

(2014) 11 AHC CK 0164
In the Allahabad High Court
Case No : Special Appeal No. 961 of 2014

Satya Prakash Chaudhary

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 6 AWC 6035

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Jai Krishna Tiwari and Radha Kant Ojha, Advocates for the Appellant

Judgement

Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Pradeep Kumar Singh Baghel, J. —The appellant had moved a writ petition, under Article 226 of the Constitution, challenging an order dated 9th September, 2014 passed by the fifth respondent namely, the Principal, B.R.D. Medical College, Gorakhpur. By the order of the fifth respondent, the appellant was suspended on the ground that he had demanded an illegal gratification from the attendant of a patient in the emergency ward. A direction has been issued to the effect that a reference to the order of suspension be made in the service book of the appellant and that an adverse entry be recorded in his character roll.

2. The learned single Judge has declined to interfere with the order of suspension, having due regard to the gravity of the charge. However, the second respondent-Director General, Medical Health Services as well as the fifth respondent-Principal, B.R.D. Medical College, Gorakhpur were directed to look into the matter and take a decision on the issue as to who is the authority competent to suspend the appellant.

3. Two submissions have been urged on behalf of the appellant. Firstly, the order dated 9th September, 2014 is not an order of suspension passed in contemplation of a disciplinary enquiry. If this is an order by way of punishment,

it ought to have been proceeded by a notice to show cause and a departmental enquiry. Secondly, the direction to make an entry in the service book and to record an adverse entry in the character roll, on the basis of the same order, would be consequently unsustainable since the entire foundation is a misconduct which is still to be proved.

4. The order which was impugned in the proceedings before the learned single Judge dated 9th September, 2014 proceeds to suspend the appellant. Ex-facie the order is not in contemplation of a departmental proceeding. It is well-settled that an order of suspension of an employee can be of two types. The first is where a suspension is ordered in contemplation of a departmental enquiry or proceeding. The second is where a suspension is contemplated by service rules as a punishment for misconduct. In the present case, the impugned order does not indicate that it is in contemplation of a disciplinary proceeding. If the order was intended to operate as a punishment for misconduct, compliance of the principles of natural justice in accordance with service rules was necessary.

5. In either view of the matter, the order of suspension that was challenged before the learned single Judge was unsustainable in view of the flaw which has been noticed above. The learned single Judge declined to entertain the petition under Article 226 of the Constitution, having due regard to the gravity of charge against the appellant. On this aspect, we need only observe that irrespective of the gravity of an allegation, the rule of law has to be observed and an order of suspension must necessarily abide by the fundamental principles of service jurisprudence as embodied in the applicable service rules.

6. For these reasons, we have come to the conclusion that the judgment and order of the learned single Judge would warrant interference in appeal. The special appeal is, accordingly, allowed and the impugned judgment and order of the learned single Judge dated 25th September, 2014 is set aside. In consequence, the Writ Petition (Writ-A No. 52394 of 2014) filed by the appellant shall stand allowed and the order passed by the fifth respondent dated 9th September, 2014 shall stand quashed and set aside.

7. However, we expressly make it clear that this judgment will not come in the way of the competent authority to pass a fresh order of suspension, if it is considered to be necessary and proper, in contemplation of a disciplinary proceeding in accordance with law.

8. The special appeal is, accordingly, disposed of. There shall be no order as to costs.