

(2009) 04 AHC CK 0518
In the Allahabad High Court

State of U.P.and others

APPELLANT

Vs

Ram Chandra Singh and another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0518

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

Final Decision : Disposed Of

Judgement

Dr.Satish Chandra, J.

Heard learned Standing Counsel for the petitioners.

The petitioners, being aggrieved by the judgment and order dated 08.08.2008 passed by the State Public Services Tribunal, Lucknow, by which the claim petition preferred by respondent no.1 under Section 4 of the U.P. State Public Services Tribunal Act, 1976 against the punishment order dated 10.01.1991 has been allowed have filed the instant writ petition.

The claim petition was contested by the petitioner by filing a written statement. The State Public Services Tribunal after hearing the learned counsel for the parties and considering the material on record has observed in the impugned judgment and order dated 08.08.2008 as under in paras 12, 13 and 14:

"12. It was pointed out by the petitioner that opposite parties had not shown to the Tribunal that His Excellency the Governor had become satisfied that in the interest of security of the State it was not expedient to hold the enquiry. Perusal of the file reveals that opposite parties in their CA/WS have pointed out that petitioner had committed acts of indiscipline and his services were terminated by His Excellency the Governor considering the matter of petitioner along with Jhakari Ram under Article 311(2)(C) of the Constitution. This fact was communicated by the Secretary Home to D.G. Police vide his order dated 2.1.1991 and the order shows that the services of the petitioner have been terminated under Article 311 (2) (C) of the Constitution. The said article lays

down that general provision of Article 311 (2) shall not be applicable "where the president or the Governor as the case may be is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

This shows that satisfaction of his Excellency the Governor was necessary to the effect that in the interest of the security of the State it was not expedient to hold enquiry. This satisfaction is objective and based on some enquiry. A perusal of file reveals that the opposite parties were given sufficient opportunities by the Tribunal to produce the relevant documents on the basis of which His Excellency, the Governor was satisfied that it was not expedient in the interest of the security of the State to hold enquiry, but they did not produce the same. On 28.2.2003, the learned P.O. had prayed that he wanted to produce the record of the proceedings in which the G.O. giving rise to removal/dismissal order had been passed. The time was allowed but in spite of several opportunity from 2003 to 2007 the same was not produced, and so on 15.11.2007 the claim petition was allowed to be listed for final hearing.

13. In this regard our attention has been drawn to the citation (2008(26)LCD 301) Mrigendra Singh vs. State of U.P. and others where it has been observed in cases where enquiry has been dispensed with before inflicting punishment, the judicial review would be permissible. It has been held that "if a challenge is made to an order passed under sub clause (c) of Second proviso of Article 311 of the Constitution, the judicial review would be permissible." It has been observed that "facts of the case on the basis of which charges have been framed or levelled or found mentioned in the order of punishment, namely on the basis of which the major punishment order has been passed, would be relevant consideration for considering as to whether the inquiry if so held, would not have been in the interest of the security of the State." In the citation of 1991, A.I.R. (S.C.) 385 Jaswant Singh Vs State of Punjab & others, it has been held that it is incumbent on the respondents to disclose to the Court the material in existence at the date of passing of the impugned order in support of the passing of the impugned order, Clause (b) of the second proviso to Article 311 (2). Again in citation of 1995 A.I.R. (S.C.) 1491 A.K. Kaul Vs Union of India and others, the Hon'ble Apex Court has observed that Constitution of India Article 311 (2) IIInd Provision Clause (C) 32 provides that Dismissal/removalDispensing with enquiryor the satisfaction reached by president/Governor justifiable with in limits.

14. In view of the law laid down in the case of 2008 (26) LCD 301, Mrigendra Singh Versus State of U.P. and others since the record regarding the termination of the petitioner's services was not produced and the petitioner has been acquitted in matters in which he has been said CA/Ws to have been involved, so adverse inference is drawn which makes the petitioner eligible for relief."

We are of the view that there is no illegality or infirmity in the impugned judgment and order dated 08.08.2008 passed by the State Public Services Tribunal, Lucknow. The writ petition is devoid of merits. It is accordingly dismissed at the admission stage.