

(2009) 03 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 434 (S/B) of 2009

State of U.P. and others

APPELLANT

Vs

Swaraj Bhushan Tripathi and others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 121 FLR 954

Hon'ble Judges : U.K. Dhaon, J; Satish Chandra, J

Bench : Division Bench

Advocate : Kapil Dev and Rajesh Singh Chauhan, for the Respondent

Judgement

U.K. Dhaon and Dr. Satish Chandra, JJ.—Heard learned Standing Counsel for the Petitioners and Sri Kapil Dev, Senior Advocate assisted by Sri Rajesh Singh Chauhan for opposite party No. 1.

2. The Petitioners being aggrieved by the judgment and order dated 24.11-2008 passed by the State Public Services Tribunal, Lucknow by which the claim petition preferred by the opposite party No. 1 against the order dated 16.1.2008 has been allowed have filed the instant writ petition.

3. The claim petition was filed by the opposite party No. 1 against the dismissal order dated 16.1.2008 before the State Public Services Tribunal. The claim petition was contested by the Petitioners by filing a written statement. The Tribunal after considering the material on record and hearing the learned Counsel for the parties at length has observed in paras 9 and 10 as under:

"From the perusal of record, it is admitted fact that there was decision of the Hon'ble High Court that if the B.T.C. candidates are not available for appointment, then, in such conditions the candidates having other kind of qualification like B.T.C., C.P. Ed, and L.T. degree may be appointed on the post of Assistant Teacher in Primary Schools and the orders dated 10.4.2003 and 28.5.2003 show that the compliance of the order of the Hon'ble High Court is mandatory and in compliance of these orders, the appointments have been made

by the Petitioner, but it was necessary for the Petitioner to seek direction/clarification before making these appointment but the Petitioner did not do so.

The main point involved in this case is whether the inquiry was conducted as per rules or not? The Petitioner was suspended in contemplation of the departmental inquiry and a charge-sheet was issued to him. Perusal of record reveals that the inquiry officer has not conducted the inquiry as per U.P. Government Servants (Discipline and Appeal) Rules, 1999 as he did not inform the Petitioner any date, time and place for holding the inquiry and statement of the witnesses was also not recorded by him and no oral inquiry has been conducted. Rule 7(vii) of Rules, 1999 provides that "where the charged Government Servants denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence." In the present case, the inquiry officer did not fix any date, time and place under intimation to the Petitioner for inquiry and no oral evidence has been recorded by the inquiry officer. From the perusal of record, it is evident that the Petitioner was not provided any opportunity for defence. The Petitioner was also not allowed to examine and cross-examine the witnesses and to adduce his own evidence in defence. The documents mentioned in the charge-sheet were also not provided to him. Thus, the principle of natural justice has been violated in the present case.

4. The Tribunal has allowed the claim petition on the ground that no date, time and place for holding the inquiry was intimated to the opposite party No. 1 by the Inquiry Officer and no oral inquiry was conducted and accordingly a liberty has been given to the Petitioners for holding a fresh inquiry in accordance with rules. The Tribunal also directed the Petitioners to reinstate the opposite party No. 1 in service forthwith along with all consequential service benefits including continuity in service.

5. Since a liberty has been given to the Petitioners to hold a fresh inquiry in accordance with rules, we are of the view that opposite party No. 1 is not entitled for the consequential benefits soon after the reinstatement.

6. The Hon"ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . has held in para 31 as under:

Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if

ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome.

7. We, therefore, modify the judgment and order dated 24.11.2008 passed by the State Public Services Tribunal to the extent that the consequential benefits awarded by the State Public Services Tribunal shall depend upon the out come of the fresh inquiry, if any. If any inquiry is initiated against the opposite party No. 1 the same shall be concluded by the Petitioners within three months from today.

With these observations, the writ petition is finally disposed of.