

(2007) 03 AHC CK 0267
In the Allahabad High Court
Case No : C.M.W.P. No. 14781 of 2007

Sajid Ali Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Air Force Act, 1950 — Section 92
Air Force Rules, 1969 — Rule 162
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2007) 4 ADJ 523 : (2007) 7 AWC 7517

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant; A.K. Nigam, Additional S.G.I., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—The Petitioner is a Constable in the Air Force. He is aggrieved by an order dated 29.12.2006, passed by the Chief of the Air Staff whereby a direction has been issued for deduction of a sum of Rs. 1,700 from the salary of the Petitioner, which is to be paid as maintenance allowance to the minor son of the Petitioner till he attains majority or remains under the custody of his mother or grant of maintenance allowance is made to him by any Court.

2. I have heard Sri M. A. Khan, learned Counsel appearing for the Petitioner as well as Dr. A. K. Nigam, learned Additional Solicitor General of India, assisted by Sri Ramesh Rai on behalf of the Respondents and have perused the record.

3. The main ground of challenge to the order dated 29.12.2006, which has been impugned in this writ petition is that the same has been passed in violation of the principles of natural justice, as no notice to show cause was issued to the Petitioner prior to the passing of the said order. It has also been submitted that since the application for grant of maintenance u/s 125, Cr. P. C. is pending before

the competent court, which is being contested by the Petitioner, hence the passing of the order for deduction of Rs. 1,700 from the salary of the Petitioner towards maintenance of the minor son of the Petitioner is wholly unjustified.

4. The impugned order has been passed u/s 92(i) of the Air Force Act, 1950, read with Rule 162 of the Rules of 1969.

5. Section 92(i) of the Air Force Act, 1950, reads as under:

92. Deductions from pay and allowances of airmen.--Subject to the provisions of Section 95, the following penal deductions may be made from the pay and allowance of an airman, that is to say,?

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

6. Rule 162 specifies that the prescribed officer for the purposes of Clause (i) of Section 92 shall be the Chief of the Air Staff. As such, the order impugned has been passed by the competent officer.

7. It is not disputed by the Petitioner that such maintenance has been granted to his own son. It has been claimed that on 6.4.2006, the Petitioner has divorced his wife-Respondent No. 3. Merely by divorcing his wife, the Petitioner cannot shirk his responsibility of maintaining the child born out of the wedlock. The child, who is the beneficiary of the order, has not even been impleaded as a party.

8. Although normally this Court would be inclined to interfere with an order which has been passed without issuing notice to show cause, but the same will not apply in every case and would depend on the facts of each case. In the present case, the Petitioner has not been able to give any satisfactory explanation that in case if he would have been given opportunity to show cause, what reply he would have given. He has thus not been able to show as to how he has been prejudiced by not being given an opportunity to show cause. In the writ petition, the Petitioner has nowhere stated that he has the responsibility of

maintaining any other children or family members, nor has he even mentioned the salary which he is getting, in order to show that the amount sought to be deducted is not reasonable.

9. When a person approaches this Court under its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India, he has to first show as to what injustice has been caused to him because of the action of the Respondents. Under this jurisdiction, even if in case there is some procedural defect in passing an order, but by such order substantial justice has been done between the parties and is otherwise equitable, this Court can always and should refuse to interfere with such order. In the present case, the impugned order is perfectly justified in law as the same has been passed by the competent officer and for valid reasons. It is not that money which is to be deducted from the salary of the Petitioner is to be paid to some unknown or unwanted person. The said amount of Rs. 1,700 which is to be deducted from his salary, is to be paid to his own minor son for his maintenance and that too only till such time he attains majority or till a competent court of law passes an order granting maintenance allowance to him. The responsibility to maintain a child is that of the father. In the present case, the Petitioner is in service and drawing salary and thus he cannot deny his responsibility to maintain his son.

10. As such, the order impugned in this writ petition having been passed by a competent officer and for valid reasons, is perfectly justified and this Court does not find any good ground for invoking its extraordinary discretionary jurisdiction in favour of the Petitioner.

11. This writ petition is, accordingly, dismissed. No order as to costs.