
(2012) 03 AHC CK 0103

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 47712 of 2008

Sita Ram Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 409
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 7, 9(4)

Citation : (2012) 3 ADJ 770 : (2012) 3 AWC 2417 : (2012) 134 FLR 123

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Ram Surat Ram (Maurya), J.—Heard counsel for the petitioner and Standing Counsel for the respondents. This writ petition has been filed for quashing the order dated 19.6.2006, passed by Director of Agriculture, U.P. at Lucknow (respondent 2), by which the petitioner has been terminated from service and it has been directed to recover Rs. 1,33,262.10 from the arrears of the petitioner or otherwise; and the order dated 21.6.2007 passed by the State of U.P. (respondent 1), by which the appeal of the petitioner has been dismissed.

2. The petitioner was appointed as "Soil Conservator Inspector, Grade II" in Agriculture Department of State of U.P. on 17.8.1966. The petitioner was posted as Incharge, Government Agriculture Seed Store, Mankapur, Gonda in the year 1986. The petitioner was transferred by the order of District Agriculture and Planning Officer, Gonda dated 20.12.1986 from this place and he was directed to hand over charge of the Seed Store to one Amber Singh. The petitioner did not comply with the order dated 20.12.1986, as such, a fresh order dated 5.8.1987 was passed and the petitioner was directed to hand over charge to Devendra Singh. The petitioner again did not comply with the aforesaid order. Therefore, the Seed Store was sealed on 20.11.1987.

3. Subsequently, the charge of the Seed Store was taken by the District Authority on 29.1.1988. After taking charge of the Seed Store, deficiency in the stocks were found, for which, Additional District Agriculture Officer, Atraula submitted a report. On the basis of the aforesaid report, a FIR was lodged on 27.2.1988, registered as Case Crime No. 23/1988 u/s 409 IPC, against the petitioner.

4. The criminal case was referred for investigation to Special Investigation Cell, Crime Investigation Department, Lucknow, who has taken custody of the entire documents of the Seed Store and on its basis, investigation was made and charge-sheet was submitted on 31.12.1988 to the Court of Chief Judicial Magistrate, Gonda. Thereafter, on the application of Investigation Officer, the records were sealed by the order of Additional Chief Judicial Magistrate, Gonda dated 3.5.1989.

5. In the meantime, the petitioner was suspended on 9.12.1987. Thereafter, by the order dated 22.12.1988, an Inquiry Officer was appointed, who issued charge-sheet to the petitioner on 31.12.1988 and supplementary charge-sheet on 6.7.1989. Due to the criminal case being registered against the petitioner, he was not available in the Office, as such, charge-sheet could not be served upon him. In the Inquiry Report dated 27.6.2003 as well as in the order dated 19.6.2006, it has been mentioned that charge-sheets were served on the petitioner through District Jail Superintendent, Gonda on 23.9.1989. It appears that at that time, the petitioner was detained in jail in Crime No. 23 of 1988, as such, he could not submit his reply to the charge-sheet within time allowed by the Inquiry Officer. Subsequently, on 5.1.1990, the petitioner moved an application for supplying the documents relied upon in the charge-sheet. But the documents were not supplied, as such, the petitioner could not submit his reply. The Inquiry Officer therefore, conducted an ex parte inquiry and submitted inquiry report dated 22.1.1993.

6. The Director of Agriculture, U.P. Lucknow was not satisfied with the inquiry report, as such, he by order dated 22.3.1993 appointed a second Inquiry Officer to conduct fresh inquiry against the petitioner. The second Inquiry Officer could not conduct the inquiry, and in the meantime, he died on 11.8.1995. Therefore, the Director of Agriculture by order dated 6.10.1995, appointed Sri M.A. Chaudhary, Joint Krishi Nideshak (Prasar), Faizabad Division, Faizabad as third Inquiry Officer and directed him to conduct fresh inquiry.

7. The records were sealed in criminal Court, therefore, documents relied in the charge-sheet were not supplied to the petitioner. The petitioner was asked to inspect the record but inspection was also not permitted as the records were kept in sealed cover in the Court. The third Inquiry Officer also delayed the inquiry proceedings and ultimately submitted his ex parte inquiry report on 27.6.2003. Inquiry report was served on the petitioner through letter dated 24.5.2004.

8. After receiving the inquiry report, the Disciplinary Authority has not issued any show-cause notice to the petitioner. Respondent 2 proceeded to pass the impugned order, as according to him, by letter dated 24.5.2004 (Annexure 11 to the writ petition), the inquiry report has been served upon the petitioner, but he has not submitted any reply. Since the petitioner has not submitted any reply, as such, by the order dated 19.6.2006, the services of the petitioner has been terminated and Rs. 1,33,260.10 was directed to be recovered from his arrears or otherwise. The petitioner filed an appeal from the order dated 19.6.2006 before respondent 1. The appeal of the petitioner has been dismissed by the order dated 21.6.2007.

9. It may be mentioned that in the meantime, suspension of the petitioner was revoked and the petitioner was transferred to various places. The petitioner was going to attain age of superannuation on 23.7.2006, while the impugned order dismissing the petitioner from service was passed on 19.6.2006.

10. The counsel for the petitioner submitted that:

The third Inquiry Officer has not conducted any inquiry in as much as he has neither fixed any date, time and place of the inquiry, nor given any notice to the petitioner.

He has not examined any evidence, oral or documentary, and submitted the inquiry report on the basis of the documents of the department/ previous report.

The material documents were kept in sealed cover in the Court of Additional Chief Judicial Magistrate, Gonda. The petitioner by his application dated 5.1.1990 demanded the relevant documents for submitting his reply, but the relevant documents were not supplied to him, due to which, the petitioner was unable to submit any reply to the charge-sheet. As such, principles of natural justice have been violated.

The inquiry was initiated by the order dated 22.12.1988 and charge-sheet was served upon the petitioner on 23.9.1989. Inquiry Report was submitted on 27.6.2003. Inordinate delay has been caused in submitting the inquiry report, which vitiates the entire inquiry proceedings and inquiry was not fair.

The disciplinary authority has not given any show-cause notice to the petitioner. The letter dated 24.5.2004 (Annexure 11 to the writ petition) does not require the petitioner to submit any reply. In the absence of any reply being called for, the petitioner was not expected to submit his reply. Accordingly, no second opportunity has been given to the petitioner and the order of termination has been passed in violation of principles of natural justice.

Original records were sealed by the order of Criminal Court. No oral evidence was recorded. There was neither oral nor documentary evidence on record to hold the petitioner as guilty.

11. In reply, the Standing Counsel submitted that:

As the petitioner has not submitted any reply to the charge-sheet and has not cooperated with the Inquiry Officer, accordingly, delay has been caused.

The inquiry report is based upon documentary evidences, as such, no further oral inquiry was required;

Since the petitioner was absent and not cooperating, as such, *ex parte* inquiry report has been submitted.

12. Supreme Court, in, *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , has held that departmental inquiry is a quasi-judicial proceeding. In *State of U.P. and Others Vs. Saroj Kumar Sinha*, , aforesaid principle has been further elaborated and held that an Inquiry Officer, acting as a quasi-Judicial authority, is in a position of an independent adjudicator. He is not supposed to be a representative of the Department/Disciplinary Authority/Government. His function is to examine the evidence presented by the department. Even in the absence of the delinquent official, he has to see as to whether unrebutted evidence is sufficient to hold the charges as proved. Departmental proceeding cannot be treated as a casual exercise. Inquiry proceedings cannot be conducted with a close mind. Inquiry Officer has to be wholly unbiased. The principles of natural justice are required to be observed to ensure not only that the justice is done but, manifestly seen to be done.

13. Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, held that if a Government servant absconds and cannot be served and will not participate in the inquiry, the matter will be proceeded *ex parte* on the material before the disciplinary authority.

Supreme Court, again in, 1996 VII AD 821 (SC) , held that even if the employee has not submitted his reply and forgone his right, disciplinary authority is not absolved of the duty to hold an *ex parte* inquiry to find out as to whether or not charges have been proved.

14. Division Bench of this Court, in, *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another*, ; *Subhash Chandra Sharma Vs. U.P. Co-operative Spinning Mills and Others*, and Single Judge in Writ Petition No. 10637 of 2007 *Shiv Prasad Ram v. State of U.P. and Others* decided on 25.11.2010, held that holding oral inquiry is necessary and if oral inquiry is not held, it amounts to denial of principles of natural justice.

15. Thus, it is now well settled that the Inquiry Officer like an independent adjudicator, is required to examine oral and documentary evidence of the department even if the employee has failed to submit his reply and is not participating in the proceedings. It is only after examining oral and documentary evidence, the Inquiry Officer is required to form his opinion as to whether the charges against the employee has been proved or not. If the oral evidences were not produced to prove the documentary evidence, then the documents cannot be treated as proved and finding on its basis is vitiated. Thus, the oral inquiry is also

mandatory.

16. Rule 7(x) of U.P. Government Servant (Discipline and Appeal) Rules, 1999 (the Rules) prescribes that where charged employee does not appear on the date fixed, Inquiry Officer shall proceed with the inquiry ex parte. In such a case, the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in the absence of the charged employee.

17. Now, in the light of aforementioned dictum, the facts of the case are liable to be examined. The third Inquiry Officer held that as the petitioner had not submitted any reply, inspite of notice dated 21.2.1997, as such, it would be presumed that he has nothing to say in the matter. The third Inquiry Officer was bound to call upon the petitioner for fresh inquiry fixing date, time and place of inquiry even if the reply was not submitted, which has not been done. Third Inquiry Officer has not done any inquiry. The inquiry report itself reveals that it was submitted on the basis of the documents of the department. Entire evidence relating to the charges against the petitioner were kept in sealed cover in the Court of Additional Chief Judicial Magistrate, Gonda since 3.5.1989. No effort was made to examine the oral evidence or the original records. Even in ex parte inquiry proceeding, the Inquiry Officer is required to examine oral and documentary evidence and to satisfy as to whether the charges against the petitioner are proved, even on the un-rebutted evidence of the department. He has not conducted any inquiry and submitted his report on 7.6.2003. Inquiry report dated 7.6.2003 is nothing but a waste paper and no reliance can be placed on it.

18. Next question arise as to whether disciplinary authority was required to call for explanation on the inquiry report. Rule 9(4) of the Rules requires the disciplinary authority to serve the inquiry report on the charged employee and call his reply on it. The disciplinary authority ought to have issued show-cause notice to the petitioner under Rule 9(4) of the Rules. The disciplinary authority has not issued a show-cause notice to the petitioner calling his explanation on the pretext that the inquiry report has been served upon the petitioner on 24.5.2004, but he has not submitted any reply. In the letter dated 24.5.2004, it is nowhere mentioned that any reply has been called for from the petitioner. Thus, valuable right of the petitioner under Rule 9(4) of the Rules has been violated.

19. The inquiry report has been held as waste paper, as such, there was no material for holding the petitioner as guilty. The impugned order dated 19.6.2006 is not based upon any evidence and is liable to be set aside.

20. Next point raised by the counsel for the petitioner is that unusual delay has been caused in completing the inquiry. In as much as alleged misconduct was of the year 1986-87, inquiry was initiated on 22.12.1988 while the inquiry report was submitted on 27.6.2003 and order on its basis was passed on 19.6.2006. Third Inquiry Officer was appointed on 6.10.1995, who submitted his report on

27.6.2003. Thus there was unusual delay in completing the inquiry.

21. Supreme Court has time to time considered the effect of inordinate delay caused in conducting the departmental inquiry. In the case of *The State of Madhya Pradesh Vs. Bani Singh and another*, , the misconduct was of the year 1975 - 1977, while charge-sheet was submitted in the year 1987. The Supreme Court has dropped the proceedings on the ground of inordinate delay in initiating the inquiry. In the case of *State of A.P. v. N. Radhakishan* AIR 1998 SCW 1629, the misconduct was of the year 1987 while charge-sheet was submitted on 31.7.1995. In this case also, the Supreme Court has dropped the proceedings on the ground of inordinate delay in initiating the inquiry. In the case of *M.V. Bijlani Vs. Union of India (UOI) and Others*, , the misconduct was of the year 1969-1970 and the charge-sheet was issued on 17.4.1975 and inquiry report was submitted in the year 1982. In this case also, Supreme Court dropped the proceedings due to inordinate delay in completing the inquiry. In *P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board*, , the misconduct was of the year 1990 and came to the notice of the department through audit report in the year 1994-95. The charge-sheet was issued in the year 2000 and Supreme Court found that there was inordinate delay in initiating of the departmental proceedings and accordingly dropped the proceedings.

22. Thus, from the aforesaid case laws, it is clear that delay in initiating departmental proceedings as well as concluding the enquiry, both are fatal. In the present case, the misconduct is of the year 1986-87 while the inquiry report was submitted on 27.6.2003. Impugned order on its basis was passed on 19.6.2006, i.e. few days before the completion of the age of superannuation. In the result, writ petition is liable to be allowed. As the misconduct is of the year 1986-87, the petitioner had also attained the age of superannuation on 23.7.2006, criminal case relating to the same charges is still pending, there is no justification for sending the case back for fresh inquiry.

ORDER

The writ petition is allowed. Order dated 19.6.2006 passed by Director of Agriculture U.P. at Lucknow and order dated 21.6.2007 passed by State of U.P., are quashed. The respondents are directed to release the arrears of salary and post retirement benefits of the petitioner within a period of three months from the date of production of certified copy of this order before respondent 2.