
(2014) 01 AHC CK 0192
In the Allahabad High Court
Case No : Special Appeal No. 115 of 2014

State of U.P.

APPELLANT

Vs

Chandra Bose and Others

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 ADJ 511 : (2014) 3 ALJ 793 : (2014) 2 ALJ 613 : (2014) 103 ALR 444 : (2014) 3 AWC 2642 : (2014) 141 FLR 366

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

Bench : Division Bench

Advocate : Ramesh Upadhyaya and C.S.C, Advocate for the Appellant; Y.S. Saxena, Advocate for the Respondent

Judgement

1. The Special Appeal by the State arises from the judgment and order of the learned Single Judge dated 17 December 2013. The first respondent was posted as the District Youth Welfare Officer, Budaun. On 22 August 2013, the Director General, Provincial Rakshak Dal addressed a communication to all the District Collectors stating that on 26 August 2013 a review meeting had been convened by the Minister for Youth Welfare and Sports Affairs, Government of U.P. at Lucknow for conducting a review of welfare activities. The meeting was to be attended by all the District Youth Welfare Officers. On 24 August 2013, the Chief Development Officer, Budaun addressed a letter to the Director General stating that the first respondent would not be able to attend the meeting on 26 August 2013 since during the period between 20 August to 26 August 2013, he had been assigned duties in connection with the distribution of laptops by the State Government. In his place, Gopal Ram, Physical Instructor was assigned the duty of attending the meeting at Lucknow. The meeting at Lucknow was attended by Gopal Ram on 26 August 2013. At the meeting, Gopal Ram was not able to satisfactorily explain the progress of the programme undertaken at Budaun. The first respondent was suspended from service on 27 August 2013. The order of suspension stated that the first respondent had deliberately and willfully failed to

remain present in the meeting on 26 August 2013 chaired by the Minister and that the person who had been deputed to attend the meeting had not been provided with adequate information to make a presentation at the meeting. A charge-sheet has since been served on 26 September 2013 whereby the first article of charge is the absence of the first respondent at the meeting on 26 August 2013.

2. On these facts the first respondent filed a writ petition challenging the order of suspension. When the petition came up before the learned Single Judge, an interim order was passed on 6 December 2013 wherein the submission of the first respondent was recorded that he had been assigned the duty of attending the distribution of laptops by the Chief Minister on 26 August 2013 and he was not relieved by his superior officers to attend the meeting at Lucknow which fact was duly communicated to the Director General in spite of which he was suspended from the service. At that stage, time was granted to file a counter-affidavit and the Director General was directed to appear in Court to explain how the first respondent could have left the Head Quarter at Budaun when he was not relieved by his superior officers on the ground that he has been assigned duties in connection with the distribution of laptops by the Chief Minister. An affidavit was, accordingly, filed before the learned Single Judge by the Director General, Ram Singh. In paragraph 6 of the affidavit, it was specifically stated that the order for suspending the first respondent was issued on the directions of the Minister. Since the Director General was present, he informed the Court that he had issued the order of suspension under the directions of the Minister.

3. Learned Single Judge has held that though an order of suspension does not constitute a punishment per se under Rule 4(1) of U.P. Government Servant (Discipline and Appeal) Rules, 1999, an independent application of mind by the Director General was required. The Director General had merely acted at the behest of the Minister and instead of following the rule of law had taken action against the first respondent. In the circumstances, the order of suspension was set aside and while allowing the petition costs of Rs. 25,000/- were imposed on the State with liberty to recover them from the concerned appointing authority who ignored the statutory duty. Moreover, a direction was also issued to the effect that Ram Singh, Director General should not be assigned duties of such an important office. The State Government was directed to take an appropriate action within 15 days.

4. The State is in appeal.

5. Learned Standing Counsel appearing on behalf of the appellant submits that the order of suspension against the first respondent was not passed merely on the ground of his absence from the meeting on 26 August 2013 which was to be chaired by the Minister but also as a result of failure of the first respondent to depute a person, who would have vital information of the progress of the activities in the district. The person who was deputed was unable to provide a satisfactory explanation of the activities in the district. The decision to suspend

the first respondent was taken in the meeting which was chaired by the Minister but which was also attended by senior officers. Hence, it was submitted that it would be unfair to attribute the order of suspension to have been passed merely on the direction of the Minister concerned.

6. The primary basis of the order of suspension in the present case, as the order itself would disclose, is that the first respondent had wilfully remained absent at the meeting on 26 August 2013 which had been convened to be chaired by the Minister for Youth Welfare and Sports. Now, the record indicates that the Chief Development Officer had informed the Director General, upon receipt of a communication dated 22 August 2013, by a letter dated 24 August 2013 that the first respondent would be unable to attend the meeting since he had been deputed to attend the distribution of laptops between 20 August to 27 August 2013. Admittedly, this was an event at which the Chief Minister of the State was to participate. Therefore, it is evident that the absence of first respondent from the meeting at Lucknow on 26 August 2013 was not a deliberate act on his part nor was there any dereliction of duty. On the contrary, the superior officers of the first respondent had assigned to him the duty of remaining present at the distribution of the laptops and had also communicated to the Director General that for this reason the first respondent would not be able to attend the meeting at Lucknow on 26 August 2013.

7. Thus, *ex facie*, the primary basis of the order of suspension has no foundation. The first respondent has thus been victimised for his absence at the meeting on 26 August 2013 though that absence was duly explained and was only in compliance of a lawful order of the superior officers requiring him to be present during the course of the distribution of the laptops. The record before the Court also indicates that the order of suspension was passed by the Director General at the behest of the Minister. The Director General admitted this fact in the affidavit which he filed before the learned Single Judge in response to the interim directions. In paragraph 6 of the affidavit, he categorically admitted to the order of suspension being passed at the behest of the Minister. Besides, such was also his statement to the Court when he remained personally present in response to the notice issued by the Court. That the officer who was deputed was unable to provide satisfactory answers in regard to the progress of the activities in the district is a subsidiary matter altogether for which the first respondent cannot be victimised.

8. On these facts, the learned Single Judge was justified in coming to the conclusion that the Director General had abdicated his duty of independently applying his mind to the issue as to whether the order of suspension was necessary. An angry Minister by himself cannot provide justification for toying with the lives of the employees and officers of the State. All public power is conferred on the foundation that it is held in trust and not on the assumption that it would be wielded for extraneous reasons. Rule 4(1) of the Rules contemplates the placement of a Government servant under suspension against

whom an inquiry is contemplated or is proceeding. The proviso to Rule 4(1), however, stipulates that the suspension should not be resorted to unless the allegations against the Government servant "are so serious that in the event of their being established may ordinarily warrant major penalty". There has been a total non-application of mind to this aspect also. No reasonable person or body of persons could possibly come to the conclusion that the facts of the present case are such as would prima facie suggest that a major penalty would be imposed if the charge is found to be true. In a situation as the present, where the first respondent was unable to remain present at the meeting convened by the Minister because he was associated with the function of the distribution of the laptops on the directions of his superiors, the said respondent would not be guilty of misconduct. The absence of the first respondent was duly explained.

9. We are cognisant of the fact that in matters of suspension pending a disciplinary inquiry, the intervention of the Court, particularly under Article 226 of the Constitution, must be rare. However, this is one of those exceptional cases where the intervention of the learned Single Judge was manifestly required to prevent what would otherwise have been a complete miscarriage of justice. The order of suspension was plainly in violation of Rule 4(1) of the Rules. The authority which passed the order of suspension acted at the dictates of the Minister and did not apply its mind independently as to whether an order of suspension was necessary. Ex facie, the requirement of the proviso to Rule 4(1) was not fulfilled.

10. In the circumstances, no case for interference with the order of the learned Single Judge setting aside the order of suspension is made out. The imposition of costs was wholly justified in the facts of this case. However, in the concluding part of the judgment the learned Single Judge has issued a direction to the effect that Ram Singh, Director General should not be assigned such an important office and should be posted in an office where an independent exercise of power is not required to be performed by him. These observations of the learned Single Judge are really not necessary for a decision of the writ petition and consequently we consider it appropriate and proper to set aside the directions contained to that effect in paragraph 20 of the judgment and order. We also clarify that the costs in the present case shall be borne by the State Government. The Special Appeal is, accordingly, disposed of in the aforesaid terms and the impugned judgment stands modified to that extent. There shall be no order as to costs.