
(1999) 05 AHC CK 0165
In the Allahabad High Court
Case No : C.M.W.P. No. 19771 of 1999

Sukhbinder Singh Pannu

APPELLANT

Vs

Adhyaksha, Nagar Palika Parishad, Saharanpur and another

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 69A, 69A(1)
Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 — Rule 28
Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 37(3)

Citation : (1999) 3 AWC 2191 : (1999) 2 UPLBEC 1474

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : R.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

D. K. Seth, J.—The petitioner has challenged the order of suspension dated 20th April, 1999 contained in Annexure-2 to the writ petition. Mr. R K. Mishra, learned counsel for the petitioner submits that this order of suspension has been issued without application of mind on the basis of the alleged report of Dinanath Sharma. He has pointed out from Annexure-1 which is a newspaper report that it was on the allegation that the petitioner was trying to sale some insecticides in the open market. According to Mr. Mishra, this was the basis on which the petitioner was suspended. He contends that there cannot be any order of suspension unless the charge-sheet is issued. For that purpose, he relies on the note appended below Rule 28 of the U. P. Nagar Mahapallka Sewa Nityamavali, 1962. He relies on the decision in the case of Sri Hari Prasad Sharma v. Municipal Board, Gangoh 1973 (1) SLR 348, in support of his above contention. He also relied on the decision Nilakantha Mishra v. State of Orissa and others 1974 (2) SLR 206, and contended that the order of suspension is in effect a punishment which cannot be inflicted without giving an opportunity.

2. I have heard the learned standing counsel and Mr. R. K. Mishra, learned

counsel for the petitioner at length.

3. The reliance placed in the case of Hari Prasad Sharma (supra) shows that it was in view of Section 69A of the U. P. Municipalities Act, the charge-sheet is to precede the suspension order. Such a conclusion was arrived at in the said decision on the basis of Section 69A (1) which is apparent from paragraph 2 of the said Judgment which is quoted below :

"The petitioner has challenged the suspension order. Section 69A of the Municipalities Act provides for suspension of officers. Subsection (1) of this section provides that: "If the President has reason to believe that the Executive Officer or the Secretary.....is corrupt, or has persistently failed in the discharge of his duties or is otherwise guilty of misconduct, he may frame charges against him and where he is satisfied that It is so necessary, he may, for reasons to be recorded, suspended him pending the completion of the enquiry....."

A perusal of this provision shows very clearly that a charge-sheet has to precede the suspension order. It is only when the charge has been framed against an officer that the question of the suspension can arise. The standing counsel has relied upon sub-section (3) Rule 37 of the U. P. Palika (Centralised) Service Rules, 1966. That rule provides that in cases requiring immediate suspension of an officer of the Centralised Services the power of suspending such an officer shall be exercised by such authority as may be specified in this behalf by the Government, and in other cases requiring the suspension of an officer, reference shall be made to the Government". It may be stated here that the petitioner belongs to the Centralised Services. However, sub-rule (3) of Rule 37 has to be read subject to Section 69A of the Municipalities Act. If the statute provides that the suspension can be ordered only after a charge has been framed, the rule cannot override ; that provision and provide that the suspension order may be passed before the charges are framed. In fact. Rule 37 (3) does not provide that the suspension order may be passed before the charge is served. It only names the officer or the authority that may pass a suspension order."

4. The said decision cannot be attracted in the case of the petitioner since admittedly, the petitioner's service is governed by U. P. Nagar Mahapaltka Sewa Niyamavali, 1962 as is admitted by Mr. Mishra who relied on Rule 28 thereof. The Rule 28 being altogether different from Section 69A of the U. P. Municipalities Act, relied in the said decision, the ratio decided therein cannot be attracted in the present case. Rule 28 and the note for our present purpose is quoted below :

"A servant of a Mahapalika against whose conduct an inquiry is contemplated or is proceeding, may be placed under suspension pending the conclusion of the inquiry at the discretion of the appointing authority. Enquiry in this rule includes the arriving at some decision on the basis of the enquiry.

Note.--As a rule, suspension should not be resorted to unless the allegation against the servant are so serious that, in the event of their being established, they may ordinarily be expected to warrant his dismissal, removal or reduction in

rank or unless the continuance in office of the servant concerned is likely to hamper or prejudice the course of enquiry. Suspension, where deemed necessary should, as far as possible, immediately precede the framing of charges and their communication to the servant charged."

5. The plain reading of Rule 28 shows that a person can be placed under suspension when an inquiry is contemplated or is proceeding. The enquiry proceeding is commenced on the issue of charge-sheet. Therefore, in the present case, in the absence of any charge-sheet, it cannot be said that the enquiry is proceeding. In the order of suspension, it has been mentioned that the charge-sheet would be issued. This indicates that the order of suspension has been issued in contemplation of an inquiry within the meaning of Rule 28, When it subsequently provides that suspension can be made even when an enquiry is contemplated, then it is not necessary that the order of suspension is to be preceded by issue of charge-sheet. Rule 28 being completely different from Section 69A of the Municipalities Act since relied on in the said decision in the case of Hari Prasad Sharma (supra), the said ratio cannot help Mr. Mishra. However, the note prescribes that in every case, the suspension should immediately precede the charge-sheet. Now the allegations if are taken note from the newspaper report, in that event, it is quite premature to indicate as to what kind of punishment could be inflicted. If those allegations are proved, it may warrant any of the punishment mentioned in the note. Such suspension can also be issued even when no punishment can be inflicted where continuance in the office may prejudice the course of enquiry. The said note also contains a condition that the suspension may precede the framing of charges and its communication to the person charged. This also demolishes the contention of Mr. Mishra to the extent that the charge-sheet is to precede the suspension. Therefore, in view of the said distinctive features, the order of suspension cannot be assailed on the grounds advanced by Mr. Mishra.

6. So far as the question that the order of suspension is a punishment is concerned, it is admittedly a settled principle of law that when inflicted by way of punishment after an enquiry, suspension is definitely a punishment but when issued in contemplation of an enquiry, the period of suspension shall remain subject to the result of the enquiry.

7. Such period can be treated after the enquiry ends in favour of the delinquent by treating him as on service and in such circumstances, the suspension can never be a punishment. Therefore, reliance on the decision in the case of Nilakantha Mishra (supra), does not take us any where to the extent as has been contended by Mr. Mishra since in the said case the order of suspension was not held to be a punishment as such when it was inflicted in pending enquiry. On the other hand, it was held that it might work prejudice, if it is accepted retrospectively as was observed in the said decision. It was so held that after five years, the order of suspension was treated as period of suspension and in such circumstances. It was held to be a punishment after the order of suspension was

confirmed in view of Rule 13 (v) of the Orissa Civil Services (Classification, Control and Appeal) Rules 1962. In the said case, such order was passed affirming the period of suspension even though no final order was passed on the disciplinary proceeding by the Governor and in such case where no final order was passed in the disciplinary proceeding but the order of suspension is affirmed, in that event it amounts to indictment of punishment and penalty. Thus, the facts of the said case are completely distinguishable from those of the present case where it is simply an order of suspension pending or in contemplation of an enquiry which is subject to the result of the enquiry and yet to be finalised. Therefore, the said decision also does not help Mr. Mishra.

8. For all these reasons, I am not inclined to interfere with the order of suspension. The writ petition fails and is accordingly, dismissed. However, there will be no order as to costs.