
(2008) 08 AHC CK 0314
In the Allahabad High Court

Shyam Singh Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 AWC 690 : (2009) 120 FLR 189 : (2008) 3 UPLBEC 2276

Hon'ble Judges : V.M. Sahai, J;S.P. Mehrotra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.M. Sahai and S.P. Mehrotra, JJ.—The present Writ Petition has been filed under Article 226 of the Constitution of India, inter-alia, praying for quashing the order dated 7th July, 2008 (Annexure No. 19 to the Writ Petition) passed by the respondent No. 3, whereby the petitioner has been placed under suspension.

2. Pursuant to our orders dated 21-7-2008, 5-8-2008 and 13-8-2008, various affidavits have been filed on record by both the sides. The matter is being disposed of finally at this stage itself with the consent of the learned Counsel for the parties.

3. We have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents.

4. In our order dated 13-8-2008, we. inter-alia, directed as under:

The Appointment Secretary, U.P, Government in his affidavit will also explain as to whether the requirements of the first proviso to Sub-rule (1) of Rule 4 of the U.P. Government Servant Rules, 1999 were complied with by making objective consideration before passing the impugned suspension order dated 7-7-2008. The Appointment Secretary, U.P. Government will further state as to what material was before him on the objective consideration of which he exercised his power of suspension, and such material be also filed alongwith his affidavit.

5. The averments in regard to the aforesaid direction are contained in paragraph 5 of the affidavit of the Appointment Secretary -Anoop Chandra Pandey, sworn on 18-8-2008.

6. From the material filed along with the Affidavit of the Appointment Secretary-Sri Anoop Chandra Pandey, it is clear that before the Appointment Secretary as well as the Competent Authority only the letter of the District Magistrate dated 30-6-2008, the letter of the District Magistrate dated 28-6-2008 and the reply of the petitioner dated 29-6-2008 and a newspaper cutting were available which were forwarded by Sri-S.R. Lakha, Principal Secretary, Nagar Vikas Anubhag-7, U.P., Lucknow with his letter dated 2-7-2008.

7. On the basis of the aforesaid letters and the newspaper cutting the competent authority has suspended the petitioner. There is no material on record which has been filed before us to demonstrate that any objective consideration has been made by the Competent Authority prior to passing the impugned suspension order as required by the first proviso to Sub-rule (1) of Rule 4 of The U.P. Government Servant (Discipline and Appeal) Rules, 1999 which has been considered by a Division Bench of this Court in Dr. Arvind Kumar Ram Vs. State of Uttar Pradesh and U.P. Jal Nigam,

8. The Division Bench has held that the first proviso to Sub-rule (1) of Rule 4 is mandatory and suspension should be an exception, and the Authority competent to suspend the employee must apply its mind to the material on record, and after objectively considering such material the Authority should arrive at a conclusion and record his reasons that charges against the employee are so serious as are likely to warrant imposition of major penalty.

9. In the present case, we do not find that the Competent Authority has made any objective consideration of the material on record, or has arrived at a conclusion that the charges against the petitioner are so serious as are likely to result in imposition of major penalty against the petitioner.

10. Unless the Competent Authority arrives at such a conclusion on objective consideration of the material on record for the reasons to be recorded, the suspension order passed by the Competent Authority would be vitiated.

11. In view of the aforesaid discussion, the impugned suspension order cannot be sustained.

12. In the result, this writ petition succeeds and is allowed. The impugned suspension order dated 7th July, 2008 (Annexure 19 to the Writ Petition) is quashed.

However, the State Government is at liberty to proceed with the enquiry against the petitioner in accordance with law.

13. Before parting with the case we may add that even though affidavits have been filed by the petitioner as well as by the respondents on the question of

malafides as well as the merits of the case but we have refrained from going into the question of malafides or the merits of the case as it may affect the interest of either of the parties in the enquiry proceedings.

We order accordingly.

Parties shall bear their own costs.