

(2009) 08 AHC CK 0185
In the Allahabad High Court
Case No : Writ Petition.No. 1095 (SB) of 2009

State of U.P.and Others

APPELLANT

Vs

Shahzada and Another

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0185

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

R.R. Awasthi, J.

2. This petition by the State is another example of the manner in which the State is contesting the cases against the private litigants.

3. The respondent was inflicted a major punishment after so called departmental enquiry being held against him vide order dated 23.12.1993 and the said order was confirmed in appeal by the appellate authority vide its order dated 31.12.1994.

4. The respondent challenged the aforesaid orders by filing a claim petition in the year 1995.

5. The aforesaid punishment was inflicted because there was charge of unauthorized absence of the respondent for a period of about three months or so, who was placed under suspension and thereafter, the departmental enquiry was conducted.

6. The claim petition preferred by the respondent was allowed by the Tribunal on 3.11.06 after recording a categorical finding that after issuance of the charge sheet and submission of reply to the same, the enquiry officer did not fix any date, time and place for holding the enquiry.

7. The Tribunal, therefore, in view of the settled position of law in respect of

holding disciplinary proceedings for inflicting major punishment, set aside the order of punishment with liberty to the State to hold the enquiry afresh against the respondent in accordance with law.

8. The State has chosen to file the writ petition against the said order dated 3.11.06 after a lapse of more than two years and eight months.

9. Learned counsel for the State, could not point out any mistake in the order, what to say of any apparent mistake or any manifest error of law.

10. When a disciplinary enquiry is held, the State and its functionaries remain oblivious of the procedure in which the enquiry should be held. The principles of natural justice and the service rules do not permit that in the case of enquiry for inflicting major punishment, the charge would stand proved after submission of reply to the charge sheet, without holding any oral enquiry or without fixing any date time and place for holding the enquiry.

11. The charges have to be proved by the material evidence on record before the enquiry officer, for which, an opportunity is to be afforded to the delinquent also to produce his evidence and to rebut the evidence tendered by the department. Opportunity to cross-examine and to rebut the documentary evidence are the cardinal principles of law.

12. Despite this being made clear in various judgments of this Court as well as of Supreme Court and despite these provisions being incorporated in the service rules, we find that the departments and in particular, the enquiry officers are acting against the principles of natural justice. The appointing authority also unmindful of the procedural defects, which would vitiate the entire proceedings, passes the final order.

13. In the instant case, despite opportunity and liberty being given to the State to hold the enquiry afresh, the State knowing fully well that there is no error in the order passed by the Tribunal, neither chose to file writ petition challenging the aforesaid order within a reasonable time nor proceeded to hold the enquiry afresh. It is after an unexplained delay of two years, eight months and twenty five days, that this petition has been filed.

14. We fail to appreciate that when the Tribunal has given the liberty to hold the enquiry afresh and the State having not filed the writ petition within a reasonable time, there was no occasion to file the writ petition at such a belated stage, and not to avail the opportunity, given by the Tribunal.

15. Petitions of this nature, not only burden the Courts, but also drag the employees into uncalled for litigation.

16. In the instant case, punishment order was passed on 23.12.1993, that too for a charge of unauthorized absence of about three months, though it was admitted that the respondent was granted leave from 7.11.1992 to 18.11.1992 as he had fallen ill and thereafter, he extended his leave upto 6.2.1993 because

he could not recover from illness. For this charge, he was suspended and an enquiry was conducted. The respondent contested the case in the Tribunal right from the year 1995 till November, 2006, i.e. for a period of more than 11 years, and when he succeeded in the claim petition before the Tribunal, the State did not choose to file any writ petition, challenging the aforesaid order, but now by means of this petition, the State intends to initiate fresh proceedings for a charge of unauthorized absence for a period of three months of a permanent officer, who joined the services on 12.12.1977.

17. There exists no ground to interfere with the order passed by the Tribunal nor do we find any reason for entertaining the petition after such a long lapse of time.

18. Since the State had not chosen to initiate proceedings afresh after a lapse of more than two years and eight months, we do not find it reasonable to allow the State to initiate proceedings for a charge of the year 1993.

19. Since the filing of the present petition is an abuse of the process of the Court and uncalled for harassment to the employee, we dismiss the writ petition with cost of Rs. 20,000/. The cost shall be deposited in the Court within a month, which shall be sent into the account of the Mediation Centre of the High Court at Lucknow.