
(2010) 11 AHC CK 0412
In the Allahabad High Court
Case No : Special Appeal No. 685 of 2010

Savindra Singh

APPELLANT

Vs

Lok Sewa Ayog Utter Pradesh and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Uttar Pradesh Public Service Commission (Regulation and Procedure) Act, 1985 —
Section 3

Citation : (2011) 1 ADJ 789

Hon'ble Judges : F.I. Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Advocate : G.S. Srivastava and Sharad Kumar, for the Appellant; Pushpendra Singh, Gautam Baghel and P.S. Baghel, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant and Sri P.S. Baghel, learned Senior Counsel for the Uttar Pradesh Public Service Commission. The appellant filed a writ petition giving rise to the present appeal assailing the order passed by the Examination Committee, U.P. Public Service Commission in relation to the action taken by the U.P. Public Service Commission (hereinafter referred to as "the Commission") debarring the appellant for a period of three years from appearing in any of the examinations conducted by the Commission. The Union Public Service Commission on account of the alleged misconduct has also taken a similar action.

2. The allegations against the appellant are that while appearing in one of the examinations conducted by the Commission on 4th August, 2009, he had not submitted the answer book and that he allegedly escaped with the answer book from the examination hall. A report was submitted by two Invigilators namely Ram Chandra Dwivedi and Ram Pher Yadav on the same day and on the basis of the said report, the appellant was issued a show cause notice calling upon him to explain as to why the proposed punishment be not imposed against him. The

appellant submitted a reply to the said show cause notice whereafter the orders impugned challenged in the writ petition, were passed rejecting his explanation.

3. Learned counsel for the appellant submits that the procedure adopted by the respondents is contrary to law and the same does not empower them to impose a punishment debarring a candidate for a period of three years. The entire procedure adopted in conducting the enquiry is in violation of principles of natural justice, inasmuch as, the appellant was not supplied with any material on the basis whereof the impugned order was passed nor was he allowed to cross-examine the two invigilators who had submitted the report on the basis whereof the punishment has been imposed.

4. Sri P.S. Baghel, learned Senior Counsel for the Commission has produced a copy of the Instructions promulgated by the Commission for the candidates to be observed for the purposes of examinations and Clause 7 and Clause 8 of the said Instructions are reproduced herein below:

5. On the basis of the said Instructions and in view of the provisions of Section 3 of the Uttar Pradesh Public Service Commission (Regulation and Procedure) Act, 1985 read with the schedule appended thereto, the Commission is empowered to conduct an enquiry under a statutory rule and impose such punishment as defined therein.

6. Sri Baghel further submits that the appellant had been given opportunity and there being no substance in the reply submitted by him, the impugned order came to be passed.

7. Having heard learned counsel for the parties and having perused the said rules, we are of the considered opinion that the Commission is fully empowered under the provisions of the 1985 Act to proceed to take such action as indicated in Clause 7 and Clause 9 of the Instructions that have been produced before us. A combined reading of the aforesaid two clauses binds the candidate to the terms and conditions of instructions and obliges the candidate not to leave the seat allotted to him in the examination hall till the answer book is collected. Any violation thereof can invite the penalty of debarment which can extend to a period of five years. In view of the aforesaid position, the first contention raised on behalf of the appellant that the Commission is not empowered to impose such punishment for debarment for the period referred to therein is unsustainable and the same is rejected.

8. We also find from the instructions received that a two member Committee had been appointed by the Commission consisting by Mr. M.D. Dubey and Mr. Savindra Singh, who were authorized to act as the Examination Committee for the purposes of awarding punishment in such related matters. The Committee thereafter proceed to issue a show cause notice through the Secretary of the Commission to which a response was submitted by the appellant whereafter the impugned order has been passed. Coming to the second submission raised by the learned counsel for the appellant that he was not given a proper opportunity

to defend himself before the said Committee, we find that the report of the two invigilators was entertained by the Commission and thereafter if passed the impugned order. The impugned order does not indicate that the appellant was apprised of the contents of the said report or any procedure was adopted by the Commission to provide an opportunity to the appellant to cross-examine the said two invigilators, whose statements were also recorded for the purposes of imposing the punishment.

9. In this view of the matter, we find that the principles of natural justice have not been observed as was required in the present case. The appellant ought to have been apprised of the material as also the statement of the said two invigilators on the basis whereof the punishment was sought to be imposed.

10. In case the appellant wanted to cross-examination the said invigilators, he ought to have been given an opportunity by the Commission in this regard. This having not been done, the order impugned to that extent cannot be sustained. Accordingly, in view of the aforesaid conclusions drawn we find that the learned single Judge has dismissed the writ petition without appreciating the aforesaid aspect of the matter and accordingly, the impugned judgment dated 2nd April, 2010 is set aside as also the order passed by the Commission dated 16th November, 2009 and the consequential order dated 4th February, 2010.

11. Learned counsel for the appellant has also submitted that during the pendency of this litigation as well as the proceedings before the Commission, the appellant be permitted to appear in other examinations conducted by the Commission and also by the Union Public Service Commission as on account of the proceedings initiated against him, he would not be able to appear in future examinations.

12. In this view of the matter, we allow this appeal and direct the Commission to provide an opportunity in the light of the observations made hereinabove to the appellant and conclude the enquiry by passing a reasoned order as expeditiously as possible but not later than two months from today. The outcome of the said enquiry shall be communicated to the appellant.

13. So far as, the entitlement of the appellant to appear in any other examination is concerned, the appellant shall be entitled to provisionally appear in other examinations which shall be subject to the enquiry so concluded and orders passed by the Commission. The appeal is accordingly allowed.