
(2010) 12 AHC CK 0159

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35898 of 2007

Ram Naresh Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Uttar Pradesh Fundamental Rules — Rule 56(c)

Citation : (2010) 12 AHC CK 0159

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Pradeep Saxena, learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. The petitioner is aggrieved by the order dated 27.06.2007 passed by the Additional Director of Education (Basic) U.P., Allahabad compulsorily reitring the petitioner under Fundamental Rule 56(c) w.e.f. 30.09.2007.

3. Learned counsel for the petitioner submits that from bare perusal of the impugned order it is evident that it is not an order of compulsory retirement simplicitor passed under Fundamental Rule 56(c) but is an order of punishment founded on certain allegations of misconduct, which as claimed by the authority who has passed the said order, are proved. He submits that such compulsory retirement is not a non penal order but a punishment since the procedure prescribed under Article 311(2) of the Constitution read with the U.P. Government Servant (Discipline and Appeal) Rules, 1999, of departmental inquiry has not been followed, hence, it is liable to be set aside. It is further submitted that the impugned order of compulsory retirement, in fact is an order of removal from service but without following the procedure prescribed in law and in utter violation of constitutional provision contained in Article 311(2) of the Constitution.

4. The respondents have filed counter affidavit. In para 11 thereof it is said that

an inquiry committee was constituted which submitted its report wherein allegations made against petitioner were found correct and thereafter the impugned order has been passed.

5. Having considering the submissions and perusing the record it appears to this Court that on certain allegations an inquiry committee was constituted to conduct a preliminary inquiry, to find out the persons responsible for those acts/omissions and pursuant to such report submitted by the inquiry committee, a first information report was lodged on 30.03.2007. The respondents in paras 12 and 21 of the counter affidavit have said that the Government decided to retire petitioner compulsorily instead of proceeding with the departmental inquiry. In fact in para 21 of counter affidavit, the respondents themselves have said that the order of compulsory retirement is not a punishment and Government thought it proper not to retain the petitioner in service instead of initiating any disciplinary proceeding.

6. To my mind the approach of the respondents in the case in hand is not only illegal and erroneous but wholly misconceived. If the respondents formed an opinion that the petitioner has become a deadwood and his continuance in service is not in public interest, a simple order of compulsory retirement could have been passed under Fundamental Rule 56(c) but in the case in hand the order of compulsory retirement has been passed by making specific allegations against the petitioner and also stating that those allegations have been found proved. The order, therefore, from a bare reading is stigmatic. It casts stigma against the conduct of petitioner. Such an order is apparently penal in nature and cannot be passed without holding disciplinary inquiry as it makes a simple order of compulsory retirement punitive, i.e., removal from service.

7. For brevity the order may be reproduced as under:

8. In order to find out whether the order in the present case is stigmatic or not nothing more is required except a bare reading thereof. The approach on the part of the respondents is clearly erroneous and show lack of administrative understanding, in particular, on the part of respondent No. 3 in such matters. It appears that the respondent No. 3 has no knowledge about the provisions pertaining to service matters and, therefore, has adopted a procedure which is palpably illegal and in the teeth of law, i.e., the statutory provision.

9. In view of above, the writ petition is allowed. The impugned order dated 27.06.2007 is hereby quashed. The petitioner shall be entitled to all consequential benefits. However, this order shall not preclude the respondents from initiating appropriate proceedings in accordance with law against the petitioner and pass afresh order accordingly.