

(1997) 10 AHC CK 0026
In the Allahabad High Court
Case No : S.A. No. 812 of 1994

U.P. Financial Corporation and Others	Vs	APPELLANT
V.P. Sharma and Another		RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 226

Citation : (1999) 3 LLJ 538 : (1998) 1 UPLBEC 304

Hon'ble Judges : D.P. Mohapatra, C.J; R.A. Sharma, J

Bench : Division Bench

Advocate : Sudhir Chandra and Ashik Bhushan, for the Appellant; S.C. Budhwar, for the Respondent

Judgement

D.P. Mohapatra, C.J.—This appeal filed under Chapter VIII, Rule 5 of the Allahabad High Court Rules by the U. P. Financial Corporation through its Chairman, the Managing Director of the Corporation and the Board of Directors of the Corporation through its Chairman is directed against the judgment dated August 1, 1994 of Civil Miscellaneous Writ Petition No. 8472 of 1984. In the impugned judgment the learned single Judge has allowed the writ petition, quashed the order passed by the Board of Directors of the Corporation (for short, the Board) dated June 30, 1984, which was communicated to the petitioner by the Managing Director of the Corporation by his letter dated June 30, 1984 (Annexure 27 to the writ petition) and directed that the petitioner shall be reinstated on the post held by him forthwith with all benefits, leaving it open to the Corporation to initiate fresh proceedings against the petitioner if it so desires.

2. On analysis of the facts of the case the findings recorded and the observations made by the learned single Judge and the arguments of the learned Counsel for the parties, the only question which needs determination is whether in the facts and circumstances of the case, the petitioner-respondent No. 1 is entitled to full back wages/ salary for the period from the order of dismissal till his

reinstatement in service. The learned Counsel for the appellants accepted the position that on; the findings recorded by the learned single Judge, the direction for reinstatement of the petitioner respondent No. 1 in service cannot be assailed. Therefore, learned Counsel for the parties concentrated on the question of payment of arrear salary wages to the petitioner respondent No. 1. 3. The facts of the case, sans unnecessary details, may be stated thus :

The petitioner respondent No. 1 Shri V.P. Sharma was appointed as Senior Manager (Finance) by the Corporation. He was posted as Zonal Manager in the year 1978 and later on he was designated as Regional Manager in the year 1979. When he was posted as Regional Manager at Jhansi, the Managing Director of the Corporation ordered initiation of disciplinary proceeding against him and his suspension on November 5, 1981 and the said order was served on him on November 10, 1981. In the charge sheet dated November 5, 1981 served on the petitioner-respondent No. 1, in short, the following charges were framed against him.

(i) In the case of M/s. Farmer Brothers, Jhansi a proprietorship concern of Shri Azmat Khan in whose favour a term loan of Rs. 1.89 lacs was sanctioned by the Internal Committee of the Corporation for setting up a unit of Bakery at D-16, U.P.S.I.D.C. Industrial Area, Bajoli, district Jhansi, the petitioner respondent No. 1, authorised payment to be made to the Bank in contravention of the set norms of the Corporation and further despite the fact that the building plan of the unit was not approved by the competent authority, he authorised disbursement against the building, which was against the norms prescribed by the Corporation. Under this charge it was further alleged that although the security furnished by the party was giving zero per cent margin on the previously disbursed loan as against the stipulated margin of 15 percent and no further disbursement was recommended by the Assistant Manager (T) of the Regional Office, Jhansi, the petitioner-respondent No. 1 authorised the payment of Rs. 18,540/- on March 31, 1980 despite the fact that the earlier disbursed loan had not been utilised properly. It was also alleged that during inspection of the unit on January 7, 1981 conducted by Shri Y.P. Gupta, Deputy Senior Manager (P) it was reported inter alia that the specifications of the machines bought by the party were not in accordance with the specification approved by the sanctioning authority and that from the exterior appearance it was evident that this showed that the petitioner-respondent No. 1 permitted disbursement in the case without observing due precautions, which resulted into misutilisation and misappropriation of the loan advanced by the Corporation.

(ii) M/s. Bundelkhand Cones and Tubes, Jhansi, a sole proprietorship concern of Shri Sudharshan Kumar, were sanctioned a term loan of Rs. 3.75 lacs for setting up a unit to manufacture paper cones at plot No. ZD-30, Industrial Area, Bijoli, Jhansi by the Internal Committee of the Corporation vide its meeting held on August 17, 1979. The petitioner-respondent No. 1 authorised the disbursement of Rs. 2,84,711/- on the payment note dated February 19, 1980 to the party at

the time of first disbursement despite several discrepancies pointed out by the office. Further, payment of Rs. 2,66,644/- was released on February 18, 1980, but no subsequent inspections of the site were arranged by the petitioner-respondent No. 1, which resulted in non-arrival of machines, documents in respect of which were retired by the Corporation.

(iii) The petitioner-respondent No. 1 put up proposal of M/s. Lok Priya Cream Centre, Jhansi, a partnership firm having its head office at 9-25, Premganj, Sipri Bazar, Jhansi, to the Internal Committee of the Corporation for sanction of term loan of Rs. 3.26 lacs, despite the fact that he was aware that the Internal Committee had already sanctioned in its meeting held on August 17, 1979, a term loan of Rs. 3.75 lacs to M/s. Bundelkhand Cones and Tubes, Jhansi, a proprietorship concern of Shri Sudarshan Kumar, who was the main person for the project in both the cases, but the petitioner-respondent No. 1 failed to comment on this aspect in his report, which showed that he did not take necessary precautions in processing the case of M/s. Lok Priya Cream Centre, Jhansi.

(iv) M/s. Bundelkhand Kagaz Karkhana, a proprietorship concern of Sri S.M. Husain having its registered office at 483, Mashiha Ganj, Jhansi, applied for sanction of a term; loan of Rs. 2.00 lacs on August 13, 1979. Despite certain objections raised by the office and the proposal to require the party to clarify certain positions which were important and relevant for processing the papers, the petitioner respondent No. 1 ordered on October 13, 1979 to process the case and put it up before the Regional Committee on October 16, 1979. Accordingly the case was put up before the Regional Committee. The loan was sanctioned on October 16, 1979. The allegation was that he pressurised the dealing officer to prepare the loan proposal and put it up before the Regional Committee without observing necessary and due precautions, which resulted into the sanction of a term loan of Rs. 2.00 lacs on wrongful lines. As the charge-sheet shows, the evidence in support of all the charges was the report dated June 9, 1981 of Shri. A.K. Kulshrestha, Senior Manager (Tech.).

4. The inquiry was conducted by a member of the Board Shri Ved Prakash. He submitted a report on October 10, 1983 to the Board wherein he held all the charges levelled against the petitioner respondent No. 1 as proved. On October 22, 1983 the Board allowed personal hearing to the petitioner-respondent No. 1. at its next meeting held on November 26, 1983. The Managing Director by his letter dated October 31, 1983 informed him and asked him that if he wished to see the records or documents here appearing before the Board, the materials would be made available for inspection by the petitioner- respondent No. 1 on November 21, 22 and 25, 1983 between 11.30 a.m. and 12.30 p.m. everyday in the room of the Managing Director. The case of the petitioner-respondent No. 1 is that neither copies of the relevant documents were given to him nor were they made available for inspection in pursuance of the letter of the Managing Director. On November 26, 1983 after hearing the petitioner-respondent No. 1 the Board

considered his case and passed a resolution which reads;

"The Board as per the decision in its meeting held on October 22, 1983, gave the personal hearing to Sri V.P. Sharma and desired that before taking the decision the enquiry officer be asked to give his (wrongly typed as "him") specific decision on the various charges against Sri Sharma on the basis of evidence available and adduced by the concerned parties."

When the decision of the Board was communicated to the enquiry officer, he was reluctant to submit a fresh report and in his letter dated February 25, 1984 addressed to the Managing Director, he said that specific decisions on which charges were framed were contained in his report dated October 10, 1983 and after careful consideration of the decision of the Board, he was of opinion that no supplementary or additional report was called for. However, subsequently, on request of the Board, the enquiry officer submitted a fresh report charge wise on May 2, 1984. The Board accepted the said report and dismissed the petitioner-respondent No. I from the services of the Corporation with immediate effect on June 30, 1984. Feeling aggrieved by the order of dismissal, the petitioner-respondent No. I filed the writ petition giving rise to this appeal.

5. The petitioner-respondent No. 1 challenged the order of dismissal on various grounds. It was contended on his behalf that the order of dismissal was vitiated as the petitioner-respondent No. 1 was not afforded opportunity to defend himself since 1 the enquiry officer neither allowed him to inspect the relevant files and papers nor supplied the relevant documents for which request had been made by him. It was further argued that even the witnesses whose production was sought by the petitioner-respondent No. I were neither summoned by the enquiry officer nor was he afforded opportunity for cross-examining them, specially Shri A.K. Kulshrestha, Senior Manager (Technical) whose report was cited in the charge-sheet as the sole item of evidence in support of all the charges. It was also contended that the petitioner-respondent No. I was not supplied a copy of the supplementary report of the enquiry officer dated May 2, 1984 and was not given an; opportunity of hearing after the said report was accepted and, therefore, the order imposing punishment was vitiated.

6. On behalf of the appellants who were Respondents in the writ petition, the contentions of the petitioner-respondent No. I were refuted. It was contended that he had been given adequate opportunity to defend himself in the inquiry and he was not prejudiced in any manner due to non-supply of copies of the relevant documents or want of opportunity to inspect such documents. It was also contended on behalf of the appellants that the petitioner-respondent No. 1 admitted the charges levelled against him in his letter dated November 28, 1983 addressed to the Board, and, therefore, no inquiry was necessary to establish the charges by adducing evidence and the disciplinary authority could proceed to punish him on his admission without any further enquiry.

7. The learned single Judge in his judgment has discussed in detail all the

contentions raised on behalf of the parties and has meticulously examined the materials placed before him. He has rejected the contention raised on behalf of the appellants that the petitioner respondent No.1 had admitted the charges of misconduct levelled against him in the letter dated November 28, 1983 addressed to the Board. He was of the view that by bare reading of the letter it is apparent that it does not contain any admission of misconduct by the petitioner-respondent No. 1; that he denied the charges levelled against him and set up an alternative case in that letter that in case the misconduct alleged against him is established, then he tenders apology and prays for being pardoned. The learned single Judge was of the opinion that the apology and prayer for being pardoned is conditional and it could be taken into consideration after the misconduct was proved and not earlier. The gist of the other findings recorded by the learned single Judge may be stated thus :

(i) Considering the question whether the report of Shri A.K. Kulshrestha can be accepted as evidence to establish the charges or it could not be relied upon unless Shri Kulshrestha was examined as a witness before the enquiry officer, the learned single Judge took note of the undisputed factual position that it is apparent from the charge-sheet that the sole evidence relied upon by the Corporation to establish all the charges levelled against the petitioner-respondent No. 1 is the report of Shri A.K. Kulshrestha. Relying upon the decision of the Apex Court in the case of Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, wherein it has been held :

"But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is no material can be relied upon to establish contested facts which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought."

The learned single Judge came to the conclusion that as Shri Kulshrestha was not produced as a witness, his report could not be relied upon by the enquiry officer as evidence to prove the charges. Consequentially, the learned single Judge recorded the finding that as the report of Shri Kulshrestha is the only evidence referred to in the charge sheet which cannot be treated as evidence to support the charges, the finding recorded by the enquiry officer that charges have been proved against the petitioner-respondent No. 1 fails.

(ii) Once the Board decided to hear the petitioner-respondent No. 1, it could not pass any final order against him without hearing him after receipt of the report dated May 2, 1984 as it gives rise to a reasonable expectation on the part of the petitioner-respondent No. 1 that he would be heard again and will get opportunity to defend himself before the Board after receipt of the fresh report and, therefore, fairness in procedure required that the Board should have heard the petitioner-respondent No. 1 after receipt of the fresh report. The Board having failed to follow such procedure, its resolution to punish him is unsustainable under law.

(iii) Once charges were framed and allegation was that norms set by the Corporation were violated by the petitioner-respondent "No. 1, then it was incumbent upon the management to make those norms available to him. As the same were not furnished to him, he could not be expected to file written statement setting up his defence and, therefore, he was prejudiced in his defence at the inquiry. The further finding recorded in this connection by the learned single Judge is that it is established that the relevant material in respect of the norms was withheld by the management from the petitioner-respondent No. 1 which happens to be the basis of charges against him and, therefore, the disciplinary proceeding against him is vitiated.

(iv) The petitioner-respondent No. 1 was not allowed to inspect the documents which he asked for after submission of the report dated October 10, 1983 despite intimation to him that he could inspect documents. The Board heard him on November 26, 1983 without affording opportunity to inspect papers specified in his list submitted on November 21, 1983. For that reason the decision of the Board is unsustainable for want of opportunity to the petitioner-respondent No. 1 to inspect the papers.

(v) Regarding relief to be granted to the petitioner-respondent No. 1, the learned single Judge held as follows :

"So far granting of relief to the petitioner on the aforesaid findings is concerned, as it is held that the report of A.K. Kulshrestha which is the sole evidence relied upon in the charge sheet, is not evidence to establish the charges and as the management failed to disclose the norms for violation of which the petitioner was charge sheeted as well as the petitioner was not provided adequate opportunity to set up his defence, disciplinary proceedings against the petitioner are liable to be quashed right from the stage of framing of charge-sheet. But at the same time, it cannot be lost sight (wrongly typed as "right") that the charges levelled against the petitioner are serious and, therefore, it is to be left open for the management of the Corporation to draw fresh proceedings against the petitioner if it so desires."

With the above findings, the learned single Judge allowed the writ petition. The operative portion of the order reads :

"For aforesaid reasons the order passed by Board of Directors of U. P. Financial Corporation dated June 30, 1984 communicated to the petitioner by Managing Director of said Corporation by letter dated June 30, 1984 (Annexure 27 to the writ petition) is quashed. The petitioner shall be reinstated on the post held by him forthwith with all benefits. It is open for the U. P. Financial Corporation to initiate fresh proceedings against petitioner if it so desires. The writ petition is allowed with costs."

8. As noted earlier, on analysis of the facts revealed from the record, the findings recorded by the learned single Judge and the scope for interference with the said findings, the position was accepted by the learned counsel for the appellants, and

in our view rightly, that the order for reinstatement of the petitioner-respondent No. 1 in service cannot be successfully challenged in the appeal; therefore, he concentrated upon the validity and legality of the direction to pay full arrear salary/wages to the petitioner-respondent No. 1. We will, therefore, examine that question.

9. The question what is the appropriate relief to be granted to the petitioner after the order of dismissal is quashed and his reinstatement in service is directed has engaged the attention of the Apex Court and this Court from time to time. The Supreme Court in the case of the Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, ruled (para 18) :

"Thus, in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi judicial proceeding of an administrative authority not being a proceeding under the industrial/labour law before an industrial/labour tribunal- culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full backwages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court..... Further more, whether a workman or employee of the statutory authority should be reinstated in public employment with or without full back wages is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/ employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two-fold reasons, we are of opinion that the High Court was in error in directing payment to the employee full back wages.

10. In the case of Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, the Apex Court held (at p. 355) :--

"Before we part with this case, we must indicate what reliefs the appellant would be entitled to. Now that the order of dismissal is set aside and the proceedings have been restored to the stage of enquiry, the appellant shall be deemed to have been restored to service. The appellant would have become entitled to the normal relief available in such a situation. He should be deemed to be in service and we do not agree with Dr. Anand Prakash that his suspension should continue. His suspension which had merged into dismissal has been vacated. It shall, however, be open for the employer to make any direction as is deemed appropriate in that behalf in future. The appellant, therefore, becomes entitled to the salary for the past period subject to his satisfying the authorities that he has not earned any other income during that period. The appellant shall be given reasonable opportunity by the enquiring officer to meet charges and the enquiry

shall be completed within four months."

11. In the case of Ranjit Thakur Vs. Union of India (UOI) and Others, the Supreme Court held as follows (Para 10) :

"Judicial review, generally speaking, is not directed against a decision, but is directed against the "decision making process".

The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.....In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

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"..... the impugned proceedings of the summary Court martial dated March 30, 1985 and the consequent order and sentence are quashed. The appellant is entitled to and shall be reinstated with all monetary and service benefits."

12. This Court in its judgment in the case of Banaras Hindu University, Varanasi v. J.N. Tripathi reported in 1996 3 UPLBEC 1976, to which one of us (Hon. C.J.) was a party, held that some of the relevant factors to be kept in mind at the time of awarding the order of termination, removal or dismissal are :

"(a) Ordinarily the High Court, in exercise of jurisdiction under Article 226 of the Constitution, should not direct payment of full backwages while setting aside the order or dismissal against the employee. The question should be left to be decided by the competent departmental authority on consideration of the relevant factors. In any view of the matter an order for payment of full backwages is not to be passed as a matter of course in every case in which the order of dismissal, is set aside or quashed by the High Court.

(b) It should be considered by the Court whether employee was gainfully employed during the period he has not been allowed to work on the post on account of the order of termination.

(c) The conduct of the parties shall be very relevant in awarding back wages.

(d) Likely hardship of the parties should also be taken into consideration while awarding or not awarding the back wages.

(e) The public interest should also be kept in mind while awarding back wages."

13. Judged on the touch-stone of the principle laid down by the Supreme Court and this Court in the decisions quoted above, it is our considered view that in the case in hand, a direction should be issued to the appellants to hold an enquiry on the question whether the petitioner-respondent No. 1 should be given full back wages/salary for the period from the date of the order of dismissal till his reinstatement in service, bearing in mind the provisions of the departmental rules/regulations/instructions and the principles laid down in the decisions of the High Court and the Supreme Court and pass a reasoned order within three months of production of copy of this judgment before the Managing Director of the Corporation. It is made clear that the petitioner-respondent No. 1 shall be reinstated in service as directed by the learned single Judge and shall be entitled to all service benefits like continuity, of service, seniority, etc. and only the question of payment of full backwages/salary will be decided by the management of the Corporation.

14. With the above modification, the judgment of the learned single Judge is confirmed. The appeal is disposed of on the above terms. No costs.