
(2015) 02 AHC CK 0064

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41340 of 2009

Shyam Babu Savita

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) 2 ADJ 614 : (2015) 4 ALJ 191 : (2015) 2 AWC 1496 : (2015) 2 UPLBEC 1097

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Y.K. Saxena, for the Appellant

Final Decision : Allowed

Judgement

Yashwant Varma, J.—Heard Sri Y.K. Saxena for the petitioner and the learned Standing Counsel for the contesting respondents.

The challenge in the present writ petition is to an order dated 23.7.2009 in terms of which a decision taken by the respondent on 18th May, 2008 to dismiss the petitioner has been reiterated. The impugned order itself came to be passed pursuant to an order of this Court made on 9.7.2008 allowing Writ Petition No. 32241 of 2008 (Shyam Babu Savita v. State of U.P. and another). By the aforesaid order of this Court, the earlier writ petition filed by the petitioner had been allowed and the impugned order of dismissal dated 18th May, 2008 quashed. This Court while remanding the matter back to the Basic Shiksha Adhikari permitted him to decide the matter afresh after giving proper and reasonable opportunity to the petitioner.

Brief facts relevant for decision of this writ petition are as follows. On 18th May, 2008, the petitioner who was initially appointed as an Assistant Teacher and was promoted as Headmaster in the year 1995, was dismissed from service. As is recorded in the said order, the order of dismissal came to be passed on account of the allegation that the petitioner was found in an inebriated state in the

precincts of the School and the respondent formed the opinion that the conduct of the petitioner had clearly brought disrepute to the Department and the Institution concerned. By the time, this order had come to be passed, the petitioner had already completed 39 years of service and was working as the Headmaster of the Institution in question. It is further evident from a reading of the order dated 18th May, 2008 that consequent to the alleged misdemeanor committed by the petitioner coming to light, he was suspended on 7th May, 2008 and consequent to a report dated 18th May, 2008 being submitted by a three-member Committee his services were dispensed with by an order of even date.

2. It was aggrieved by the aforesaid order that the petitioner approached this Court and filed Writ Petition No. 32241 of 2008. This Court after hearing the parties noticed that the order of dismissal had come to be passed without the petitioner being afforded any opportunity of hearing. In view of the above undisputed position which emerged before this Court, it, by its judgment and order dated 9.7.2008, allowed the writ petition, quashed the order of dismissal and remanded the matter back with directions as noticed hereinabove.

3. Picking up the thread post the order of this Court dated 9.7.2008, it appears from the record that the petitioner submitted Affidavits of various persons as well as his own representation for the consideration of the respondents. In his representation, the petitioner contended that the entire incident has been stage-managed and that certain persons who wanted to set him up, blackmailed him and made a concocted CD. and also took pictures of him to prove that he had voluntarily consumed alcohol in the precincts of the Institution and was thus found to be in a state of intoxication. In terms of the Affidavits, the petitioner stated on oath that certain unscrupulous elements mixed something in a cold drink offered to him and thereafter took photographs and resorted to blackmail.

4. Consequent to the said representations and Affidavits being filed (and as is recorded in the impugned order), a notice was issued to the petitioner calling upon him to appear before the authorities on 29.9.2008. The impugned order further records that subsequent to the order of this Court and in order to ascertain facts in respect of the said incident yet again another three-member Committee was constituted by an order dated 11.8.2008. It proceeds to record that the aforesaid Committee was re-constituted on 12.12.2008 and that this Committee subsequently submitted a report on 4th July, 2009 indicting the petitioner yet again.

5. Accepting the aforesaid report and as a consequence of the conclusions/findings recorded therein, the respondent No. 2 rejecting the testimonials submitted by villagers in favour of the petitioner, again found the petitioner guilty of the allegations leveled against him and consequently proceeded to reject the representation of the petitioner.

6. Sri Saxena has referred to the categorical averments made in Paragraphs 14,15 and 16 of the writ petition to contend that the entire proceedings taken

against him were in flagrant violation of the Principles of Natural Justice as also the statutory Rules which governed the service conditions of the petitioner. Elaborating his submissions, Sri Saxena submitted that the petitioner was neither served a charge-sheet nor was he given any opportunity to examine/cross-examine witnesses, the inquiry report was never supplied to him thus resulting in serious prejudice. He further submitted that as is evident from a reading of the impugned order, the Inquiry Committee constituted on 12.12.2008 never put the petitioner to notice nor did it take any evidence in the presence of the petitioner.

7. The pleas as taken in Paragraphs 14, 15 and 16 read as under:

"14. That the Rule 5(3) of the U.P. Basic Education Staff Rule, 1973 provides that the procedure prescribed for the departmental proceeding in Civil Services Rules will be applicable in case of the employee of the department. The Rule 55 of the 1930 Rules provides a detailed procedure for departmental proceeding which includes that the charge-sheet will be served to the employee in definite term and the employee shall be given reasonable time to put his written statement in his defence. It further provides that if employee desires, oral enquiry shall be held in respect of the evidence and employee will be entitled for cross-examination of witnesses etc. In the present case neither the charge-sheet has been served nor any notice or opportunity has been given to the petitioner. The alleged enquiry report has been submitted on the back of the petitioner. The petitioner was never given information with regard to any evidence and hence none of the procedures provided under Rule 55 of the 1930 Rules has been followed.

15. That the impugned order itself reveals that the alleged enquiry committee was constituted on 12.12.2008 but no notice or information was given to the petitioner with regard to the aforesaid enquiry committee. Even the date of taking evidence by the enquiry committee has been disclosed.

16. That the report dated 4.7.2009 was never served to the petitioner. The respondent authorities ought to have supplied the copy of enquiry report dated 4.7.2009 before passing the impugned order."

The above categorical assertions made by the petitioner have not been materially traversed by the respondents as would be evident from a reading of Paragraph 13 of the Counter-affidavit, which is as under:

"That the contents of paragraph Nos. 13, 14, 15 and 16 of the writ petition are not admitted as stated hence are denied. In reply it is submitted that after making enquiry dated 18.5.2008 the aforesaid teacher was terminated and on the basis of enquiry dated 4.7.2009, the application was rejected." 8. Having heard learned counsel for the parties, it is quite evident that the directions of this Court contained in its judgment and order dated 9.7.2008 have been merely provided lip-service. The order of this Court and the directions contained therein have not been complied with either in letter or in spirit. While remanding the matter back to the respondents, and in view of the reasons recorded in its order,

this Court had clearly provided an opportunity to the respondents to proceed against the petitioner after complying with the basic principles of Natural Justice.

9. In proceedings taken by a Department against its employee, the basic and fundamental requirements of Natural Justice and fair play would be :

"(a) The petitioner be made aware of the charges leveled against him and the material on the basis of which the same are sought to be proved;

(b) He be given an opportunity to submit an explanation with respect to the charges;

(c) He be permitted to adduce the evidence in support of his case and consequently also being permitted to cross-examine witnesses who may depose against him;

(d) Be made aware of all material adverse to him and which are taken into consideration for the purpose of proving the charges levelled against him;

(e) Be provided a copy of the inquiry report and;

(f) Be permitted to submit a representation to establish why the adverse findings recorded in the said Inquiry Report be not accepted by the Disciplinary Authority."

10. However, the above narration of facts establishes beyond a measure of doubt that not even one facet of the above fundamentals were followed or adhered to before passing of the impugned order.

11. A reading of the impugned order shows that the petitioner was invited before the Disciplinary Authority on only one occasion when his representation/replies were taken on record. It is further evident from a reading of the impugned order that the petitioner was neither invited to participate in the proceedings before the Inquiry Committee nor was he permitted to explain his case before the members of the said Committee. In fact, from the pleadings exchanged between the parties, it is quite apparent that the petitioner far from being given right of representation before the Inquiry Committee, he was not even made aware of its constitution. The principles of Natural Justice and the doctrine of fairness were further infringed when the petitioner was denied the opportunity to go through the report submitted by the Inquiry Committee and submit his explanation as to why the conclusions recorded therein were not liable to be accepted.

12. Regard must be had to the fact that the petitioner had, in his representation, categorically set up a case that he did not consume liquor willingly and that certain unscrupulous elements had mixed something in a cold drink offered to him and which he was forced to consume and thereafter blackmailed. This version of the petitioner was not even considered by the respondents. In any view of the matter, the petitioner was not given an opportunity to establish and prove the above before passing of the impugned order. Adherence to the Principles of Natural Justice cannot ever be overemphasised. In fact they are not just a part and parcel of our jurisprudence but today they represent rule of law

as we know it. What better way to reemphasize their importance and relevance even today than in the words of Justice Krishan Iyer in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, :

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam--and of Kautilya's Arthashastra--the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not. new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

48. Once we understand the soul of the rule as fair play in action--and it is so--we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more--but nothing less. The exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Textbook excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

In view of the aforesaid facts, this Court is clearly of the opinion that not only were the fundamental Principles of Natural Justice not adhered to in the present case, grave prejudice has been caused to the petitioner and accordingly it is constrained to come to the conclusion that the impugned order cannot be sustained.

Accordingly and in view of the above, the impugned order dated 23.7.2009 is hereby quashed. The petitioner was to attain the age of superannuation on 30th June, 2010. He will accordingly be entitled to all consequential reliefs/benefits from the date of suspension till attuning the age of superannuation as if the order of dismissal had not been passed.

The writ petition is accordingly allowed in terms aforesaid.