
(1995) 12 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 1142 of 1993

Smt. Narendra Pal Kaur

APPELLANT

Vs

Director, Social Welfare and Another

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Citation : (1996) AWC 569 Supp : (1996) 1 UPLBEC 137

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Dileep Kumar, for the Appellant;

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The Petitioner has challenged the order dated 24.11.1992 (Annexure 7 to the writ petition) terminating her services under the provisions of U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred as the Rules). The Petitioner was Initially appointed on the post of Supervisor in the department of Harijan and Social Welfare (now Social Welfare) U.P. on 27.8.1979 by the Respondent No. 1. The Petitioner's services were regularised and she was promoted on the post of Superintendent on 8.5.1981. The Petitioner's services had been confirmed on the post of Superintendent on the recommendation of the U.P. Public Service Commission, vide Its letter dated 17.12.87. The Petitioner's name was placed at serial No. 27 of the seniority list and her date of regular appointment on the post of Superintendent was fixed as 12.5.88 (Annexure S. A. 1).

2. The Petitioner was posted as Superintendent. Government Protective Home (Woman). Meerut in the year 1990 and was transferred to Mathura on 18.5.90 on the post of Superintendent. Rajkiya Shishu Sadan.

3. The Petitioner was served with a suspension order dated 30.6.1990 at Mathura on the charges of corruption alleged to have been committed by her when she was posted at Meerut (Annexure 1). Subsequently, a charge sheet was served

upon the Petitioner on 22.8.90 and the Deputy Director, Social Welfare, Agra Region. Agra was appointed as enquiry officer. It also appears from the said letter that the said enquiry officer was directed to submit his report within a month (Annexure 3).

4. The Petitioner submitted her written statement in respect of the charges mentioned therein and it appears that the enquiry officer filed his report on 14.3.1991. but the same was rejected by the Respondent No. 1 vide his order dated 18.4.1991 as the same was found suffering from some mistakes (Annexure 5).

5. The Deputy Director (Administration). Head Quarter, Lucknow was appointed as an enquiry officer and was directed to take upon the case on war footing and submit his report within 15 days. It appears from the record that the said enquiry officer submitted his report, but the Respondent No. 1 did not accept the same as it was also not found based upon the facts of the case and the same was rejected by the Respondent No. 1 vide his order dated 29.7.92. It appears that the said order dated 29.7.92 was never served upon the Petitioner.

6. The Additional Director of Social Welfare Department was appointed as enquiry officer, who directed the Petitioner to appear before him at Meerut on 9.9.92 and 11.9.92. The Petitioner appeared as directed by the third enquiry officer and filed her written statement stating that her earlier explanation/ defence may be treated as an explanation to the charge. The Petitioner was again directed to appear before the third enquiry officer on 7.10.92 and 12.10.92. the Petitioner complied with the said order and the enquiry was completed.

7. The enquiry report was submitted to the Respondent: No. 1, who finally passed an order dated 24.11.1992 terminating the services of the Petitioner under the said Rules.

8. Being aggrieved and dissatisfied, the Petitioner filed the instant writ petition and it was admitted in the month of January, 1993 but Respondents have not filed the counter-affidavit nor the learned standing counsel asked for the time to enable him to file the counter-affidavit when the matter came up for final hearing on 5.12.1995. Thus in view of the above, the contentions/averments made in the writ petition have to be taken as true as the same have not been controverted by the Respondents.

9. Sri Rajiv Gupta, learned Counsel appearing for the Petitioner raised the Issue that as the Petitioner had been confirmed on a substantive post, the service of the Petitioner could not have been terminated under the said Rules. The second issue raised by the learned Counsel for the Petitioner is that the enquiry report was not furnished to the Petitioner before passing the impugned order dated 24.11.1992 (Annexure 7) and thus the impugned order is vitiated. The law is well settled so far as the second issue is concerned.

10. In the case of Union of India and others Vs. Mohd. Ramzan Khan, , Supreme Court has held as under;

The report is an adverse material if the inquiry officer records a finding of guilt and propose a punishment so far as the delinquent is concerned. in a quasi-Judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of recording his conclusion, rules of natural justice would be affected.... We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any. in the matter of proposed punishment to be inflicted would be within the rules of natural Justice and the delinquent would, therefore, be entitled to the supply of a copy thereof...and will also be entitled to make a representation against it, if he desires, and non-furnishing of the report would amount to violation of rules and make the final order liable to challenge, hereafter.

11. In the case of S.P. Viswanathan (i) v. Union of India and Ors. 1991 Suppl. (2) SCC 269, it was held that if enquiry report is not supplied to the delinquent employee before passing the order of punishment, the order would be rendered illegal. But the decision of this Court is given a prospective effect.

12. The Constitution Bench of Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., considered the issue and reaffirmed the law laid down in Mohd. Ramzan Khan's case. It held as under;-

Hence it is to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural Justice.

13. The law laid down/reaffirmed by the Constitution Bench was applied in the case of Managing Director, E.C.I.L. Hyderabad v. B. Karunakar (ii) 1994 Suppl (2) SCC 391 and held that the enquiry report not having been supplied to the delinquent employee, the enquiry is vitiated, however the management was given liberty to continue inquiry against the delinquent employee from the stage not held to be vitiated. It was further observed that the said requirement would be obligatory only from the date of the judgment in the case of Mohd. Ramzan Khan, le., 20.11.1990. The same view was taken by the Apex Court in the cases of State of U.P. and Another Vs. Abhai Kishore Masta, and B.C. Chaturvedi Vs. Union of India and others, .

14. In the instant case the Impugned order of termination under the said Rules was passed on 24.11.1992 (Annexure 7 to the writ petition) much after the date of the delivery of judgment in Mohd. Ramzan Khan's case (supra) i.e.,

20.11.1990 and as the Respondents had not controverted the fact, that the Petitioner had not been served with a copy of the enquiry report, the law laid down therein and in the aforesaid cases is fully applicable.

15. In view of the above, the impugned order dated 24.11.1992 (Annexure 7) is hereby quashed and the Respondents are directed to treat the Petitioner in service. However, the Respondent No. 1, disciplinary authority is at liberty to furnish a copy of the enquiry report to the Petitioner and proceed with the enquiry from the said stage to onwards, if the said authority wishes so. As the petition succeeds only on the second issue, there is no need to decide the first issue as to whether the Petitioner's services could have been terminated by applying the aforesaid Rules of 1975.

16. The writ petition is allowed. However, there shall be no order as to costs.