
(1993) 10 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 6506 (S/B) of 1992

Satya Narain Srivastava

APPELLANT

Vs

U.P.State Food and Essential Commodities Corporation Ltd.,
Lucknow and another

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Citation : (1993) 10 AHC CK 0034

Hon'ble Judges : K.L.Sharma, J

Final Decision : Dismissed

Judgement

K.L. Sharma, J.—This writ petition has been filed against the chargesheet dated 22892 contained in Annexure3 to the writ petition. He has prayed for issue of a writ of certiorari for quashing of the chargesheet and for issue of a writ of mandamus commanding the opposite parties not to proceed with the disciplinary proceedings on the basis of the chargesheet. The petitioner has also prayed for the issue of mandamus commanding the opposite parties to regularise the services of the petitioner and to pay him equal pay for equal work and regular salary since August, 1992.

2. The petitioner was appointed by the opposite party No. 1, a Government Company, as a Salesman on 2581988 on daily wages of Rs. 29.54 which was raised to Rs. 30.54 per day with effect from 12592, whereas the other Salesmen of the opposite parties are getting the regular pay scale of Salesman. The petitioner alongwith two others filed a writ petition No. 1022 of 1991 (S/S) in this Court against the order of retrenchment, in which an interim direction was issued that if the juniors to the petitioner are working, then the petitioner be also provided the work and paid salary by the opposite parties. This interim direction was complied with by the opposite parties but regular salary of Salesman was not paid. On 12592 the petitioner was transferred from Mawaiya to Bada Birwa and handed over the charge of Mawaiya shop on 7892 and joined at Bada Birwa on 8892. There was an inspection of Mawaiya shop by opposite party No. 2 on

28792 and on the basis of that inspection a chargesheet dated 22892 was given to the petitioner for the initiation of the disciplinary proceedings. The petitioner has challenged the facts mentioned in the chargesheet. He has further stated that since he has been working for more than 240 days in a Calendar year since 1985, his services are liable to be regularised as his work and conduct has always been found satisfactory, and is entitled to be paid equal pay for equal work like other Salesman of the Corporation by virtue of Articles 14 and 16 of the Constitution. He has stated that the opposite parties had cancelled the first chargesheet and served another chargesheet which is not permissible under the doctrine of estoppel and principle of natural justice.

3. The petitioner amended this writ petition adding some more facts, grounds and prayer consequent upon the issue of the show cause notice dated 1593 for proposed dismissal of the petitioner contained in Annexure8 to the writ petition.

4. The opposite parties have contested this writ petition. It has been stated in the counter affidavit that the petitioner was not regular employee of the Corporation and was not entitled to the pay of the regular Salesman, but he committed serious irregularities in the course of the discharge of his duties as Salesman, and, therefore, the chargesheet was served on him. There is no illegality in the chargesheet or in the initiation of the disciplinary proceedings against him, but later on it was found that some clerical mistakes were committed in the preparation of the chargesheet dated 22892, and, therefore, this chargesheet was cancelled and a fresh chargesheet incorporating the necessary correction was given to the petitioner on 21992. It has been further stated that the writ petition against the chargesheet is not maintainable for the reason that the supply of the chargesheet is by itself an opportunity to the petitioner to show cause against the charges levelled against him, and to participate in the enquiry and crossexamine the departmental witness and then to give his own evidence in support of his defence. There is as such no violation of the principles of natural justice The clerical mistake in the chargesheet could be corrected by the competent authority which issued the chargesheet, and as such there is no violation of the principles of estoppel. It has also been stated that the petitioner is not entitled to be regularised, and more so when his conduct is not satisfactory and is harmful in the Corporation.

5. I have heard the learned Counsel Sri A. P. Srivastava for the petitioner and the learned Counsel for the opposite party Sri Abid Ali and perused the record.

6. The learned Counsel for the petitioner has submitted that the issuance of the chargesheet dated 22892 followed the order of punishment dated 22892 vide AnnexureSa to the counter affidavit, and as such the disciplinary action following the punishment is bad in law. I have read the letter dated 11892, AnnexureSa to the counter affidavit of the opposite parties. This letter was addressed by the Managing Director to the District Manager of the Company at Lucknow. This letter followed the inspection of Mawaiya shop made by the Managing Director on 28792. In the inspection of the Managing Director, certain irregularities

committed by the petitioner came to the notice of the Managing Director. In view of the alleged irregularities, the District Manager of the Company at Lucknow was directed to stop taking work from the petitioner working as daily wage Salesman. This direction of the Managing Director to the District Manager cannot be construed an order of punishment, but it is merely an administrative direction given in the interest of the Company for preventing commission of other irregularities to the detriment of the Company. There is nothing in law to prevent the Managing Director from issuing the chargesheet after stopping the petitioner to work. There is no violation of the principles of natural justice if the petitioner was stopped from working before the issuance of the chargesheet. It merely amounted to cessation of work from the date when the irregularities came into the notice of the Inspecting Officer. The petitioner being a daily wager could not claim payment of wages or subsistence allowance if the work was not being taken from him. The terms and conditions of his appointment as a daily wage Salesman did not entitle him to claim salary for the period of cessation of work. However, the learned Counsel Mr. Abid Ali appearing for the opposite parties showed the graciousness by submitting that if the Court gives such a direction, the Company will, of course, comply with it though the petitioner is not entitled in law to daily wages or subsistence allowance like a regular employee. I do not find any provision in law where under a daily wager can be directed to be paid daily wages or subsistence allowance when the employer has stopped taking work him. Therefore, this Court is unable to give such a direction. The learned Counsel Mr. Abid Ali has now moved an application on 27993 to the effect that after consideration of the explanation of the petitioner to the fresh chargesheet dated 21992, the Managing Director has decided to withdraw the show cause notice for proposed dismissal of the petitioner and to restart the disciplinary enquiry from the stage of chargesheet in accordance with the provisions relating to the disciplinary enquiries. It has been accordingly prayed that after withdrawal of the show cause notice for proposed dismissal, this writ petition becomes Infructuous and is liable to be dismissed.

7. The learned Counsel for the petitioner has submitted that the opposite parties are not entitled to restart the enquiry from the stage of chargesheet as the petitioner has already suffered for about a year. The learned Counsel Mr. Abid Ali pointed out that the Company has now paid without entitlement but in all fairness and on humanitarian ground the subsistence allowance to the petitioner and as such there remains no grievance and hardship to the petitioner. He has further submitted that it is always within the competence of the Managing Director to cancel or withdraw the show cause notice, the chargesheet and even cancel the enquiry and to issue another chargesheet or to restart the enquiry in accordance with the legal provisions from the stage of the chargesheet. The learned Counsel for the petitioner has not been able to show any provision of law whereby the appointing authority disciplinary authority is prevented from doing so as is being done by the Company in the instant case. I find substance in the contention of the learned Counsel Mr. Abid Ali that after withdrawal of the show

cause notice of dismissal, this writ petition which was later on amended to challenge the show cause notice also becomes in fructuous and deserves dismissal as such. I further find substance in the contention that the Managing Director being the competent authority to initiate disciplinary proceedings afresh is entitled to cancel the enquiry and the show cause notice and to restart the disciplinary enquiry afresh on the chargesheet already furnished, or to be served afresh. But, I am surprised to see how disciplinary enquiry is called for against a daily wage Salesman. Any way, I do not want to comment on this proposed action for the reason that the petitioner may not be prejudiced in this regard.

8. The learned Counsel for the petitioner has vehemently pointed out that the facts mentioned in the chargesheet are totally false and no disciplinary action is called for against the petitioner. I also find that in the writ petition as well as in the Annexures thereto the petitioner has challenged the facts mentioned in the chargesheet and has also given his explanation to prove that the charges levelled against him are false. But, I am afraid that such disputed questions of fact cannot be examined by this Court while exercising extra ordinary jurisdiction under Article 226 of the Constitution, which is confined to a judicial review of any order passed in violation of the provisions of law. In the instant case, no violation of any provision of law has been shown in regard to the disciplinary action being taken against the petitioner. There is also no breach of the principles of natural justice committed by the opposite parties in regard to the service of chargesheet and the disciplinary enquiry against the petitioner. The order dated 11892 whereby the petitioner has not been allowed to work, is not an order of punishment, and no opportunity of hearing was called for before issuing such a direction by the Managing Director to the District Manager. There is also no violation of the doctrine of estoppel if the earlier chargesheet dated 22892 has been found to contain clerical mistakes, and instead a fresh chargesheet has been served on 21992 by withdrawing the earlier chargesheet dated 22892. By this act of the Managing Director, no prejudice has been caused to the petitioner whose position remains the same as it was before issuing the chargesheet dated 22892, or the fresh chargesheet dated 21992. This Court cannot be expected to go into those facts which are subject matter of the chargesheet and have to be enquired into by the Enquiring Officer after giving full opportunity not only to the department, but also to the delinquent employee. These facts have to be left to be enquired into by the Enquiring Officer at the proper stage. No ground has been made out to call for inference by this Court at this stage.

9. For aforesaid reasons, this writ petition does not have merit. Moreover according to the latest application dated 2791993 presented on behalf of the opposite parties that the impugned show cause notice for proposed dismissal of the petitioner has been withdrawn, this writ petition has in the amended form become in fructuous, and is liable to be dismissed. The grievance of the petitioner for payment of the daily wages, or the subsistence allowance from August 1992 has also been redressed by the opposite parties as disclosed in para 2 of the affidavit of Sri R.K. Nigam accompanying the application dated 2791993.

10. Subject to the above observations and reasons, this writ petition is hereby dismissed with no order as to costs.