

(1999) 07 AHC CK 0151
In the Allahabad High Court
Case No : C.M.W.P. No. 10632 of 1992

Satya Ram Yadav

APPELLANT

Vs

Deputy Managing Director, U.P. State Warehousing Corpn.,
Lucknow and others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AWC 2540 : (2000) 85 FLR 640 : (1999) 3 UPLBEC 1760

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; O.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The petitioner was appointed on ad hoc basis as clerk on 21.11.79. He Joined his duties on 24.11.79. The petitioner has been dismissed from service by the respondents by order dated 13.12.91 w.e.f. 19.8.91 on the ground that he absented from the duty. The petitioner claims that he applied for leave which was subsequently sanctioned after his dismissal by the respondents. The order of dismissal is under challenge in the instant writ petition.

2. The respondents in their counter-affidavit stated that the petitioner has got an adequate statutory alternative remedy of filing an appeal under regulations framed by the corporation, therefore, this petition is liable to be dismissed on the availability of alternative remedy. He further argued that since the petitioner was absent from duty unauthorisedly as his leave was not sanctioned, therefore, the respondents issued a show cause notice on 8.10.91 by registered post as to why he be not dismissed from service under the regulations. It was stated in the notice that the petitioner had been absent from duty from 19.8.91 after joining at Rath on 8.8.91. It was also mentioned that the petitioner was absent earlier also from 14.7.90 to 23.3.91. 30.3.91 to 7.8.91 and no application has been given by the petitioner for the period 14.7.90 to 25.3.91. It was further stated

that the petitioner is continuously absent from duty which is in violation of the regulations. Charge-sheet and show cause notice has been given to the petitioner but the petitioner has shown no improvement. In case the petitioner within 15 days did not reply to the notice, then it will be presumed that he was is not interested in the service of the corporation. Since no reply was given by the petitioner to the show cause notice, therefore, the order dated 13.12.91 was passed by the respondent No. 1 dismissing the petitioner from service w.e.f. 19.8.91.

3. I have heard Shri Anil Kumar Sharma learned counsel for the petitioner and Shri O. P. Singh, learned counsel appearing for the respondents.

4. Learned counsel for the petitioner urged that the dismissal order is violative of principle of natural justice as the petitioner was a confirmed clerk and he could not be dismissed from service by the respondents arbitrarily without holding any departmental disciplinary proceedings and without giving proper opportunity of hearing to him. He further urged that the petitioner remained absent from duty due to illness of his wife and family members. He applied for leave, however, since respondents themselves have sanctioned the leave of the petitioner after passing of the dismissal order by their order dated 4.4.94, this itself demonstrates that the respondents illegally and arbitrarily earlier did not sanction the leave of the petitioner, therefore, the dismissal order is liable to be set aside.

5. Shri O. P. Singh the learned counsel for the respondents argued that the petitioner has got an adequate statutory alternative remedy of filing an appeal under regulations, therefore, this petition is liable to be dismissed on the availability of alternative remedy. The other argument was that the petitioner had been dismissed after issuing show cause notice and charge-sheet in accordance with the principles of natural justice. He further argued that the petitioner was a temporary employee and he was absent from duty without any leave, therefore, he has rightly been dismissed from service.

6. The petitioner in paragraph 2 of the writ petition clearly stated that he was confirmed on the post of the clerk. This fact has not been denied by the respondents in paragraph 4 of their counter-affidavit. Therefore, the assertion of the petitioner that he was confirmed employee has to be accepted. It is settled law that such an employee cannot be dismissed from service without holding departmental disciplinary proceeding and without giving him proper opportunity to defend himself. The petitioner was absent from duty from 19.8.91 after Joining at Rath on 8.8.91. He was also absent from 14.7.90 to 23.3.91. 30.3.91 to 7.8.91 and 14.7.90 to 25.3.91. With regard to his absence from duty on the abovementioned dates, the petitioner has explained in the writ petition that he could not join his duty to illness of his wife, brother and himself. His brother subsequently died. In paragraph 8 of the writ petition, he has clearly stated that no charge-sheet dated 15.5.91 was served upon the petitioner, only a show cause notice was served upon him to which he submitted a reply thereafter,

joined his duty on 8.8.91 after availing medical leave from 26.3.91. Paragraph 8 of the writ petition has been replied by the respondents in paragraph 9 of the counter-affidavit, wherein it has been asserted that charge-sheet was served on the petitioner along with letter dated 15.5.91, but copy of the charge-sheet has not been filed along with the counter-affidavit. This leads to the presumption that charge-sheet was not served on the petitioner. No enquiry officer was appointed, no material has been brought on record by the respondents to establish "that any departmental disciplinary proceedings was held by the respondents. The service of show cause notice dated 8.10.91 has been denied by the petitioner in paragraph 12 of the petition which has been replied by respondents in paragraph 12 of the counter-affidavit wherein self contradictory reply about the service of notice has been given. The notice was sent to the petitioner by registered post. It has not been stated on what date the show cause notice was sent by registered post. No registry receipt has been filed by the respondents. The dismissal order dated 13.12.91 also does not mention that the show cause notice dated 8.10.91 was served upon the petitioner. From the facts stated above, it is clear that the notice dated 8.10.91 was not served on the petitioner. The order dated 13.12.91 dismissing the petitioner from service w.e.f. 19.8.91 was in violation of the principles of natural justice and cannot be upheld.

7. The other argument of the learned counsel for the respondents that the petitioner was a temporary employee and his dismissal from service without any enquiry cannot be interfered by this Court is devoid of any merit. As earlier held in this judgment, it was not disputed by the respondents that the petitioner was A confirmed employee. If the contention of the learned counsel for the respondents is accepted that the petitioner was a temporary employee. even in that case the dismissal order passed cannot be upheld. The dismissal order states that the petitioner is being dismissed on the ground of unauthorised absence from the duty. This casts stigma upon the petitioner. The dismissal order was punitive and the petitioner was entitled for a proper opportunity of hearing in accordance with the principles of natural justice which was not given to him.

8. The last argument of the learned counsel for the respondents that the petitioner has an adequate alternative remedy of appeal before the State Public Tribunal is also liable to be rejected. The dismissal order has been found to be violative of principle of natural justice. The Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , has held that if an order is violative of principle of natural justice in that case even if there is statutory alternative remedy available to the petitioner, the High Court can interfere without relegating the petitioner to pursue the alternative remedy.

9. For the reasons given above, the order of dismissal passed with retrospective effect by the respondents deserves to be set aside.

10. The respondent has sanctioned leave of the petitioner for the period during which he remained absent. A copy of the order dated 4.4.94 has been placed on the record as Annexure-VI to the counter-affidavit. The petitioner shall be

entitled for computation of arrears of salary after deducting salary of the petitioner as per order dated 4.4.94 passed by the respondents.

11. The writ petition succeeds and is allowed. The impugned order of dismissal dated 13.12.91 passed by respondent No. 1 dismissing the petitioner with effect from 19.8.91 Annexure-VI to the writ petition is quashed. The respondents are directed to reinstate the petitioner in service and pay his entire arrears of salary after deducting salary of the petitioner as per order dated 4.4.94 passed by the respondents within a period of three months from the date of production of a certified copy of this order before the respondent No. 1.

12. There shall be no orders as to costs.