

(2010) 10 AHC CK 0078
In the Allahabad High Court
Case No : Special Appeal No. 1634 of 2010

Satya Narain Tiwari

APPELLANT

Vs

U.P. State Handloom Corporation Ltd. and Another

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Uttar Pradesh State Handloom Corporation Ltd. (Officers and Staff) Service Rules, 1981 — Rule 15

Citation : (2011) 1 AWC 414 : (2011) 128 FLR 348 : (2011) 3 LLJ 777 : (2011) 1 UPLBEC 465

Hon'ble Judges : R.K. Agrawal, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Agrawal and A.P. Sahi, JJ.—The Appellant, an employee of the U.P. State Handloom Corporation (hereinafter referred to as "the Corporation"), was subjected to a disciplinary enquiry. The Managing Director of the Corporation passed an order on 7th June, 2006 whereby he disagreed with the Enquiry Officer's report dated 20th December, 2005 and ordered the enquiry to be conducted de novo as in his opinion there were discrepancies in the enquiry report. Assailing the aforesaid order the Appellant filed the writ petition, which has given rise to the present appeal.

2. The learned Single Judge after noting the arguments, rejected the writ petition holding that upon an examination of the records, the disciplinary authority found that no oral enquiry had been held and, therefore, the reasons given for ordering a fresh enquiry is justified. The learned single Judge further held that in any event, the Petitioner does not suffer in any manner as the order does not visit him with any penal consequences.

3. Sri Avanish Mishra, learned Counsel for the Appellant contends that the services of the Appellant are governed by the U.P. State Handloom Corporation Limited (Officers & Staff) Service Rules, 1981 (hereinafter referred to as "the

1981 Rules") and according to the said Rules if the disciplinary authority disagrees with the enquiry report, he has to record reasons and also record his findings on each individual charges before ordering a fresh enquiry. Sri Mishra further contends that no opportunity was given to the Appellant at the stage of ordering a fresh enquiry, while disagreeing with the enquiry report which had already been submitted in favour of the Appellant and, therefore, the order is vitiated. He submits that Rule 15 of the 1981 Rules has been violated and, therefore, the learned Single Judge committed an error by upholding the impugned order dated 7th June, 2006.

4. Replying to the aforesaid contentions raised by learned Counsel for the Appellant, Sri S.N. Singh, learned Counsel for the Corporation contends that from the records, it is evident that the Enquiry Officer did not hold any oral enquiry and as a matter of fact, the enquiry was not conducted in accordance with the Rules. In such a situation, the disciplinary authority was fully justified in ordering a fresh enquiry.

5. We have heard learned Counsel for the parties and from a bare perusal of the records, we find that one Sri D.P. Mishra-Deputy Registrar, who was appointed as Enquiry Officer, submitted his report through his letter dated 20th December, 2005 exonerating the Appellant from the charges. The disciplinary authority opined that the Enquiry Officer had not conducted the enquiry appropriately and it has been found that the enquiry report is incomplete and is unclear. This is indicated in the order dated 22.5.2007. We also find that the order dated 7th June, 2006 by which a fresh enquiry was ordered, does not contain any reason for disagreeing with the Enquiry Officer's report. It simply recites that for various reasons a new Enquiry Officer was being appointed to conduct the enquiry in respect of the employees mentioned therein, including the Appellant-Satya Narain Tiwari. This order was passed on a report indicated in the note-sheet, on 5th June, 2006. The said note-sheet, which has been prepared by some subordinate official indicates that the file was incomplete and that there were requests for examination and cross-examination of witnesses which was not ensured by the Enquiry Officer. It has further been indicated therein that the responsibility for the loss caused has not been fixed even if, the Appellant or the other officers are to be exonerated. It appears that on the aforesaid report the order dated 7th June, 2006 was passed.

6. The disciplinary authority, therefore, has not indicated in the order dated 7th June, 2006 as to what reasons impelled him to appoint a new Enquiry Officer and get the enquiry held afresh. The contention raised on behalf of the Corporation that the learned single Judge has observed that there were reasons available as no oral enquiry has been held, has to be rejected, inasmuch as, such a reason has to be contained in the order of the disciplinary authority and cannot be gathered from the averments contained in the counter affidavit. The order of the disciplinary authority has to stand on the basis of the reasons recorded therein and not by reasons stated in the counter affidavit in view of the proposition of

law laid down by the Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

7. In our opinion, the disciplinary authority has not recorded any reasons of his own nor has he expressed his opinion by recording a finding on the charges levelled against the Appellant. The disciplinary authority therefore ought to have, in compliance of Rule 15 of the 1981 Rules discharged his obligations, which has not been done in the instant case.

8. We may gainfully reproduced Rule 15 of the 1981 Rules hereinunder:

15. Action of the enquiry report:

(i) The disciplinary authority shall, if it disagrees with the finding of the enquiring officer on any charge, record his reasons for such disagreement and also record his own findings on such charge.

(ii) If the disciplinary authority, having regard to its finding on all or any of the charges, is of the opinion that any of the impossible penalties should be inflicted on the employee, he shall make an order imposing such penalty, notwithstanding anything contained in the sub-rules dealing with the imposition of minor penalties.

(iii) If the disciplinary authority, having regard to its findings on all or any of the charges, is of the opinion that no penalty is called for, he may pass an order exonerating the employee.

9. Sri S.N. Singh, learned Counsel for the Corporation contends that the Rules so framed are not statutory rules and therefore, the same cannot be enforced by this Court.

10. The aforesaid submission has to be noted only for being rejected, inasmuch as, Rules have been framed by the Corporation for the benefit of the employees and it is not open to the Corporation to take this plea after having violated the Rules itself. We may add that the law propounded by the Supreme Court on this issue is clearly enunciated in the decision of B.S. Minhas Vs. Indian Statistical Institute and Others, where it is held as follows:

23. The next question that arises for consideration is whether the appointment of Respondent No. 4 as Director of Respondent No. 1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director should be suitably publicized. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement cannot in any way affect the appointment of Respondent No. 4 as Director of Respondent No. 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so Respondent No. 1 was bound to comply with it. In support of his contention he strongly relied upon Ramana Dayaram Shetty v. International

Airport Authority of India. The Court in that case held: (SCC p. 503, para 10)

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

The aforesaid principle laid down by Mr. Justice Frankfurter in *Vitarelli v. Seaton* has been accepted as applicable in India by this Court in *Amarjit Singh Ahluwalia v. State of Punjab* and in subsequent decision given in *Sukhdev Singh v. Bhagatram Sardar Singh Reghuvanshi*. Mathew, J. quoted the above-referred observation of Mr. Justice Frankfurter with approval.

24. In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of Respondent No. 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent No. 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-law 2.

25. Compliance with this bye-law also seems to be necessary in the name of fair play....

11. Apart from this, the rules of natural justice had to be necessarily read into the rules, to the effect that the disciplinary authority was under an obligation to have recorded his reasons for disagreeing with the Enquiry Officer's report and, therefore, should have given an opportunity to the Appellant. On this issue before proceeding to record findings on the charges, the disciplinary authority did not given any opportunity to the Appellant nor did he record any findings as required under Rule 15 of the 1981 Rules.

12. In our opinion, the procedure adopted by the disciplinary authority is contrary to Rule 15 of the 1981 Rules and is also a clear violation of established principles of natural justice.

13. We are supported in our view by the judgments of the Apex Court in the cases of *Punjab National Bank and Ors. v. Kunj Behari Misra* 1998 (80) FLR 841 (SC). *Yoginath D. Bagde v. State of Maharashtra* and *Anr.* 1998 (80) FLR 841 (SC) *S.B.I. and Others Vs. Arvind K. Shukla*, and *C.S.H.A. University and Anr. v. B.D. Goyal*. 2002 (4) AWC 3042 (SC).

14. A perusal of the aforesaid judgments leave no room for doubt that wherever there is an absence of any specific provision in the Rules, the employer is duty bound to give an opportunity before it proceeds to pass an order for holding a fresh enquiry upon disagreement with an enquiry report already submitted.

15. In the instant case, the aforesaid dictum of the Supreme Court has not been followed and the Rules having been violated, the learned Single Judge fell in error by rejecting the writ petition. The order dated 7th June, 2006 and the consequential order dated 22.5.2007, insofar as it relates to the disagreement with the Enquiry Officer's report, is set aside.

16. The judgment and order of the learned Single Judge dated 1.9.2010 is also set aside with a direction to the Respondents to proceed to conclude the enquiry from the stage of consideration by the disciplinary authority on the Enquiry Officer's report dated 20th December, 2005. It shall be open to the disciplinary authority to pass an order in accordance with Rule 15 of the 1981 Rules and in the event the disciplinary authority concludes its findings against the Appellant, only then it shall further proceed to continue with the disciplinary proceedings in accordance with law. The appeal is accordingly allowed.