

(1999) 11 AHC CK 0182

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15144 of 1981

Smt. Satyawati Katiyar and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Constitution of India, 1950 — Article 227, 229, 235, 237, 311

Penal Code, 1860 (IPC) — Section 147, 148, 215, 307, 379

Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 — Rule 3(7), 4(1)

Citation : (1999) 11 AHC CK 0182

Hon'ble Judges : S.H.A. Raza, J; Krishna Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The fate of this writ petition hinges on the reply to the question as to whether an enquiry conducted by the Administrative Tribunal against the judicial officer, an order of deduction of 50% of pension under Rule 351A of Civil Services Rules, can be passed by the Governor of the State.

2. Before dealing with this question, it is pertinent to have a glance over the factual matrix of the case as set out in the writ petition by the deceased Petitioner Suraj Bali Katiyar, who expired on 26.4. 1987 and in his place his wife, their sons and two daughters were substituted as Petitioners.

3. Late Shri Suraj Bali Katiyar was appointed as a Judicial Officer under the provisions of U.P. Judicial Officers Service Rules, 1948 in the years 1955. On 30th September 1967 in pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor was pleased to order the publication of Notification No. P-7479/II-C-54/1961 in exercise of powers conferred by Article 237 of the Constitution of India.

4. It has been averred that on 27.5.1971 one Pandit Triveni Sahai, M.L.A. and one Radhey were shot dead in town of Dataganj, Dudaun, His Younger brother

Radhey Shyam was the Deputy Inspector General of Police and Director of Vigilance, U.P. On 29.5.1971 one Balak Ram surrendered in the Court of late Shri Katiyar and preferred an application, in which it was mentioned that men of the complainant party and the police were hunting him out and if he would not be taken into custody, he would be killed. Late Shri Suraj Bali Katiyar ordered that accused Balak Ram be taken into custody and he was sent to jail.

5. Late Shri Suraj Bali Katiyar in this writ petition averred that Shri Radhey Shyam Sharma, Deputy Inspector General of Police and Director of Vigilance was very much annoyed to him due to that reason and he made a complaint to the Secretary to the Government of U.P. Vigilance Department leveling certain allegations against late Shri Katiyar and Shri Mahabir Prasad , the then District Judge, Budaun.

6. On 26.3.1973 Dr. Manohar Lal Gupta, Deputy Secretary to Government of U.P. requested the Registrar of this Court for initiating proceedings at the behest of Shri Radhey Shyam Sharma, Deputy Inspector General of Police, Who made a complaint.

7. On 27.11.1974 an order of suspension was passed against late Shri Suraj Bali Katiyar under the signature of late Shri Gulam Husain Commissioner and Secretary to the State Government, wherein it was indicated that under the order of the Governor, the case of the Petitioner will be referred to the Administrative Tribunal under Rule 4(1) of the U.P. Disciplinary proceedings (Administrative Tribunal) Rules, 1947. The said letter also contains a copy of the charge -sheet and late Shri Suraj Bali Katiyar was directed to submit an explanation against the charge sheet. The Additional Registrar of the High Court, Allahabad was asked to relieve late Shri Suraj Bali Katiyar from the charge of the judicial magistrate.

8. On 10.12.1974 late Shri Suraj Bali Katiyar submitted his reply to the Administrative Tribunal and submitted that he should be furnished with the copies of the document upon which the imputation of charges were based.

9. On 20th January, 1974 late Shri Suraj Bali Katiyar, after attaining the age of superannuation, was ordered to be retired with effect from 31.12.1976.

10. After late Shri Suraj Bali Katiyar was furnished with the copies of the document upon which the imputation of charges were based, on 9.4.1975 he submitted his detailed explanation to the charge sheet. On 18.7.1975 the Ad hoc Administrative Tribunal, Lucknow informed that the Governor Vide Notification No. 1775/39-1-2-M dated 5.7.1975 transferred the Petitioner's (late Shri Suraj Bali Katiyar) matter from Administrative Tribunal IInd to Administrative Tribunal Ad hoc, comprising two members namely, Shri P.C. Pandey, I.A.S.(Chairman) and Shri A.P. Agarwal, Member, U.P. Administrative Tribunal IInd.

11. The contention of the learned Counsel appearing on behalf of the Petitioners is that the Tribunal was not properly constituted in accordance with Rule 3(7) of

the Disciplinary proceedings (Administrative Tribunal) Rules, 1947 and the Governor could not make reference u/s 4(1) of the aforesaid Rules against a judicial magistrate under the control of the High Court in view of the notification dated 30.9.1967 under Article 237 of the Constitution of India for the reason that the High Court was vested with a power to hold disciplinary proceedings in relation to the members belonging to U.P. Judicial Officers Service Rules as well as under Article 235 of the Constitution of India.

12. It was further contended by the learned Counsel for the Petitioners that neither the enquiry report was the Petitioners that neither the enquiry report was submitted nor the recommendation of the Administrative tribunal was furnished to late Shri Suraj Bali Katiyar. On 25.3.1977 the District Judge, Etah sent a letter to late Shri Suraj Bali Katiyar asking him to show cause as to why he be not dismissed from service as recommended by the Administrative Tribunal 13. The thrust of the learned Counsel for the Petitioners is that District Judge was not competent to issue show cause notice under Rule 10 of the Disciplinary Proceedings (Administrative Tribunal) Rules, 1947. It was mandatory for the Governor to send the Tribunal's recommendation to the High Court and after receiving the decision of the High Court, the Governor could have passed the order of dismissal, removal or compulsory retirement or any other penalty.

14. Taking a cue from the decision of Hon''ble Supreme Court in Samsheer Singh Vs. State of Punjab and Another, it was submitted that Petitioner (Late Shri Suraj Bali Katiyar) was a Judicial Officer under the control of the High Court and as such enquiry through Vigilance department and by one member of Administrative Tribunal without consultation and recommendation of the High Court was void abinitio and without jurisdiction.

15. However, on 24.9. 1977 another show cause notice was received from the State Government, Which was served upon late Shri Suraj Bali Katiyar through the District Judge, Etah containing a notice dated 12.09. 1977, wherein it was indicated that the Administrative Tribunal vide its enquiry report dated 18.12.1976 found charges No. 1 and 2 proved and exonerated from charge No. 3 and since the Petitioner (Late Shri Suraj Bali Katiyar) had retired from Service with effect from 31.12.1976, the Governor directed the State Government to issue a show cause notice as per the report of the Tribunal that as to why 50% of the pension may not be deducted under the provisions of Article 351A of the Civil Service Regulation. Late Shri Suraj Bali Katiyar submitted his explanation against the show cause notice.

16. Charge No. I mentions that on April 15, 1971, the deceased Petitioner had taken a sum of Rs. 10,000/= at his residence from one Hifzul Hasan, Son of Daud Ali, residence of village Gabhiyai, P.S. Allapur, district Buduan as illegal gratification for granting bail to the nine persons case crime No. 77 of 1971, P.S. Allapur, under Sections 147/148/307/452/436 I.P.C. (S.T. No. 292 of 1971. Although the deceased Petitioner had rejected the bail applications of two accused on 15.4.1971. The deceased Petitioner was also charged with a view to

minimize the gravity of the charges leveled against the accused. The deceased Petitioner in his order dated 16.4.1971 granted bail by indicating that co-accused Ameer Hasan had fired with a Tamancha and Monis Ali Khan had fired in the air.

17. Charge No. 2 indicates that the deceased Petitioner in the month of October, 1971 had taken illegal gratification, of which, two bottles of liquor, 15 Kg. Of kalmi Mangoes, 2 Kg. of sweet as well as meat and Rs. 1,000/- cash from the complainant Shri Makhan Lal to show him favour in complaint case No. 717 of 1970, in re: Makhan Lal v. Deep Chand, u/s 379/215 I.P.C. In the same month the deceased Petitioner further took Rs. 6,00/- from Deep Chand, accused in that case for acquitting him and obtaining an order for the return of the alleged stolen property, i.e. a camel.

18. As stated earlier the enquiry report of the Administrative Tribunal, IInd, U.P. Lucknow was sent along with a copy of the letter of the Additional Registrar of the High Court and the deceased Petitioner was asked to submit a reply against the same.

19. In his reply, which late Shri Suraj Bali Katiyar submitted on 15.6.1980, it was mentioned that the entire proceedings were vitiated due to non furnishing of the report of the tribunal and denial of opportunity to show cause against the said notice inasmuch as after his retirement the Petitioner (late Shri Suraj Bali Katiyar) was lying on his death bed. It was also stated that the proceedings suffer from colourable exercise of powers inasmuch as enquiry was initiated at the behest of Shri Radhey Shyam Sharma, Deputy Inspector to be the brother of Pandit Triveni Sahai, Who was murdered and the Petitioner (late Shri Suraj Bali Katiyar) allowed the application of the accused for surrender and remanded him to judicial custody.

20. The first question which falls for consideration before this Court is as to whether the Petitioner (Late suraj Bali Katiyar) could be subjected to investigation by the vigilance department and thereafter proceeded with in an enquiry by the Administrative Tribunal and the Governor of the State without the decision of the High Court under Article 235 of the Constitution of India can pass the impugned order under Regulation 351A of the Civil Service Regulations deducting 50% from the pension of the Petitioner (Late Shri Suraj Bali Katiyar).

21. Article 235 of the Constitution of India with the control of the High Court over the Subordinate Courts, which reads as under:

235. Control over subordinate courts:

The control over district court and courts and courts subordinate there to including the posting and promotion of and the grant of leave to , persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court , but nothing in this article shall be construed as taking away from any such person any right of appeal under such Law:

22. In *The State of West Bengal Vs. Nripendra Nath Bagchi*, a Constitution Bench of Hon'ble Court observed in para 13 of the report:

We do not accept, this contention. The word "Control" is not defined in the Constitution. In part XIV which deals with Services under the Union and the State the word "disciplinary control" or "disciplinary jurisdiction" have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our Judgment, include disciplinary jurisdiction. In deed, the word may be said to be used as a term of art because the Civil Service (Classification, Control and Appeal) Rules used the word "Control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these articles indicates that "Control" was vested in the High Court to effectuate a purpose namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior State of the Law, The evil sought to be removed and the process by which the law was evolved. The word "control" as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Article 227 gives to the High Court superintendence over these courts and enables the High court to call for returns etc. The word "Control" in Article 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High court is made subject to an appeal if so provided in the Law regulating the conditions of service and this necessarily indicates as order passed in disciplinary jurisdiction, Secondly, the words are that the High Court shall "deal" with the judge in accordance with his rules of service and the word administrative jurisdiction.

It was further held in para 18 of the report"

There is, therefore, nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it. In our Judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiry's, impose punishments other than dismissal or removal, subject however, to the conditions of service, and a right of appeal if

granted by the conditions of service, and to the giving of an opportunity of showing cause as required by Clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this circumstances.

23. In *Samsher Singh Vs. State of Punjab and Another*, a Constitution Bench Hon'ble Supreme Court observed in para 76 of the report "The High Court under Article 235 is vested with the control of subordinate judiciary. The High Court according to the Appellant failed to act in terms of the provisions of the Constitution and abdicated the control by not having an inquiry through judicial officers subordinate to the control of the High Court but asking the Government to enquiry through the vigilance department."

It was further indicated in para 78 of the report:

The High Court for reasons which are not Stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the vigilance department. The members of the subordinate judiciary are not only under the care and custody of the High Court, but are also under the care and custody of High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. That is the broad basic of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the government to enquiry through the Director of Vigilance.

24. In *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, , the Constitutional bench of Hon'ble Supreme Court after Considering *Samsher Singh* (Supra) held in para 47 of the report.

25. The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High court. The High Court of course under this control cannot terminate the services or impose any punishment on District Judges by removal or reduction. The control over District Judges is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceedings any District Judge is to be removed from service or any punishment is to be imposed that will be in accordance with the conditions of service."

26. It was further held in para 50 of the report:

This Court in the majority view in *Shamsher Singh v. State of Punjab* (C.A. No. 2289 of 1970) and *Ishwar Chand Agarwal v. State of Punjab* (Civil) Appeal No. 632 of 1971) decided on 23rd August, 1974 reported in *Samsher Singh Vs. State of Punjab and Another*, pointed out that the High Court is to hold the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court for discipline and dignity. The enquiry conducted by the Director of Special Enquiry was unconstitutional.

27. There is no necessity for this Court to over burden the judgment by multiplying the authorities on this question, suffice to say that there are catina of decisions of Hon"ble Supreme Court, wherein it has been observed that under Article 235 of the Constitution of India the control is vested with the High Court over the subordinate courts in all matters including the disciplinary proceedings and the powers of the Chief Justice the High Court under Article 229 includes the powers to suspend, dismiss, remove or compulsory retire from service an officer of subordinate judiciary.

28. In view of the reasons mentioned in the fore going paragraphs, we are of the view that the entrie disciplinary proceedings commencing from suspension order dated 27.11.1974 passed by the State Government, issuance of the charge sheet under the signature of Secretary to the State Government, order of the Governor referring the matter to Administrative Tribunal to hold the enquiry against the Petitioner (Late Shri Suraj Bali Katiyar) under Rule 4(1) of the U.P. Disciplinary proceedings (Administrative Tribunal) Rules, 1947. The enquiry report dated 18.12.1976 submitted by the Administrative Tribunal, issuance of show cause notice dated 25.3.1977 by the District Judge Etah asking the Petitioner (Late Shri Suraj Bali Katiyar) to show cause, even when he retired on 31.12.1976, as to why in pursuance of the recommendation of the Administrative tribunal he will not be dismissed from service under Rule 10 of the Disciplinary proceedings (Administrative Tribunal) Rules, 1947, issuance of another show cause notice dated 12.9.1977 by the State Government to the effect that the Administrative Tribunal in its enquiry report dated 18.12.1976 found charges No. land 2 proved and as the deceased Petitioner retired from service with effect from 31.12.1976 and the Governor has directed the State Government to issue show cause notice as per the report of the Administrative Tribunal as to why 50% of the pension may not be deducted under the provisions of Regulation 351-A of the Regulations and the report of the Administrative Tribunal passed by the State Government in the name of the Governor of U.P. deducting 50% of the pension of the deceased Petitioner under Regulation 351-A of Civil Service Regulations, are totally vitiated and are liable to be set aside.

29. The impugned order dated 19.11.1981 reveals that late Shri Suraj Bali Katiyar, while he was working as Judicial Magistrate at Budaun, the Vigilance Department of the High Court found certain allegations prima facie to be correct against him. There after, with the consultation of the High Court, the matter was

referred for enquiry by the Administrative Tribunal, IInd. The Tribunal after completing the enquiry found two charges stood proved against the Petitioner (deceased). The consent/ concurrence of the High Court was obtained on the report of the Administrative Tribunal. In the meantime the Petitioner (deceased) retired on 31.12.1976. As even against a retired officer action under Regulation 351-A could be taken, hence the question of deduction of pension was passed. Thereafter, furnishing with a copy of the decision of Administrative Tribunal, a show cause notice was issued to the Petitioner (deceased), in which it was proposed that 50% of his pension be deducted. The Petitioner (deceased) submitted a reply against the show cause notice, which was considered by the Administrative Committee in its meeting dated 5.5.1979. The Administrative Committee rejected the representation of the Petitioner (deceased) and had recommended deduction of 50% of pension of the Petitioner (deceased). The State Government after considering the recommendation of the High Court took a decision to accept the recommendation of the High Court, thereafter the Governor of U.P. exercising his powers under Regulation 351A and Rule 28 of the U.P. Judicial Officers Service Rules directed that from the pension of Petitioner (deceased), deduction of 50% be made.

30. In view of the provisions contained in Article 235 of the Constitution and Section 28 of the U.P. Judicial Officer Rules, the powers is vested with the High Court to initiate and conduct and enquiry against an officer belonging to subordinate judiciary. After coming into force of the notification dated September 30, 1967, the Petitioner (deceased) became the member of the subordinate judiciary and only the High Court, under Article 235 of the Constitution of India, could hold the enquiry, but unfortunately the High Court abnegated its control by holding the enquiry against the Petitioner (deceased).

31. We are of the view that the High Court under Article 235 is vested with the control of the subordinate judiciary, ought not to have asked the State Government to hold the enquiry through the administrative Tribunal. It appears that the High Court failed to discharge its duty of preserving its control. It was nothing, but an act of abnegation of its powers of control. If the High Court would have conducted the enquiry through any officer subordinate to it and recommended to the State Government for the deduction of the pension of the Petitioner (Late Shri Suraj Bali Katiyar), then the State Government could have been perfectly justified in passing the said order, but in the instant case the Administrative Tribunal conducted the enquiry, submitted its report and the High Court on the basis of the said report, recommended for deduction of 50% of the pension of the Petitioner (Late Shri Suraj Bali Katiyar) under Regulation 351-A of Civil Service Regulations and the State Government passed the impugned order.

32. As we have state earlier, it was the duty of the High Court to have conducted the enquiry preferably through the District Judge and thereafter would have recommended to the State Government for any appropriate action.

33. In view of our observations indicated in the foregoing paragraphs, as a result

of which this writ petition succeeds, we have not delved into the other points raised in this writ petition regarding malafide and denial of reason of reasonable opportunity.

34. In view of what has indicated herein above the writ petition succeeds and is allowed. A writ in the nature of certiorari quashing the impugned order of the Government directing 50% deduction from the pension of the Petitioner (Late Shri Suraj Bali Katiyar), the order of the Government dated 27.11.1974 suspending the Petitioner (Late Suraj Bali Katiyar) pending enquiry and the report of the Administrative Tribunal dated 18.12.1976, is issued. The Respondents are directed to make the payment of full pension to the substituted heirs and legal representatives of the deceased Petitioner and grant family pension to his wife in accordance with rules from the date of death of the deceased Petitioner.