
(2014) 03 AHC CK 0175

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2810 of 2002

Smt. Jiwanti Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 4 ADJ 345 : (2014) 5 ALJ 88 : (2014) 104 ALR 451 : (2014) 6 AWC 5606 : (2014) 142 FLR 170 : (2014) 2 UPLBEC 1557

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Alok Kumar Yadav, Advocate for the Appellant

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed challenging the order passed by the State Government dated 20.10.2001, whereby a sum of Rs. 2,37,500/- quantified as loss, caused to the State due to act of the petitioner, has been directed to be recovered from the amount payable to the petitioner towards pension/gratuity as well as deduction of 10% amount from pension has been ordered. The petitioner was posted as District Non Formal Education Officer, Bareilly and was holding the charge of the office of District Basic Education Officer, Bareilly, from where she was to retire on 31.1.1994, after attaining the age of superannuation. On 31.1.1994, an order of suspension was passed against the petitioner in contemplation of disciplinary enquiry. A writ petition was filed by the petitioner for payment of retiral benefits, which was disposed of with a direction upon the authorities to pay retiral benefits, admissible to her in accordance with law vide order dated 19.8.1994, which is Annexure-3 to the writ petition. By an order passed on 8.2.1996, the State of U.P. decided to proceed further with the disciplinary enquiry by resorting to the provisions of Civil Services Regulation 351-A and the Deputy Regional Education Officer, Bareilly was appointed as enquiry officer. A charge-sheet on the same date was also issued to the petitioner. The petitioner submitted her reply on 16.11.1996.

2. It appears that an enquiry was, thereafter, conducted and the enquiry officer submitted its report, which is Annexure -7 to the writ petition. The enquiry officer found that 95 science kits were purchased for a sum of Rs. 5000/- each without inviting tenders from non-notified agency. It was further found that the science kit of better quality had been purchased two years earlier for a sum of Rs. 1742/- and therefore, the purchase of kits for a sum of Rs. 5000/- per kit, in the manner as had been done, was not justified. The enquiry officer also found that justification for such purchase was attempted to be made on the basis of minutes of a purchase committee meeting dated 1.3.1993 in which the item relating to purchase of science kit was added with different hand writing at the end of the third page and continued at the top of page-4 clearly demonstrating that it was subsequently added to create justification for the purchase. These minutes were signed by the Chairman of the Zila Panchayat and the petitioner, who was the Secretary of the District Purchase Committee. The enquiry officer, after finding that the purchase was illegally made on excessively higher amount, observed that it was not possible to fix responsibility on any one person in the matter and recommended to exonerate petitioner from charges.

3. The petitioner, thereafter, represented that the provisional pension, which was being paid to petitioner be substituted with payment of regular pension as the enquiry has been concluded. Thereafter, a Writ Petition No. 36749 of 2001 was filed, which was disposed of with a direction to the disciplinary authority to pass final order in the matter. The disciplinary authority examined the report of the enquiry officer but did not agree with its recommendation that the petitioner be exonerated of the charges. Detailed discussions were made by the disciplinary authority by noticing the contents of the enquiry report and that a case for recovery of the loss from the petitioner was made out. The petitioner was given an opportunity to submit a reply on the issue of disagreement with the recommendation of the enquiry officer. The petitioner submitted her reply, where after, the impugned order has been passed.

4. We have heard Sri Alok Kumar Yadav, learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the State.

5. The counsel for the petitioner made following submissions:

(I) The petitioner had acted bonafidely in the matter, inasmuch as the decision to purchase science kit was collectively taken by the District Purchase Committee, of which the petitioner was merely a Secretary and the decision of the purchase is a collective one, for which she cannot be individually held responsible.

(II) It was submitted that the petitioner tried to purchase science kits from the State Science Education Academy but the science kits were not available, therefore, after taking appropriate permission from the accounts officer of the Zila Basic Shiksha Adhikari, the decision of the committee was implemented.

(III) The petitioner had already retired and the delayed proceedings were initiated against her and the imposition of punishment upon her is arbitrary.

(IV) Since the enquiry officer had recommended her exoneration in the matter, there was no material with the disciplinary authority to differ and the procedure adopted for differing and imposing punishment is not sustainable in view of the law settled.

(V) It was lastly urged that the punishment is disproportionate and cannot be inflicted only upon the petitioner.

6. Learned Standing Counsel, appearing for the State has tried to justify the action of punishment taken against the petitioner on the ground that her act in purchasing science kit on exorbitantly higher price, without inviting tender, and its purchase from non approved agency, was clearly an act amounting to misconduct and, therefore, the loss suffered by the State was liable to be compensated by the petitioner. It was also argued that due opportunity has been afforded to the petitioner by the disciplinary authority while disagreeing with the recommendation of the enquiry officer and, therefore, the procedure followed before imposing the punishment was fair.

7. We have examined the respective submissions of the learned counsel for the parties and have also perused the materials available on record.

8. The undisputed facts which emerges from the respective pleadings and material on record is that the decision to purchase science kits had been implemented without inviting any tender. The petitioner was holding the charge of the office of District Basic Education Officer and, therefore, was competent authority in the matter.

9. Photo copy of the minutes of the District Purchase Committee meeting dated 1.3.1993 has been brought on record by way of supplementary-affidavit by the petitioner. The committee consisted of 5 members with Zila Panchayat Adhyaksha as is Chairman and the petitioner as the Secretary of the committee. The minutes of the committee report have been apparently written in one hand writing, which is running into 5 pages. All the 5 members have signed at the start of the minutes and the report, thereafter has been signed at the end by the petitioner and the Zila Panchayat Adhyaksha. Different items of purchase appears to have been discussed and approved in the minutes. From the bare perusal of the minutes, it is apparent to the naked eyes that in a different hand writing towards the end of the page-4 and before the start of other proceedings on page-5, it is stated that the committee has unanimously resolved to purchase Science kit from District Panchayat Udyog, Moradabad. The petitioner has incorporated the date of first March while signing the minutes at the end alongwith the signature of the Zila Panchayat Adhyaksha. The second annexure to the supplementary-affidavit is a letter dated 10.3.1993 of the petitioner addressed to the Director State Science Education Academy, U.P. Allahabad, informing that 97 science kits are needed, that it be made available and bill for it be presented. On this very letter, an endorsement is made on 16.3.1993, stating therein that the since kit is not being prepared and thus its supply is not possible

and as the financial year is going to close, therefore, the science kits be purchased from some other place. The next annexure is a note to the accounts officer, on which certain endorsements have been made that in case if there is no restriction imposed by the State then the purchase of science kits be made. However, two letters dated 10.3.1993 addressed to the Director, State Science Education Academy and to the accounts officer, containing no mention of the alleged recommendation of the District Purchase Committee dated 1.3.1993 that science kits be purchased from the Zila Panchayat Udyog Moradabad at the rate of Rs. 5000/-per kit.

10. We have gone through the report of the enquiry officer as well as the subsequent notice dated 7.6.2000 and the reply of the petitioner thereto.

11. The enquiry officer as well as the disciplinary authority both have taken a view that the alleged decision of the purchase of science kit from the Zila Panchayat Udyog Moradabad at the rate of Rs. 5000/- per kit has been subsequently added in a different hand writing. Having ourselves perused the photo copy of the minutes, we are satisfied that the conclusion so drawn, is not baseless arbitrary or perverse. From the sequence of the minutes dated 1.3.1993 it appears that the item relating to purchase of science kit was introduced latter. This conclusion of ours is supported by the fact that in the subsequent letter of 10.3.1993, sent by the petitioner or in the note submitted to the accounts officer dated 15th and 16th March, 2003 there was no mention of the decision of the District Purchase Committee, which is of a previous date i.e. 1.3.2003. It is in this context that the charge of not inviting tenders assumes significance. The petitioner admittedly was District Basic Education Officer. The sending of the letter dated 10.3.1993 is also an indication that the petitioner was not bound by the alleged decision of 1.3.2003 inasmuch as her letter dated 10.3.1993 adopts a course distinct from what was decided in the minutes dated 1.3.1993. If the petitioner, on her own showing, can differ from the recommendation of the committee, she cannot, thereafter, say that she was bound by the decision of the committee. We further find substance in the agreement that the department had purchased better quality science kits at the rate of Rs. 1742/- and after adjusting a delay of two years, the price of kit could not have been above 2500/-per kit as had been taken in the impugned proceedings. From the material and evidence on record, the conclusions drawn by the respondents to hold the petitioner guilty of causing financial loss, cannot be faulted. The decision to recover the amount from the petitioner, therefore, is justified. The argument of the petitioner that her actions were bona fide, cannot be accepted as procedural violation resulting in causing of loss to State is apparent from the record. The submissions of the petitioner in this regard, therefore, are rejected.

12. So far as the next submission of Mr. Yadav is concerned, we find that the enquiry officer after noticing the relevant facts and materials, had recommended her exoneration. The disciplinary authority, on a valid consideration, had taken a different view, based on the conclusions arrived at by the enquiry officer in its

report. A notice dated 7.6.2000 clearly mentioning the reasons of disagreement and inviting explanation of petitioner on it, was issued. There was, thus, a complete compliance on part of the respondents to the requirement of issuance of notice on disagreement by the disciplinary authority with the recommendation of the enquiry officer as has been held by the Apex Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , as followed in the case of Lav Nigam v. Chairman and M.D. I.T.I. Ltd., 2006 (9) SCC 440, as well as the latest decision of the Supreme Court in S.P. Malhotra Vs. Punjab National Bank and Others, . The argument of the petitioner, therefore, on this account also fails.

13. Dealing with the last two submissions of the petitioner, we find that while issuing notice dated 7.6.2003, opportunity was granted to the petitioner in respect of proposed decision to recover the amount of loss caused to the State and to order recover such amount of loss. The State, therefore, was clearly entitled to recover the amount of loss caused to the State from the retiral dues of the petitioner including gratuity and pension etc.

14. In the order impugned, however, a decision to permanently deduct 10% of the pension, has also been taken in addition to forfeiture of gratuity. The order of punishment cannot be enlarged beyond the notice dated 7.6.2000, which was limited to the extent of recovery alone. We, therefore, while upholding the order of punishment imposed upon the petitions, clarify that the recovery from gratuity and pension would be confined only to the extent of loss ascertained in the impugned proceedings, which has been quantified at Rs. 2,37,500/-. The 10% deduction from pension would also be limited for the purposes of recovery only. Subject to above, the order dated 20.10.2001 is upheld. The writ petition fails and is hereby dismissed.