
(2008) 08 AHC CK 0060
In the Allahabad High Court

Smt. Anshu Bharti

APPELLANT

Vs

State of U.P. and Basic Shiksha Parishad

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 AWC 691 : (2008) 119 FLR 963

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri A.P. Tiwari for the petitioner and learned Standing Counsel for the respondents.

2. AS agreed by learned Counsel for the parties, the writ petition is being heard and decided finally at this stage under the Rules of the Court since the issue raised by the petitioner is purely legal and, therefore, the learned Standing Counsel does not propose to file any counter affidavit, but has opposed the writ petition by making oral submissions.

3. The petitioner is aggrieved by the order dated 3.11.2004 whereby the District Basic Education Officer, Badaun has placed the petitioner under suspension observing that she was found absent on inspection made on 2.11.2004 and her mother Smt. Panna Arya is working as Head Master of the said institution, and that she is being placed under suspension.

4. Learned Counsel for the petitioner submitted that despite more than three and half years have lapsed, but no departmental enquiry has been conducted against the petitioner. It is only on 10.9.2007, a charge-sheet has been given to the petitioner, which was replied on 11.9.2007, but even thereafter, nothing has proceeded further. Learned Counsel for the petitioner contended that the order of suspension is vitiated in law firstly since it does not disclose as to whether it has been passed in a contemplated departmental proceeding or a pending

departmental proceeding and further that continued suspension for almost four years without completing departmental enquiry renders the impugned order of suspension punitive and therefore is liable to be set aside.

5. Learned Standing Counsel, on the contrary, stated that from the order of suspension, it is evident that the petitioner used to remain absent and this constitute a misconduct and, therefore, she has been rightly placed under suspension. It is also pointed out that charge sheet having issued on 10.9.2007, at the best, the authorities may be directed to complete departmental enquiry expeditiously.

6. Having heard learned Counsel for the parties and perusing the record, in my view, the writ petition deserves to be allowed. An order of suspension can be passed only when a departmental enquiry is contemplated or pending against the employee concerned. A perusal of the order of suspension impugned in this writ petition nowhere shows that an enquiry is in contemplation or pending warranting suspension of the petitioner in the present case. The question whether such an order of suspension would be valid, came up for consideration before a Division Bench in Smt. Meera Tiwari Vs. Chief Medical Officer and others, wherein it was held as under:

3. From the said rule it appears that a Government Servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry. The impugned order of suspension does not refer to any contemplated inquiry or the fact that any inquiry is pending.

4. In That view of the matter, we are of the view that the order of suspension is against the provisions of Rule 4 of the U.P. Government Servant (Discipline & Appeal Rules, 1999 and the same cannot be sustained....

7. A similar dispute came up for consideration before another Division Bench of this Court in Special Appeal No. 180 of 2007 Hari Shanker Misra v. State of U.P. and Ors. decided on 27.2.2007 in which, following the judgment in Meera Tiwari (supra), the suspension order was set aside since it was nowhere mentioned therein that the order of suspension was passed either in contemplation of disciplinary proceedings or pendency thereof. The same view has also been adopted by another Division Bench (in which I was also a member) in Radhey Shyam Srivastava v. State of U.P. and Ors. 2008 (1) ADJ 466.

Moreover, from a perusal of the charge sheet, a copy whereof is Annexure-4 to the writ petition, it appears that the impugned order of suspension is only a pretext to harass the petitioner inasmuch two charges levelled against her are that the inspection dated 2.11.2004 shows that the petitioner used to remain absent in the institution and charge No. 2 shows that the petitioner's mother Smt. Panna Arya who is Head Master of the institution also used to remain absent in the institution. Learned Counsel for the respondents could not tell as to how the petitioner can be held guilty of any misconduct if her mother remains

absent from the institution and for her act or omission, how the petitioner can be proceeded against. Ex facie, this Court is satisfied that the charge No. 1 is not such which may warrant any major punishment, if proved to be true and, hence, the suspension of the petitioner is wholly unjust, illegal and cannot sustain in law.

Secondly, from the record, it is evident that the order of suspension was passed on 3.11.2004 and after almost two years and ten months, on 10.9.2007, the Assistant Basic Education Officer issued charge sheet to the petitioner which has been replied by the petitioner on 11.9.2007 and, thereafter almost 11 months have passed since then, but the enquiry has not been completed so far. The question to be answered would be whether such prolonged suspension is justified. The answer is No. The prolonged suspension of the petitioner is clearly unjust and unwarranted. The question deals with the prolonged agony and mental torture of a suspended employee where inquiry either has not commenced or proceed with snail pace. Though suspension in a contemplated or pending inquiry is not a punishment but this is a different angle of the matter, which is equally important and needs careful consideration. A suspension during contemplation of departmental inquiry or pendency thereof by itself is not a punishment if resorted to by the competent authority to enquire into the allegations levelled against the employee giving him an opportunity of participation to find out whether the allegations are correct or not with due diligence and within a reasonable time. In case, allegations are not found correct, the employee is reinstated without any loss towards salary, etc., and in case the charges are proved, the disciplinary authority passes such order as provided under law. However, keeping an employee under suspension, either without holding any enquiry, or in a prolonged enquiry is unreasonable. It is neither just nor in larger public interest. A prolonged suspension by itself is penal. Similarly an order of suspension at the initial stage may be valid fulfilling all the requirements of law but may become penal or unlawful with the passage of time, if the disciplinary inquiry is unreasonably prolonged or no inquiry is initiated at all without there being any fault or obstruction on the part of the delinquent employee. No person can be kept under suspension for indefinite period since during the period of suspension he is not paid full salary. He is also denied the enjoyment of status and therefore admittedly it has some adverse effect in respect of his status, life style and reputation in society. A person under suspension is looked with suspicion in the society by the persons with whom he meets in his normal discharge of function.

A Division Bench of this Court in Gajendra Singh Vs. High Court of Judicature at Allahabad, observed as under:

We need not forget that when a Government officer is placed under suspension, he is looked with suspicious eyes not only by his colloques and friends but by public at large too.

Disapproving unreasonable prolonged suspension, the Apex Court in Public Service Tribunal Bar Association v. State of U.P. and Ors. 2003 (1) UPLBEC 780

(SC) observed as under:

If a suspension continues for indefinite period or the order of suspension passed is malafide, then it would be open to the employee to challenge the same by approaching the High Court under Article 226 of the Constitution.... (Para 26)

The statutory power conferred upon the disciplinary authority to keep an employee under suspension during contemplated or pending disciplinary enquiry cannot thus be interpreted in a manner so as to confer an arbitrary, unguided and absolute power to keep an employee under suspension without enquiry for unlimited period or by prolonging enquiry unreasonably, particularly when the delinquent employee is not responsible for such delay. Therefore, I am clearly of the opinion that a suspension, if prolonged unreasonably without holding any enquiry or by prolonging the enquiry itself, is penal in nature and cannot be sustained.

The view I have taken is supported from another Judgment of this Court in *Ayodhya Rai and Ors. v. State of U.P. and Ors.* 2006 (3) ESC 1755.

In view of the above discussion, the impugned order of suspension deserves to be quashed. The writ petition is, accordingly, allowed. The suspension order dated 3.11.2004 passed by respondent No. 2, Annexure-3 to the writ petition is hereby quashed.

However, the respondents are at liberty to proceed with the pending enquiry and complete the same expeditiously but not beyond three months from the date of production of a certified copy of this order. Consequential benefits for the period of suspension would depend upon the aforesaid enquiry, if any. The petitioner is entitled to cost quantified as Rs. 5,000/-.