

(2014) 01 AHC CK 0204

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 43886 of 2004

Udai Pratap Singh @ Sukhdeo

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2014) 1 ACR 1005 : (2014) 2 ADJ 773 : (2014) 4 ALJ 65 : (2014) 2 AWC 1369 : (2014) 1 UPLBEC 808

Hon'ble Judges : Rajesh Kumar Agrawal, J

Bench : Single Bench

Advocate : N.K. Saxena, Deepak Saxena and Ram Kishor Gupta, Advocate for the Appellant

Judgement

Rajes Kumar, J.—Heard Sri Ram Kishor Gupta, learned counsel for the petitioner and Sri Raj Kumar Pandey, learned Standing Counsel. By means of the present writ petition, the petitioner is seeking the following relief:

5. Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 1 to pay pensionary benefit to the petitioner from the date of his superannuation from service;

VI. Issue a writ order or direction in the nature of certiorari quashing the order dated 2.9.2013 passed by respondent No. 3 rejecting the representation dated 26.4.2004 submitted by the petitioner.

2. The petitioner was a regular employee with the respondent No. 3 and was working on the post of Ward Boy at Rajkiya Ayurvedic & Unani Chikitsalya, Dhagwa, district Hamirpur. In the year 1978 a First Information Report was lodged against the petitioner and the petitioner has been sent to jail. The petitioner has been suspended vide order dated 8.9.1978. The petitioner has been sentenced to life imprisonment vide judgment and order dated 5.5.1981

passed by IIIrd Additional Sessions Judge, Hamirpur in Session Trial No. 257/78, under Sections 302, 34 I.P.C. in pursuance thereof, the services of the petitioner has been terminated vide order dated 19.10.1981, w.e.f. 5.5.1981, the date on which the petitioner has been convicted by the Sessions Court. Against the conviction order, the petitioner filed Criminal Appeal No. 1017 of 1981, which has been allowed by this Court vide order dated 5.3.2004 and the petitioner has been acquitted. After the acquittal, the petitioner filed the present writ petition challenging the termination order dated 19.10.1981. The petitioner filed amendment application claiming post retiral benefits from the date of his superannuation and further prayed for quashing of the order dated 2.9.2013 rejecting the representation of the petitioner dated 25.6.2004.

3. Learned counsel for the petitioner submitted that the services of the petitioner appears to have been terminated under the Proviso of Article 311(2) of the Constitution of India after the petitioner being convicted by the Sessions. Court vide order dated 5.5.1981 without making any enquiry. No departmental enquiry proceeded and has not been culminated into any punishment. The termination of the petitioner is mechanical without application of mind. Now the petitioner has been acquitted on merit by this Court honourably, therefore, the petitioner is entitled to be reinstated with all benefits. However, since the petitioner has attained the age of superannuation, the petitioner's service can only be notionally reinstated and the petitioner may be allowed to be reinstated with full salary and further the pensionary benefits from the date of superannuation.

4. In support of the contention, reliance is placed on the decision of learned Single Judge in the case of Ratan Singh Vs. State of U.P. and Others, , in the case of Constable 491 Civil Police, Gabbar Singh Vs. State of U.P. and Others, in the case of Prem Pal Singh Vs. State of U.P., and the decision of the Apex; Court in the case of State of U.P. and Another Vs. Ram Vinai Sinha .

5. Learned Standing Counsel submitted that it was open to the petitioner to challenge the termination order in the year 1981. He further submitted that the petitioner has been given benefit of doubt by this Court while acquitting from the criminal charges. He submitted that the petitioner has not made any pleading that he was unemployed during the period of termination and, therefore, in any view of the matter, he is not entitled for any Salary for the period after termination.

6. I have considered the rival submissions and perused the record.

7. Present writ petition has been filed in the year 2004 challenging the termination order dated 19.10.1981 when the petitioner was acquitted in Criminal Appeal No. 1017 of 1981 in respect of the criminal charges. The writ petition was entertained without raising any objection in respect of the laches. In the facts and circumstances, the laches have also been explained. Therefore, the objection of learned Standing Counsel that the petitioner should have challenged the termination order in the year 1981 and since, it has been challenged in the

year 2004, the petitioner is not entitled for any relief, cannot be accepted.

8. Now coming to the merit of the case. The perusal of the termination order reveals that the services of the petitioner have been terminated merely because the petitioner has been convicted by the Sessions Court mechanically without application of mind whether the conduct of the petitioner was such that he was liable to be terminated.

9. In the case of *Union of India and Another Vs. Tulsiram Patel and Others*, , the Apex Court while considering the *pari materia* provision under Article 311 of the Constitution of India, held as under:

The second proviso will apply only where the conduct of a Government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a Government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned, Government servant is such as justified the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the Government servant is not entitled to an enquiry.

(Emphasis added)

10. A similar question came up for consideration before a Division Bench of this Court in the case of *Shyam Narain Shukla v. State of U.P.*, (1988) 6 LCD 530 and this Court held as under:

In view of the above decision of the Supreme Court, it has to be held that whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him. In the matter of consideration of conduct as also the quantum of punishment the employee has not to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage.

11. Similarly another Division Bench of this Court in the case of *Sadanand Mishra v. State of U.P.*, 1993 LCD 70, held that on the conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction is also considered. Further, it is held that the scrutiny of conduct of an employee leading to his conviction is to be done *ex parte* and an opportunity of hearing is not to be provided for this purpose to the employee concerned.

12. In view of the above law laid down by the Apex Court and by this Court

before passing the dismissal order the competent authority ought to have considered "Conduct led to conviction" and should not pass the order mechanically on the basis of mere conviction.

13. In the present case, no such exercise has been done. The conduct of the petitioner, which led to conviction has not been examined and the petitioner has been dismissed mechanically only on the ground that he has been convicted by the criminal Court. Perusal of the order of this Court passed in Criminal Appeal No. 1017 of 1981, by which the petitioner has been acquitted reveals that the petitioner has been acquitted on merit on consideration of the evidences on record. Admittedly, no departmental enquiry has been made and no reason has been given for not conducting the disciplinary proceeding. In this view of the matter, the termination order is not sustainable.

14. The impugned order is also not sustainable as it has been passed in violation of principle of natural justice without giving any opportunity to the petitioner. The petitioner has now been retired. He can only be reinstated notionally and entitled for other post retiral benefits.

15. On the facts and circumstances, I am of the view that on the principle of "No work no pay", the petitioner is not entitled for the salary for the period during which he has not worked. However, the period of termination be treated as the period of service and the petitioner would be entitled for other post retiral benefits from the date when he attained the age of superannuation.

16. In the case of Baldev Singh Vs. Union of India (UOI) and Others, , Apex Court held that where the service of the employee is terminated on the ground that he was convicted in criminal case and on his acquittal his service is reinstated, the employee is not entitled for salary for the period during which he has worked on the principle of "no work no pay". In the result, the writ petition is allowed in part. The impugned termination order dated 19.10.1981 as well as order dated 2.9.2013 passed by the respondent No. 3, Regional Ayurvedic/Unani Chikitsadhikari are set aside. However, the petitioner is not entitled for back salary for the period when he has not worked on the principle of "no work no pay" and would entitled for the post retiral benefits, namely, pension etc. from the date when he attained the age of superannuation.