

(2013) 11 AHC CK 0033

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 47154 of 2012

Vinod Kumar Verma

APPELLANT

Vs

Registrar General High Court Judicature and Another

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 1 ESC 214

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—Heard Sri Pratik J. Nagar, Advocate for petitioner and Sri Ashish Mishra, counsel for respondents. Since pleadings are complete, as requested and agreed by learned counsel for the parties, I proceed to hear this matter so as to decide at the admission stage under Rules of the Court.

2. The petitioner is a class III employee in District Judgeship, Rampur. He was appointed as Copyist on 1.8.1987 and was shifted in copying section in July, 1989. On certain charges of manipulation in judicial record, disciplinary proceedings were commenced against him. He was placed under suspension on 25.5.1992. Initially, a charge-sheet was issued on 7th April, 1993 but the same was replaced by another charge-sheet dated 1.3.1997. Inquiry was conducted by Sri A.K. Rastogi, Special Judge (NDPS Act), Rampur and he submitted report dated 16th of July, 2013, recording his findings that the charges are not proved against petitioner. The District Judge, Rampur, taking a dissenting view with the Inquiry Officer's report dated 16.7.2013, however, by order dated 16th of July, 2003 remanded this matter for further inquiry, appointing Sri S.K. Pandey, Additional District Judge, Court No. 2, Rampur as new inquiry officer by order dated 1.9.2003.

3. Subsequently, Sri S.K. Pandey having been transferred, inquiry was conducted by Smt. Pratibha Khanna, Additional District Judge, Rampur and she submitted report dated 22.2.2007 holding the petitioner and few others guilty of charges No. 1 and 2. Consequently, Sri Narendra Kumar Jain, the then District Judge,

Rampur issued a show-cause notice dated 7.9.2007 to the petitioner proposing punishment of dismissal. Petitioner submitted his representation dated 15.9.2007 against the aforesaid notice. Thereafter, a punishment order was passed on 20th September, 2007 by then District Judge, Rampur, Sri Narendra Kumar Jain, dismissing petitioner from service.

4. Aggrieved thereto, petitioner preferred an appeal before Administrative judge under Rule 7(2)(b) of the U.P. Subordinate Courts Staff (Punishment and Appeal) Rules, 1976 (hereinafter referred to as Rules) vide memo of appeal dated 22.11.2007. This appeal was decided by Administrative judge vide order dated 28.3.2011. The dismissal order was set aside but the Appellate Authority directed that petitioner shall not be paid back wages from 1992 to 2007. Order of Appellate Authority was communicated to petitioner vide Joint Registrar's letter dated 12.7.2011. Consequently, the District Judge passed order dated 19th of July, 2011 reinstating petitioner in service but without any benefit of arrears of salary etc. The petitioner, in fact, was reinstated on the vacant class ?III post in the pay scale of Rs. 950-1500/- (Revised 5200 - 20000, Grade Pay 19000). It is this appellate order as also the consequential order, which are assailed in this writ petition. It is also stated that against the order denying back wages, petitioner made a representation but the same has also been turned down by Administrative Judge as communicated to the petitioner vide this Court's letter dated 2.7.2012.

5. It is contended that Administrative Judge found that handwriting expert in his report has not indicted petitioner in regard to alleged manipulation of record. In the first inquiry report submitted by Sri A.K. Rastogi, this charge was not found proved against the petitioner. But the second inquiry report when looked into from this aspect of the matter, has held the petitioner guilty and therefore, the subsequent Inquiry Officer having not looked into that aspect the matter, had committed error. The Appellate Authority held that the punishment of dismissal imposed upon petitioner is highly excessive and deserves to be reduced but instead of reducing the punishment in accordance with rules, while setting aside the punishment of dismissal, it has imposed punishment of denial of arrears of salary to the petitioner.

6. It has been argued on behalf of petitioner that denial of arrears of salary to the petitioner is patently illegal and without jurisdiction in as much as no such punishment is prescribed under the rules, and therefore, in the garb of reducing punishment, arrears of salary could not have been denied to him, particularly when no such punishment is prescribed in law. As a matter of fact, punishment imposed upon the petitioner by the Appellate Authority is impermissible and without jurisdiction. It is further contended that the substituted punishment imposing something as punishment, de hors the rules, is patently without jurisdiction.

7. Learned counsel appearing for the respondents while supporting the order impugned in this writ petition submitted that the Appellate Authority did not

exonerate petitioner from the charges which were found proved in the inquiry conducted against him whereupon the District Judge imposed punishment of dismissal. The Appellate Authority only took a lenient view of imposing a lesser punishment and this sympathetic approach of Appellate Authority must not be viewed so as to give a licence to unscrupulous persons to take advantage of salary which would otherwise be unjust and uncalled for.

8. I have heard submissions and perused the record. In my view the issue raised in this petition is a very small one. It is no doubt true that the order of dismissal has not been found correct by Appellate Authority and that stood set aside on issuance of a direction that the petitioner must be reinstated in service.

9. Having done so and having also observed that the petitioner deserves a lesser punishment, I made strenuous effort to read the order repeatedly to find out what lesser punishment has been imposed upon petitioner but could find none. Even the learned counsel for respondents despite repeated queries made by the Court could not point out any lesser punishment which has been imposed by Appellate Authority, after setting aside punishment of dismissal, imposed by learned District Judge. The only thing evident from impugned appellate order is that the petitioner has been denied arrears of salary and it has been directed that he shall be paid only current salary. Therefore, this Court has no option but to treat this part of the order as a punishment imposed by Appellate Authority, after setting aside earlier punishment of dismissal, imposed by the District Judge, Rampur.

10. Now, question is whether denial of back wages/salary to petitioner, after setting aside punishment of dismissal, amounts to imposition of a lesser and a valid punishment, upon petitioner or not.

11. The question, whether a punishment, which is not prescribed in Rules, can be imposed, came to be considered by Apex Court in *Vijay Singh Vs. State of U.P. and Others*, and returning in negative, in para 11 thereof, the Court said:

11. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide: *Bachhittar Singh Vs. The State of Punjab*, ; *Union of India (UOI) Vs. H.C. Goel*, , *Mohd. Yunus Khan Vs. State of U.P. and Others*, ; and *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others*,).

Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules.

Thus, the order of punishment being outside the purview of the statutory rules is

a nullity and cannot be enforced against the appellant.

(emphasis added)

12. In view of the above settled exposition of law, the impugned order denying arrears of salary while setting aside dismissal order and reinstating the petitioner, is not sustainable. The writ petition is accordingly allowed with costs. The impugned order dated 28.3.2011 (as communicated vide letter dated 19.7.2011) passed by the District Judge, Rampur (Annexure-11) to the extent it has not directed payment of entire back wages, allowance and other privileges from 1992 till date, to the petitioner and that the order dated 21.5.2012 (as communicated to the petitioner on 6.7.2012) (Annexure-13) passed by the Joint Registrar, Allahabad to the extent it has directed not to pay entire back wages, allowance and other privileges from 1992 to the petitioner, are hereby quashed. The petitioner shall be entitled to costs which is quantified to Rs. 25,000/- (Rupees Twenty Five Thousand).