
(2012) 05 AHC CK 0247

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42578 of 2004

Umakant Awasthi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Citation : (2012) 6 ADJ 419

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Radhey Krishna Pandey, B.D. Pandey, Shailesh Tripathi and Deo Prakash Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Hon'ble Ashok Pal Singh, J.—Heard learned counsel for the parties and perused the material available on record. The brief facts of this case are that the petitioner was appointed as Police Constable in the year 1984 and was promoted as Head Constable in the year 1993. On 15.3.1999, he was issued a show-cause notice by respondent No. 4 for concealment of fact that he had purchased an immovable property in his name without any information to the department concerned, against which a reply was submitted by him. However, the respondent No. 4 not finding the said reply to be satisfactory passed an order dated 22.4.1999 awarding against the petitioner the punishment of censor entry.

2. On the same set of facts another show-cause notice was issued to the petitioner on 19.5.1999 against which a reply was submitted by the petitioner and the respondent No. 4 vide his order dated 7.6.1999, passed the punishment for withholding the integrity of the petitioner as a result of which the bonus and other service benefits were withheld.

3. Feeling aggrieved, the petitioner challenged both the aforesaid orders before the superior officers of his department but when no relief was granted, he ultimately challenged the above orders before the State Public Services Tribunal

(hereinafter referred to as the tribunal) by filing claim petition No. 727 of 2000. The tribunal vide its order dated 27.2.2004 partly allowed the aforesaid claim petition by quashing the order dated 7.6.1999 by which the integrity of the petitioner was withheld. However, no relief was given to the petitioner regarding the order of respondent No. 4 by which punishment of censor entry was awarded against him. He has filed the instant writ petition for getting the same also quashed.

4. It is submitted by the learned counsel for the petitioner that the order of the tribunal on the face of it is illegal and perverse insofar as it relates to the punishment of censor entry awarded to the petitioner. Both the orders were passed on the same set of facts on which two show-cause notices were issued to him. Thus there was no justification for the Tribunal to have quashed the one and not to have given any relief for the other. The tribunal ought to have quashed the order of the censor entry as well.

5. The perusal of the impugned order passed by the tribunal reveals that the tribunal while quashing the order of withholding the integrity of the petitioner has taken into consideration, the directions issued vide G.O. No. 4758/VIII-I-50(36)/80 dated 16th May 1981 in which it was provided that an inquiry should be made into the allegations against an employee for exercising the power of withholding his integrity and has found that no such inquiry was held in the present case before passing the order of withholding the integrity of the petitioner.

6. It is contended by learned counsel for the petitioner that in view of the said G.O. as no inquiry was also made before passing the order of censor entry, said order is also liable to be quashed.

7. We do not find any force in the above submissions made by the learned counsel for the petitioner. The aforesaid G.O. Dated 16th May 1981 is clearly applicable only for the proceedings where the integrity of an employee is withheld. It cannot be made applicable in a case of punishment of censor entry, which is a minor punishment as enumerated in clause (b) of sub-rule (1) of Rule 4 of the U.P. Police Officers of Subordinate Ranks (Punishment & Appeals) Rules 1991 (hereinafter referred to as Rules of 1991), whereas withholding integrity of an employee on the face of it is a serious matter for a Government employee which not only may cast a stigma on his conduct but may also entail him a severe punishment falling under the category of major punishments as enumerated in clause (a) of sub-rule 1 of Rule 4 of Rules of 1991.

8. It is noticed from the perusal of the impugned order of the tribunal that the tribunal has taken into consideration the provisions of Rule 14(2) of the Rules of 1991, which reads as under:

14(2) - Notwithstanding anything contained in sub-rule(1) punishments in cases referred to in sub-rule(2) of Rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken against him and of the

imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make the proposal.

9. The aforesaid provisions make it clear that the procedure prescribed in Rule 14(2) of the Rules of 1991 provides for a detailed enquiry to be conducted where a major punishment may be awarded but where a minor punishment is to be awarded a different procedure as provided under sub-rule 2 of rule 5 of the aforesaid Rules of 1991, is to be adopted which is summary in nature and nowhere requires a detailed inquiry to be conducted before passing any such minor punishment. The G.O. Dated 16th March 1981 appears to have been issued only as a precautionary measure to fall in line with the procedure prescribed for cases which are serious in nature and in which a major punishment is to be awarded.

10. A perusal of show-cause notice dated 15.3.1999 for passing censor entry and the subsequent show-cause notice dated 19.5.1999 for withholding integrity reveals that both have been issued on same set of facts about concealment of fact of purchase of immovable property in his name by the petitioner but for different punishments. It has been submitted by the learned counsel for the petitioner that once a punishment had been awarded on a show-cause notice, second show-cause notice on the same set of facts could not have been issued as it would violate the bar of principle of double jeopardy. This Court finds itself in agreement to the said argument of the learned counsel for the petitioner but on this ground the second show-cause notice or the punishment awarded in pursuance thereto which had been issued subsequent to the first show-cause notice, only can be quashed, which has been so done by the tribunal. However, the first show-cause notice issued against the petitioner and the punishment of censor entry awarded to him in pursuance thereto cannot be quashed on the basis of this principle of double jeopardy which had not occasioned till then.

11. In view of the above the impugned order of the tribunal in not granting any relief to the petitioner against the punishment of censor entry awarded to him cannot be said to suffer from any illegality or infirmity. The writ petition thus having no force is found liable to be dismissed.

The writ petition is accordingly dismissed with no order as to costs.