

(2009) 07 AHC CK 0199
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29569 of 1996

Surya Narain Tripathi

APPELLANT

Vs

Madhyamik Shiksha Parishad, Allahabad and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0199

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This writ petition is directed against the order dated 12.8.1993 by which the petitioner has been superseded and the junior to him have been granted promotion allegedly without any valid reason illegally ignoring the petitioner. The petitioner has prayed for a writ of certiorari for quashing the order dated 12.8.1993 which is appended as Annexure1 to this writ petition. It appears that the integrity of the petitioner for the year 198485 has been withheld by the impugned order in 1993.

3. The facts of the case are that the petitioner was appointed as Assistant in Madhyamik Shiksha Parishad, Allahabad in 1973. He was promoted as Senior Assistant and was performing his duties as Senior Assistant in Coordination section in the year 1984. The work and nature of the duties of the petitioner in coordination section has nothing to do with the preparation, tabulation or issuance of mark sheets to the examinees, but it is to be done by the employees of confidential section (3) & (4) who execute the work of preparation and declaration of result. Thereafter, the work of scrutiny and issuance of revised mark sheet is also done by the confidential section (3) & (4), in the Board.

4. It appears that a forged mark sheet was issued to an examinee of Intermediate bearing roll no. 253909 who was a regular student of Janta Inter College, Kusuwapur, DistrictPratapgarh.

5. In paragraph 5 of the writ petition, it has been averred that main task of the petitioner in coordination section was with the press for printing of the stationary as well as of arranging the gunny bags for the purpose of keeping or storing the copies and records etc.

6. It is stated in the writ petition that the work in respect of the scrutiny of Intermediate Colleges of District Pratapgarh was being done by another person working in confidential section, but the respondents without any rhyme or reason and without conducting any inquiry or affording any opportunity to the petitioner, by the impugned order dated 12.8.1993 communicated him of adverse entry regarding withholding of his integrity for the year 1984-85.

7. Aggrieved by the aforesaid order dated 12.8.1993 non verification of his integrity for the year 1984-85, the petitioner moved a representation on 4.10.1993 on the ground inter alia that the said punishment has been awarded without affording any opportunity in an arbitrary and illegal manner and requested for justice to be done in the matter.

8. Subsequently, after acquittal of the petitioner, the department is continuing to inflict punishment upon him as after that he was not given selection grade and now he has retired from service without payment of retiral benefits. Only provisional pension being paid to him.

9. It appears that some inquiry was conducted by vigilance department and the petitioner requested for its report but without even providing copy of the report or any evidence against the petitioner and without holding any departmental inquiry into the matter, the said adverse entry was communicated to the petitioner.

10. It also appears from record that an FIR was lodged against the petitioner in case crime no. 106 of 1990, u/s 420/466/471/120B IPC and 13 (2) of Anti Corruption Act in P.S. Civil Lines, Allahabad. Consequently, the charge sheet was issued to the petitioner and he was acquitted from the charges by the Special Judge, Anti Corruption act/Additional Sessions Judge, Varanasi in Special case No. 3 of 2000 vide judgment and order dated 31.1.2005 (appended as Annexure No. SA1 to the supplementary affidavit) holding that the criminal case was a result of departmental rivalry; that the said forged mark sheet was issued in the hand writing of some other person and neither in the hand writing of the petitioner nor was issued by him and that the prosecution failed to prove any of the offences/charges against him.

11. The impugned order dated 12.8.1993 has been challenged by the petitioner on the ground that it amounts to punishment without affording any opportunity of hearing and is against the principles of natural justice, hence it is illegal, arbitrary and liable to be quashed.

12. Learned Standing Counsel has submitted that the petitioner was working in High School Examination Section during the period 24 January 1984 to July 1984

and thereafter in Confidential section from September 1991 and not in coordination department as cleared by him though prior to 24.1.1984 he was in that department. It is stated that a CB CID enquiry was conducted by the vigilance department of Uttar Pradesh in the matter of issuance of forged mark sheet to candidate of roll no. 253909 as stated above and that result of DistrictPratapgarh was prepared by one Durga Prasad Tripathi with help of other employees. It is urged by the standing counsel that the adverse entry has been awarded to the petitioner and his integrity for the year 198485 has been withheld on the order of the vigilance office Lucknow issued vide letter no. 836 dated 12.8.1993 and as such withholding of his integrity is not arbitrary as alleged; that representation of the petitioner dated 4.10.1993 and 5.10.1993 were received in the office but the report of vigilance cannot be given being confidential in nature.

13. It is doubtful as to whether against the order of acquittal by the learned Sessions Judge an appeal has been filed in the High Court, as neither the number of appeal nor its date of filing has been informed by the Standing Counsel. It is admitted fact in the supplementary counter affidavit that as a consequence of the impugned order the juniors to the petitioner had been promoted and were granted selection grade against which a representation was also made by him, but the same was denied on the ground that an appeal is prepared to be filed by the State.

14. In the supplementary counter affidavit filed on behalf of the respondents it is averred that information regarding proposal of filing of appeal against acquittal is being initiated as received from vigilance department and that the appeal so proposed might have been forwarded by the D.G.C. (Criminal) though the Legal Remembrancer, State of U.P. for being filed in High Court. It is averred in paragraph 5 of the supplementary counter affidavit that according to the opinion of District Government Counsel non payment or withholding of retiral benefits of the petitioner is legal.

15. In paragraphs 4 and 5 of the supplementary rejoinder affidavit the petitioner has taken a stand that there has been no departmental enquiry proceedings against the petitioner and as he has been acquitted in the criminal case withholding of his promotional and financial benefits is illegal and arbitrary. It is stated that he is not aware of filing of any appeal by the state against the order of acquittal dated 31.1.2005 and even if appeal has been filed it has no relevance for withholding his retiral benefits due to him particularly in absence of any departmental enquiry having been held against him. It is urged that the entry of doubtful integrity is automatically washed of on acquittal and as such the opinion of D.G.C. is not correct.

16. The admitted facts further culled out from the record and the arguments of the parties are that the petitioner has been acquitted by the learned Sessions Judge on the ground that the charges are not proved against the petitioner.

17. Admittedly, no domestic inquiry whatsoever was held. It is settled law that no person is guilty unless charges are proved. Since appeal is continuation of the proceedings of the court below and the petitioner has been acquitted therein, the petitioner cannot be punished either on the ground that Vigilance office at Lucknow recommended for withholding the integrity of the petitioner in 1993 after about 8 years for the year 1984-85 when in fact adverse entry had been given to him in that year and in subsequent years.

18. Once the Court has rendered a judgement then it is to be honored and it can only be set aside by a superior Court of law. The Distt. Government Council cannot sit in appeal over the judgment of the superior court and for withholding of retiral benefits on the ground that appeal against acquittal is being proposed to be filed in the matter or had been filed. If any appeal filed against acquittal is decided in favour of the respondents natural consequences from it would flow but till acquittal is continuing and is not set aside punishment cannot be held pending decision in appeal.

19. Lastly the petitioner was neither provided report of the vigilance enquiry nor the same has been produced in Court. A person cannot be denied to challenge an enquiry report on basis of which he has been visited with serious consequences and which tarnishes his image and status in the society on the ground of confidentiality. He could have been also proceeded with departmentally and has every right under the Constitution to defend himself. Thus in spite of acquittal the petitioner was not only given adverse entry of withholding of integrity for year 1984-85 after about 8 years on the dictates of the vigilance Officers at Lucknow but was also further punished by denying him selection grade in admitted backdrop that his juniors had been granted the same after ten years of service. Not only this retiral benefits have been withheld, but moot question before the Court is as to whether after his acquittal in the criminal case, could there separate punishments have been inflicted upon him on dictates of the vigilance office and upon the opinion of the D.G.C.?

20. From the averment made in the counter affidavit it is apparent that the petitioner has been superseded and has neither been granted selection grade after completion of ten years of service pursuant to the Government Order dated 3.6.1989 as referred to in the office order dated 9.12.1993 nor retiral benefits have been paid to him.

21. Thus, it is clear from the above that the petitioner was neither a spy nor was asking for any secret information from the vigilance department or the Board. On one hand he is being punished with major punishment and on the other he is denied opportunity to clear himself of charges by challenging the order of withholding increment which had been passed on the dictates of the vigilance office at Lucknow by not providing him the report of vigilance enquiry on the basis of which his integrity had been withheld and which could have been challenged by the petitioner before the Court of Law. Such consecutive actions to throttle no dues of a citizen of free India in spite of this acquittal cannot be

permitted by any court on reasonable standards. The action of respondents suffers not only from vice of non transparency but also from arbitrariness, illegality and against principles of natural justice.

22. The amendment application of the petitioner moved subsequently for selection grade has already been allowed by order dated 9.4.2008 and the petition has been amended, accordingly.

23. For the reasons stated above, the writ petition succeeds and is accordingly allowed. The impugned order dated 12.8.1993 is quashed. It is further directed that since the petitioner has now retired from service on 31.1.2006 therefore he will be given notional promotion and all the retiral benefits at least at par with the person who is next below in the seniority to him. The petitioner will be given pensionary benefits along with 6% interest in accordance with law within a period of three months from the date of production of a certified copy of this order.