

(2014) 02 AHC CK 0124

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36183 of 2001

Ram Deo Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 210

Citation : (2014) 2 ADJ 649 : (2014) 103 ALR 749 : (2014) 4 AWC 3782 :
(2014) 2 ESC 1049 : (2014) 141 FLR 909

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Vijay Kumar Singh, Advocate for the Appellant

Judgement

1. The petitioner, who was an officer of the Revenue Department of the State of U.P., was posted as Consolidation Officer at Muzaffarnagar and he passed an order on 20.3.1996, u/s 9A(2) of the U.P. Consolidation of Holdings Act in case No. 3205 of 1990. By this order, the petitioner allowed the claim of objectors in respect of plots No. 2829/0-2-0, 2831/0-6-0 and 2832/3-1-0 of Khata No. 689. The plots were directed to be recorded as bhumidhari with transferable right of the objectors after deleting the entry of Bhatta/State land. The order dated 20.3.1996 has been made the basis for initiation of disciplinary proceedings against the petitioner and ultimately the order impugned dated 9.8.2001 has been passed by the Consolidation Commissioner, State of U.P., against the petitioner, whereby the pension of the petitioner has been deducted/reduced by 25%. The petitioner has challenged the order aforesaid dated 9.8.2001 by filing the present writ petition. This Court, while admitting the present writ petition on 6.2.2012, noticed that the validity of the order in question of the petitioner dated 20.3.1996 is still sub-judice before this Court in Writ Petition No. 19728 of 1999, wherein an interim order had already been passed on 13.5.1999, and, therefore, the Writ Petition No. 19728 of 1999 was also directed to be listed alongwith the records of the present case. This Court, therefore, has also perused the records

of Writ Petition No. 19728 of 1999.

2. From a perusal of the records of the connected Writ Petition No. 19728 of 1999, it transpires that the order dated 20.3.1996 had been challenged by the Gaon Sabha by filing Appeal No. 233/1998. During the pendency of the appeal, an application appears to have been filed before the District Collector/District Deputy Director of Consolidation, Muzaffarnagar, wherein the records of the appeal were summoned and in exercise of revisional power u/s 48 of the Act, the District Magistrate/Deputy Director of Consolidation, Muzaffarnagar has set aside the order dated 20.3.1996 vide order dated 19.2.1999, and the plots in question have been directed to be recorded in the name of State Government/Fire Brigade. The order dated 19.2.1999 has been challenged by the objectors, namely Pradyumn Kumar and others by filing Writ Petition No. 19728 of 1999. An interim order staying the dispossession of the objectors has been passed by this Court and the writ petition has already been admitted on 26.11.2002. Since the validity of the order dated 20.3.1996 passed by the petitioner is still subjudice before this Court, as such this Court refrains from expressing any opinion on the merits of the order dated 20.3.1996, and the discussion of the said order dated 20.3.1996 is limited for the purposes of examining the validity of the disciplinary proceedings which have been initiated against the petitioner.

3. The disciplinary proceedings were initiated against the petitioner, on account of passing of the order dated 20.3.1996 and a charge-sheet dated 7.7.1998 was served upon the petitioner. The two charges levelled against the petitioner were as under:

(i) The petitioner had illegally passed the order dated 20.3.1996, directing the recording of the names of the occupants, ignoring the fact that in the previous consolidation proceedings the land was recorded as state land and, therefore, passing of such illegal order renders the petitioner's integrity doubtful.

(ii) After amendment in Section 210 of U.P.Z.A. & L.R. Act no person could perfect any right, on the basis of possession/occupation and, therefore, the passing of order dated 20.3.1996, granting transferable bhumidhari right to the occupants was illegal and as such the integrity of the petitioner is doubtful.

4. The petitioner submitted interim reply to the charge-sheet on 11.7.1998. In this interim reply, the petitioner denied the charges levelled against him. He stated that the order dated 20.3.1996 was rightly passed by him, after hearing the parties and upon consideration of matters on record. It was stated that the name of objectors were recorded prior to abolition of Zamindari in different capacities including 1358-59 fasli. It was denied that the claim of objectors had been allowed on the basis of possession and, therefore, the second charge was non-existent. Reference was also made to the order dated 30.3.1973, passed by Assistant Collector, in proceedings of Case No. 334/72-73, u/s 122B, as well as the order dated 26.2.1977, passed by Additional Commissioner, Meerut in Revision No. 18 of 1976, wherein old possession of the occupants had been

accepted. It was stated that since the occupants were already recorded prior to 1358-59 fasli as occupants, therefore, the entry of brick-kiln would not extinguish the right of the occupants and that he has correctly passed the order. He further stated that without examining the order dated 20.3.1996 in correct perspective the charge-sheet has been issued. The petitioner demanded various materials and documents relating to matter in issue and submitted that he would submit his reply only thereafter. The petitioner also stated that he would supply his list of witnesses only after getting the desired materials. An opportunity of personal hearing was also prayed.

5. The interim reply of the petitioner and the request made therein for supply of relevant materials does not appear to have received any consideration. The petitioner also retired on 30.9.1999. It appears that this Court in Writ Petition No. 25623 of 1998, filed by the petitioner, challenging the suspension order passed in respect of the same charge, passed the following orders:

The petitioner is challenging suspension order and charge-sheet.

We dispose of this petition with the direction to complete the enquiry against the petitioner preferably within 3 months in accordance with law. If the petitioner is exonerated in the enquiry he shall be given pension and other retiral benefit forthwith.

6. It is issuance of this direction that after expiry of more than two years, the petitioner was supplied some of the documents vide letter dated 27.5.2000, which appears to have been received by the petitioner on 1.6.2000. The petitioner, thereafter, submitted a reply on 5.6.2000 and supplemented it on 12.6.2000. The petitioner submitted that the proceedings initiated against him be dropped on the basis of reply submitted. The petitioner also contended that since the disciplinary proceedings were initiated against him in view of the reasons contained in subsequent order of the Deputy Director of Consolidation dated 12.2.1999, and as it had already been stayed by this Court, therefore, there is no basis to proceed with the departmental proceedings against him, which is liable to be dropped.

7. It further appears from the record that the enquiry Officer proceeded to submit his report on 19.6.2000, solely on the basis of the charge-sheet issued to the petitioner as well as the reply of the petitioner, submitted thereto. It is noticed that the reply of the petitioner to the charge-sheet is dated 5.6.2000 and 12.6.2000 respectively, whereas the enquiry officer has submitted his report on 19.6.2000, which is within a period of 7 days from the date of submission of petitioner's reply. The enquiry Officer concluded that the charge No. 1 against the petitioner is partially proved, whereas the second charge was held to be proved in its entirety.

8. The Disciplinary Authority issued a show-cause notice to the petitioner on 4.11.2000 observing that although in the enquiry report the first charge was partially proved in the enquiry report but upon examination of materials on

record, the first charge was found to be entirely proved, for which reasons were disclosed in the show-cause notice. The petitioner replied to the show-cause notice reiterating the stand already taken by him in his reply. The Disciplinary Authority was not satisfied with the reply of the petitioner and consequently an order dated 9.8.2001 has been passed, which has given rise to filing of the present writ petition.

9. We have heard Sri Vijay Kumar Singh, learned counsel for the petitioner, learned Standing Counsel for the respondents and have also examined the records of the present writ petition as well as the records of connected writ petition No. 19728 of 1999.

10. Learned counsel for the petitioner has assailed the impugned order by submitting that:

(i) Since the issue with regard to validity of the order dated 20.3.1996 was still subjudice before this Court in writ petition No. 19728 of 1999, as such it was not open for the Department to treat the order dated 20.3.1996 as illegal and to proceed with departmental proceedings on that account.

(ii) The enquiry initiated against the petitioner was in violation of principle of natural justice, inasmuch as after submission of reply to the charge-sheet no date and time for holding enquiry was fixed or intimated, no oral evidence etc. were examined and report of the Enquiry Officer was wholly ex parte, which has denied opportunity of proper defence to the petitioner and the consequential order of punishment is thus violative of principles of natural justice.

(iii) It was submitted that the only charge against the petitioner was that the order passed by him was illegal order and there is no further allegation that it was passed for extraneous consideration and, therefore, mere passing of the wrong order would not constitute the charge of misconduct.

(iv) The Enquiry Officer had partially found one of the charges to be proved against him, whereas the Disciplinary Authority disagreed with the opinion of the Enquiry Officer and without recording proper reasons and affording proper opportunity, the Disciplinary Authority has proceeded to prove the charge No. 1 as proved in its entirety, which is illegal.

11. The counsel for the State, on the other hand, has attempted to justify the order by arguing that petitioner had passed palpably illegal and wrong order, which was against the provisions of law and he was rightly proceed with departmentally, by issuing charge-sheet in the matter. The petitioner has been afforded proper opportunity of hearing in the matter and the respondent authority has already taken a lenient view in the matter on account of the fact that the petitioner has retired and, therefore, the decision of the Consolidation Commissioner dated 9.8.2001 requires no interference by this Court.

12. We proceed to first examine the submissions of the learned counsel for the petitioner that the enquiry proceedings had not been fairly conducted and the

petitioner was denied proper opportunity to defend himself, as a result of which, the principles of natural justice stood violated.

13. A perusal of the record shows that the charge-sheet was issued to the petitioner on 7.7.1998. The petitioner submitted an interim reply on 11.7.1998, whereby the petitioner denied the charges and requested that he be provided relevant materials and records in order to enable him to submit his final reply and also to specify as to who are the persons to be examined as witness in the matter. The petitioner had also prayed for an opportunity of personal hearing. This interim reply has been sent within a period of 4 days of the submission of the charge-sheet. The enquiry officer took more than two years to respond to this letter of the petitioner and much after the petitioner has actually retired that the documents were provided to him on 1.6.2000. The petitioner submitted his reply immediately thereafter on 5.6.2000 and also an additional reply on 12.6.2000. We find from the records that after submission of reply by the petitioner, no date and time was fixed for holding of an enquiry in the matter and no witness were examined either. The enquiry officer, as a matter of fact, did not hold any enquiry, as was required. It is settled principle of law that once charges have been denied by the employee, by submitting his reply, with which the enquiry officer is not satisfied, it is incumbent upon the enquiry officer to proceed in the matter by holding an inquiry, of which, date, time and place of enquiry should be intimated to the employee and only thereafter proper enquiry should be conducted by affording opportunity of examining witnesses etc. We find that no such exercise was conducted in the present case. The enquiry report itself appears to have come into existence just in a week of submission of reply of the petitioner, without fixing any date, time and place for holding of inquiry.

14. From the perusal of enquiry report, which is on record, it is clear that no enquiry was actually conducted in the matter. This factual aspect has also been pleaded by the petitioner in the writ petition, particularly, in para Nos. 20 and 21 thereof, which has not been effectively denied. We find from the materials on record that actually no date, place and time for holding of the enquiry was fixed or intimated to the petitioner and as a matter of fact, the enquiry officer merely on the basis of consideration of petitioner's reply proceeded to submit his enquiry report.

15. The counsel for the petitioner has relied upon a Division Bench Judgment of this Court in case of Abdul Hamid Vs. State of U.P. and Secretary, Adult Education, Non-formal Education, U.P. Government, The facts of the said case are applicable in this case as well. Para Nos. 13 and 15 of the said judgment, which are relevant, are reproduced below:

13. Though denial of the charges by the petitioner in his reply, obligated the Enquiry Officer to hold enquiry and for holding enquiry to fix date, time and place by intimating it to the petitioner for participating in the enquiry but in the circumstances of the present case where the petitioner has denied the charges and has specifically requested for adducing the evidence and for cross-

examination, it cannot be said that the enquiry was held in accordance with C.C.A. 1930 nor it was held as per Regulation 351-A of Civil Service Regulation 1930 or under the U.P. Government Servant (Discipline and Appeal) Rules, 1999.

15. We are in agreement of the aforesaid proposition of law that if the charges have been denied by the Government Servant, he has to be informed about the date, time and place for holding inquiry, allowing him to participate in the inquiry. It is a different matter that despite such opportunity being given the delinquent may not chose to appear in the inquiry. But in the instant case there is no such plea of the respondents.

16. The further contention of Sri Singh that no oral enquiry, since was conducted, as such, the enquiry was vitiated, also has substance. No witnesses etc. have been examined. This Court in a recent decision rendered in Writ Petition No. 64216 of 2011 Dr. (Smt.) Abha Gupta v. State of U.P. and others, has dealt with the law on the subject and after referring to various decisions of this Court as well as of Apex Court, concluded that if adequate opportunity of making oral inquiry is denied then the order of punishment itself would be rendered illegal. The procedure, thus followed by the enquiry officer, in holding the enquiry against the petitioner cannot withstand the test of judicial scrutiny. We are inclined to accept the argument of the petitioner that the enquiry proceedings, in the instant case, had been conducted in complete violation of principles of natural justice.

17. We further find force in the submission of the counsel for the petitioner that once the validity of the order of 20.3.1996 was subjudice and the order of Deputy Director of Consolidation, which had reversed the order dated 20.3.1996, was awaiting adjudication in Writ Petition No. 19728 of 1999, it was not open for the department to have treated the order dated 20.3.1996 as illegal. The department clearly prejudged the issue. Once the matter was pending on merits, the conclusion drawn in the order passed by the petitioner on 20.3.1996, could not be held as illegal.

18. The next argument of the petitioner that the charge-sheet merely proceeded on the allegation that the order passed by the petitioner was illegal, therefore, the integrity of the petitioner became doubtful, is unjustified, also has substance. Merely passing of a wrong and illegal order by quasi-judicial authority would not constitute a misconduct. The Hon''ble Supreme Court in case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, , while dealing with the instance of failure by quasi-judicial authority to properly adjudicate the matter, by wrong application and interpretation of law, has been pleased to hold that such error itself does not constitute a misconduct. A wrong decision is subject to judicial supervision in appeal and that in order to issue a charge-sheet against a quasi-judicial authority, something more in the nature of extraneous consideration or mala fide having actuated the order, needs to be alleged and proved. Relevant portion of para-40 and para-43 of the said judgment is reproduced below:

40. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication where under quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

19. Reliance has also been placed by the learned counsel for the petitioner upon the decision of the Hon"ble Supreme Court in the case of Awani Kumar Upadhyay Vs. The Hon"ble High Court of Judicature at Allahabad and Others, , as well as the judgment reported in the case of Smt. Mona Panwar Vs. The Hon"ble High Court of Judicature at Allahabad and Others, . The Hon"ble Supreme Court has recognised that our legal system acknowledges fallibility of the judges and that is why it provides for appeals and revisions. The condemnation of the officers passing illegal order, without there being any allegation of mala fide or extraneous consideration being the motivation for passing of such orders, have not been approved.

20. In the facts of the present case, we find that only allegation against the petitioner is of having passed an illegal order. There is no allegation that such passing of order, termed as illegal, was actuated by any mala fide or extraneous consideration. Not only that no such allegation is levelled against the petitioner, it further transpires from the record that no material whatsoever has been referred to, which may even remotely suggest that the order dated 20.3.1996 was passed for any extraneous consideration. Even if the charge on its face value is taken to be correct i.e. of passing of an incorrect/illegal order by a quasi-judicial authority, it would not amount to a misconduct. An order, claimed as illegal, could be challenged in higher forum, as has already been done in the present case and the validity of the said order is yet to be finally adjudicated. We are, therefore, of the opinion that on the basis of the charge levelled against the petitioner, as well as materials brought on record, no case of commission of misconduct against the petitioner was made out, justifying disciplinary proceedings.

21. We further take notice of the fact that the charge-sheet against the petitioner had been issued on 7.7.1998, to which an interim reply was submitted by the

petitioner on 11.7.1998 and thereafter the enquiry did not proceed further till the retirement of the petitioner on 30.9.1999. It is only after this Court directed for conclusion of enquiry that the respondents proceeded in the matter, in undue haste, and without adequate opportunity of defence to the petitioner, the enquiry officer gave his report. The petitioner has already retired in the year 1999 and he has already been harassed to a great extent.

22. The last submission of the petitioner that the disciplinary authority did not intimate reasons for disagreeing with the collusion of the enquiry officer on issue No. 1, and that the provisions of Section 351-A of CCS Rules have been arbitrarily exercised, in the present case, does not require any consideration, in view of the fact that we find that the petition is liable to succeed on other counts, for the reasons specified above.

23. Upon consideration of the entire facts and circumstances of the case, we have no hesitation in holding that the order of the Consolidation Commissioner dated 9.8.2011 is clearly illegal as the very basis for initiating the disciplinary action against the petitioner was non-existent in the present case and the only allegation of quasi-judicial authority, having passed an illegal order, without there being any allegation of improper motive or extraneous consideration, was not sufficient to initiate disciplinary action against the petitioner. The disciplinary proceedings conducted against the petitioner were also in violation of principles of natural justice and the Act of the enquiry officer in submitting his report, after receiving the petitioner's reply, without actually holding any enquiry, also cannot be sustained. The department clearly lost sight of the fact that the validity of the order dated 20.3.1996 was yet to be adjudicated and the matter since was pending adjudication in Civil Misc. Writ Petition No. 19728 of 1999, as such, no conclusion could be validly drawn that the order dated 20.9.1996, passed by the petitioner, was illegal. The entire premise, on which the impugned proceedings have been initiated against the petitioner, are illegal, invalid and renders the order impugned unsustainable in law.

24. In the facts and reasons as stated above, the order impugned dated 9.8.2001 cannot be sustained and is hereby quashed. The respondents are directed to forthwith re-calculate the pension admissible to the petitioner and the portion of pension illegally withheld from the petitioner, pursuant to order dated 9.8.2001, be paid to him alongwith 9% interest. The petitioner, in the facts and circumstances of the case, is also entitled for payment of costs, which we quantify at Rs. 2,500/-. With the aforesaid observations and directions, petition is allowed.