

(2014) 01 AHC CK 0009

In the Allahabad High Court

Case No : Special Appeal Defective No. 110 of 2014

Smt. Parmi Maurya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2014) 2 ADJ 633 : (2014) 3 AWC 2831 : (2014) 2 UPLBEC 1060

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : M.A. Ausaf and Ashok Khare, Advocate for the Appellant

Judgement

1. This special appeal arises from a judgment of the learned Single Judge dated 24 September 2013. The appellant applied for and was appointed on 4 January 1990 on the post of Health Worker (Female). The appellant claims to have completed the A.N.M. course at the A.N.M. Training Centre, Azamgarh in 1989. According to the appellant, the mark sheets were issued in the year 1989 and a training certificate was issued by the Secretary, U.P. State Medical Health and Family Welfare Faculty on 9 August 1993. A notice to show-cause was issued to the appellant on 29 October 2010 intimating her that the documents which were submitted by the appellant had been examined by the Medical Faculty and were found to be fabricated. The appellant was called upon to submit documentary evidence for verification within a period of three days. The appellant has averred that in pursuance of the notice to show-cause, she appeared before the Chief Medical Officer, Chitrakoot (second respondent) and produced the original certificate/training certificate which were scrutinised by the second respondent. On 30 November 2010, an order of termination was passed by the second respondent. The order of termination was challenged by the appellant in the writ proceedings before the learned Single Judge under Article 226 of the Constitution. The principal ground of challenge was that the order of termination which constituted a major penalty was passed without any inquiry and in breach

of the principles of natural justice as no charge-sheet was issued and no reasonable opportunity of defending the charge was furnished to the appellant.

2. The learned Single Judge noted the submission of the appellant that a copy of the report on the basis of which the order of termination was passed was not supplied to the appellant nor was she afforded an opportunity of defence as no departmental inquiry was conducted. The learned Single Judge held that normally a petition on such a submission would succeed but where the Court, after perusing the record, could itself arrive at a particular conclusion that would support the ultimate decision, writ jurisdiction under Article 226 of the Constitution should not be exercised since substantial justice has been done. On this basis, the learned Single Judge examined the records on which reliance was placed by the appellant and having found that there was discrepancy, declined to interfere with the order of termination. The learned Single Judge has also relied upon the judgment of the Supreme Court in *R. Vishwanatha Pillai Vs. State of Kerala and Others*,

3. The principal challenge of the appellant is that since the order of termination was passed without issuing a charge-sheet and without conducting a disciplinary proceeding, the principles of natural justice had been violated. Learned counsel for the appellant has submitted that the learned Single Judge was not justified in enquiring into the evidence for the first time in exercise of the writ jurisdiction under Article 226 of the Constitution. Moreover, it was submitted that the judgment of the Supreme Court in *R. Vishwanatha Pillai (supra)* is squarely not applicable to the situation in the present case where an order of termination has been passed against a permanent employee without even convening a disciplinary inquiry on a substantive charge of misconduct.

4. A counter-affidavit was filed on behalf of the State before the learned Single Judge in which it was stated that a letter dated 26 April 2004 was written by the Special Secretary, Government of U.P., in response to the letter of the Principal Secretary dated 18 March 2004 instructing all the Chief Medical Officers/Superintendents of the Districts through the Director, Medical and Health Services, U.P., Lucknow to conduct a verification of the appointments made and to make available the information within fifteen days of the receipt of the letter. The Superintendent of Police, Vigilance Department had written a letter to the Chief Medical Officer, Chitrakoot to issue instructions to Health Workers working under him to be present at the Sector Office on 23 July 2004 in respect of an inquiry/investigation being done by the concerned Inspector. Moreover, it was stated that the Registrar, Uttar Pradesh Nurses and Midwives Council, Lucknow had also issued a letter dated 23 February 2010 to the Chief Medical Officer, Chitrakoot informing him, in response to a letter dated 10 February 2010, that the registration certificate and the mark sheets relating to the appellant are fabricated.

5. The admitted position before the Court is that the appellant worked as a Health Worker (Female) right from the date of her appointment on 4 January

1990 until the order of termination which was passed on 30 November 2010. Prior to that, on 29 October 2010, a notice to show-cause was issued to the appellant calling upon her to produce documentary evidence for verification of the documents within three days. Pursuant thereto, the appellant appeared before the second respondent and produced the documentary material on which she placed reliance. No charges were framed. No disciplinary proceedings were held. The order of termination dated 30 November 2010 states that the documents which were submitted by the appellant in relation to her training as an A.N.M. were got verified from the U.P. State Medical Health and Family Welfare Faculty pursuant to a letter dated 10 February 2010. The Medical Faculty, as the letter of termination states, had opined that the documents which were found to have been submitted by the appellant were fabricated. No copy of the report of the Medical Faculty was furnished to the appellant nor she was given notice of such finding before the order of termination was passed.

6. On these facts, the learned Single Judge, in our view, was clearly in error in arrogating to the Court the task of determining whether the certificate and mark sheets submitted by the appellant were genuine or otherwise. This, with respect, was no part of the jurisdiction of the writ Court under Article 226 of the Constitution. When a substantive charge of misconduct is levied against an employee of the State, the misconduct has to be proved in the course of a disciplinary inquiry. This is not one of those cases where a departmental inquiry was dispensed with or that the ground for dispensing with such an inquiry was made out. The U.P. Government Servants (Discipline and Appeal) Rules, 1999 lays down a detailed procedure in Rule 7 for imposing a major penalty. Admittedly, no procedure of that kind was followed since no disciplinary inquiry was convened or held.

7. The learned Single Judge has relied upon a judgment of the Supreme Court in *R. Vishwanatha Pillai* (supra). In that case, the appellant was appointed to the Indian Police Service on the basis of a scheduled caste certificate. A full-fledged inquiry was conducted by the Scrutiny Committee. The order of the Scrutiny Committee invalidating the caste claim was upheld both before the High Court and the Supreme Court. Due opportunity was given to the appellant by the Scrutiny Committee to put forth his defence. It was, in this background that the Supreme Court held that issuance of fresh notice under the Rules was not necessary as the genuineness of the certificate had already been examined by an independent body constituted under the direction of the Supreme Court in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, . The observation of the Supreme Court in paragraph 13 are as follows:

We do not find any substance in this submission. The misconduct alleged against the appellant is that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate. While appointing the appellant as Deputy Superintendent of Police in the year 1977, he

was considered as belonging to the Scheduled Caste. This was found to be wrong and his appointment is to be treated as cancelled. This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by the KIRTADS and the Scrutiny Committee constituted under the orders of this Court. Appellant was given due opportunity to defend himself. The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On close scrutiny of facts we find that the safeguards provided in Article 311 of the Constitution that the Government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself stands complied with. Instead of departmental inquiry the inquiry has been conducted by the Scrutiny Committee consisting of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer having intimate knowledge in the verification and issuance of the social status certifies, who were better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to the appellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld up to this Court would be repetitive as well as futile. The second safeguard in Article 311 that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of the appellant has been passed by his appointing authority.

8. The facts of the present case are, therefore, clearly distinguishable. The charge of misconduct has to be duly established. Since no disciplinary inquiry was held, the charge was never proved.

9. In this view of the matter, we are of the view that the judgment and order of the learned Single Judge is unsustainable and the special appeal would have to be allowed. We, accordingly, allow the special appeal in terms of the following directions:

(i) The judgment of the learned Single Judge dated 24 September 2013 is quashed and set aside;

(ii) In consequence, the order of termination dated 30 November 2010 shall stand quashed and;

(iii) The respondents shall be at liberty to hold a departmental inquiry in respect of the allegation of misconduct and take necessary action thereafter as may be

warranted in accordance with law.

There shall be no order as to costs.