
(2022) 07 UK CK 0085

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 201 Of 2018

Suresh Chandra

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Uttarakhand Government Servant (Discipline And Appeal) Rules, 2003 — Rule 3(a)

Citation : (2022) 07 UK CK 0085

Hon'ble Judges : Vipin Sanghi, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : A.S. Rawat, Charanjeet Kaur, S.S. Chauhan

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The petitioner has preferred the present writ petition to assail G.O. No. 323 / II-2017-02(7)/2011 dated 16.04.2018, issued by the Principal Secretary, Minor Irrigation Department, and the letter dated 05.05.2018 bearing No. 239/Min.Irri./ Recovery-30/2018-19, issued by the Chief Engineer / Head of Department, Minor Irrigation Department, Uttarakhand.

2. The order dated 16.04.2018, issued by the Principal Secretary, Minor Irrigation Department, imposed a penalty of recovery of fifty percent of the financial loss of Rs. 15,12,192 (Rupees Fifteen Lacs Twelve Thousand One Hundred and Ninety Two) from the petitioner, who was serving as an Executive Engineer at the relevant time, and the remaining fifty percent amount was directed to be recovered from other subordinate staff, including Sectional Accounts Officer under Para-3(Ka)(2) of the Minor Penalties of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, apart from withholding two annual increments of the officers found guilty of misconduct. In short, the misconduct, alleged against the petitioner, was that he directed release of huge amount of Rs. 1,23,50,000/- in favour of Maihar Cement for supply of fifty thousand bags of

Birla Gold Cement at the rate of Rs. 247 per bag. The rates were for Department Godown at Silpata, District Pithoragarh.

3. Without securing the said amount, and without any authority to release the said amount in advance, the petitioner released the amount in favour of the supplier, who failed to supply 9,557 bags resulting in a huge loss to the State Exchequer.

4. By the subsequent order dated 05.05.2018, the Head of the Department implemented the penalty imposed upon the petitioner, as aforesaid.

5. The submission of the learned Senior Counsel for the petitioner is that the petitioner acted bona fide on account of certain projects under the Accelerated Irrigation Benefit Scheme suffering progress due to lack of cement. He submits that the petitioner had released the amount after due permission from the Accounts Division of the Head Quarters. In this regard, he had drawn our attention to the Invoice of Maihar Cement, whereon the endorsement had been made.

6. We have perused the said document, and it nowhere disclosed that the petitioner was permitted to make out-of-turn payment to the supplier, in advance and that too, without any security.

7. It appears that the payment had to be made under the terms of the contract only upon receipt of the supplies, and that too, after quality check. The said Firm had been made payment even before the entry of the payment in the Measurement Book being made by him, and by wrongfully placing the order for supply of cement without provisioning for the same in the budget.

8. The learned Senior Counsel for the petitioner submits that after the supplier had defaulted, he had himself raised the issue with the higher authority to take action against the supplier, which shows the bona fide and lack of involvement with the supplier.

9. The action of the petitioner, even if it is assumed to be bona fide, was completely reckless and contrary to the contractual terms and the norms laid down for release of payment to suppliers by the Government. It is on account of the said act and omission on the part of the petitioner that the Government interest and consequently public exchequer suffered, and in our view, the penalty imposed upon the petitioner could not be said to be harsh or disproportionate.

10. The learned Senior Counsel for the petitioner has relied on Rule 3(a) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 to submit that the recovery of Rs. 7,56,096/- (Rupees Seven Lacs Fifty Six Thousand and Ninety-Six) from the petitioner is impermissible since, according to the petitioner, only twenty-five percent of the monthly salary could be recovered as fine. In this regard, he relies on Rule 3(a) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, which reads as under:-

"3. Penalties-The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants:-

(a) Minor Penalties—

(i) Censure;

(ii) Withholding of increments for a specified period;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

(iv) Fine in case of persons holding Group "D" posts:

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed."

11. In our view, the interpretation, advanced by the learned Senior Counsel for the petitioner, is not correct. The Rule would show that one of the minor penalties, which could be imposed upon a government servant, is recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence, or breach of orders.

12. Therefore, the entire amount of pecuniary loss could be recovered without any limitation. The proviso, aforesaid, only states that the fine shall in no case exceed twenty-five percent of the month's pay in which the fine is imposed. It is clear to us that the penalty imposed upon the petitioner is under Clause (iii) i.e. for recovery of a part of the pecuniary loss, and is not a fine, which could be imposed under Clause (iv) above. Therefore, the proviso is not at all attracted. So far as the recovery of pecuniary loss is concerned, there is no restriction on its recovery.

13. We, therefore, do not find any merit in the present writ petition, and the same is, accordingly, dismissed.

14. In sequel thereto, pending application, if any, also stands dismissed.