

(2009) 07 AHC CK 0230
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

K.M. Saxena

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : (2009) 07 AHC CK 0230

Hon'ble Judges : C.K. Prasad, C.J;D.K. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This intra-Court appeal, at the instance of the respondents, under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952 arises out of an order dated 25.11.2008 passed by a learned Judge in Writ Petition No. 7323 (SS) of 2008.

2. Short facts giving rise to the present appeal are that the writ petitioner-respondent (hereinafter referred to as the "respondent"), at the relevant time, was posted as Stenographer in the office of the Divisional Commissioner, Lucknow Division, Lucknow. He was put under suspension and attached to the office of the Divisional Commissioner, Lucknow Division, Lucknow. Respondent, alleging mala fide, filed Writ Petition No. 7837 (S/S) of 2007 (K.M. Saxena v. The State of U.P. and Ors.) before this Court, inter alia, praying for change of the Inquiry Officer. This Court by order dated 08.08.2008 disposed of the said writ petition with the following observations:

Since the main grievance of the petitioner is that the Commissioner Lucknow Division Lucknow may effect the inquiry, I feel it appropriate to issue a direction to the State Government to reconsider the matter and appoint some other Inquiry Officer posted in some other division to inquire the matter. Accordingly, direction is issued and the petitioner is at liberty to move an appropriate application before the State Government along with certified copy of this order

who shall consider the same in light of the observations made herein above and appoint some other inquiry officer of other division within a week from the date of production of a certified copy of this order. I further feel it appropriate to observe that since the petitioner is under suspension, the inquiry officer shall not delay the inquiry and complete the same expeditiously with the cooperation of the petitioner after providing opportunity of hearing to the parties including supplying the relevant documents for the purpose. The petitioner shall be paid subsistence allowance as admissible under Rule.

3. In the light of the aforesaid order, by order dated 22nd September 2008, while cancelling the attachment of the respondent with the office of the Divisional Commissioner, Lucknow Division, Lucknow, attached him in the office of the Divisional Commissioner, Faizabad Division, Faizabad and further directed that the enquiry be conducted by the Divisional Commissioner, Faizabad Division. Thereafter, by Memo dated 22nd October 2008, the Divisional Commissioner, Lucknow Division served a charge sheet on the respondent. The respondent challenged the aforesaid charge sheet in the writ petition, which has given rise to the impugned order, inter alia, contending that the Divisional Commissioner, Faizabad Division having become his Appointing/Disciplinary Authority, the charge sheet issued by the Divisional Commissioner, Lucknow Division is illegal. The aforesaid submission found favour with the learned Judge and the Learned Judge quashed the charge sheet. While doing so, the learned Judge observed as follows:

That being so, it is evident that the impugned charge sheet is wholly without jurisdiction having been issued by an authority who was not competent to do so. Normally a charge sheet is not to be interfered by the Court but where it is wholly without jurisdiction or the allegations contained therein do not constitute any misconduct, the Court may look into the matter and interfere in judicial review. Since evidently the petitioner was transferred to Faizabad by State Government on 22.09.2008, the date on which the charge sheet was issued to the petitioner, he was not posted at Lucknow and, therefore, Commissioner of Lucknow Division had no authority to proceed against the petitioner.

In view thereof, the impugned charge sheet is hereby quashed and the writ petition is allowed. However, it is made clear that this order shall not deprive the respondents or the competent authority namely, Commissioner, Faizabad Division, Faizabad to issue a charge sheet to petitioner in accordance with law afresh.

4. Mr. Mukund Tewari, learned Standing Counsel appearing on behalf of the appellants, submits that in view of the order of this Court dated 08.08.2008 passed in the writ petition filed by the respondent, an observation was made to appoint some other Inquiry Officer of other Division and in order to facilitate the enquiry, the respondent was attached to the office of the Divisional Commissioner, Faizabad Division and the Divisional Commissioner, Faizabad Division was appointed as the Inquiry Officer. He points out that the misconduct

was committed by the respondent at Lucknow and the charge sheet pertains to that place and in that view of the matter, the Divisional Commissioner, Lucknow Division did not err in issuing the charge sheet to the respondent while posted at Faizabad.

5. Dr. L.P. Mishra, appearing on behalf of the respondent, however, submits that the moment the respondent was transferred to the office of the Divisional Commissioner, Faizabad Division, Faizabad, the Divisional Commissioner, Lucknow Division ceased to be the Appointing/Disciplinary Authority and the charge sheet can be issued only by the Divisional Commissioner, Faizabad Division.

6. Having appreciated the rival submissions, we find substance in the submission of the learned Counsel for the appellants. As stated earlier, the question of appointment of another Inquiry Officer arose in view of the order passed by this Court in the earlier writ petition filed by the respondent. In the light thereof, in order to facilitate the departmental enquiry, the respondent was attached to the office of the Divisional Commissioner, Faizabad Division and the Divisional Commissioner, Faizabad Division was appointed as the Inquiry Officer. In our opinion, attachment of respondent to Faizabad Division will not denude the Divisional Commissioner, Lucknow Division the power of the Disciplinary Authority. In fact, the Divisional Commissioner, Faizabad Division after holding the enquiry has to submit the enquiry report to the Divisional Commissioner, Lucknow Division for the purpose of taking decision in regard to the misconduct, which is the subject matter of enquiry.

7. We are of the opinion that the learned Judge committed an error by holding that the Divisional Commissioner, Faizabad Division, who had become the Disciplinary Authority, could issue the charge sheet only.

8. In the result, the appeal deserves to be allowed and is, accordingly, allowed. The impugned judgment and order dated 25.11.2008 passed in Writ Petition No. 7323 (SS) of 2008 is set aside.

9. There shall be no order as to costs.