

(2025) 04 AHC CK 0915
In the Allahabad High Court, Lucknow Bench
Case No : Writ Petition A No. 23727 Of 2018

Yogendra Giri

APPELLANT

Vs

State Of U.P.Thru.Prin.Secy.Cooperative Deptt Lko.And Ors

RESPONDENT

Date of Decision : 11-04-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 210
Code of Criminal Procedure Act, 1973 — Section 154, 161, 164, 173(2), 190, 190(1)
(a), 193, 209, 216, 218, 228, 319
Indian Penal Code, 1860 — Section 323, 332, 379, 426

Citation : (2025) 04 AHC CK 0915

Hon'ble Judges : Arun Kumar Singh Deshwal, J

Bench : Single Bench

Advocate : Ronak Chaturvedi

Final Decision : Dismissed

Judgement

Rajesh Singh Chauhan, J

1. Heard Shri Anwar Ashfaq, learned counsel for the petitioner and the learned Standing Counsel for the opposite party No.1 as well as Shri Alok Sharma, learned counsel for the opposite party Nos.2 to 7.

2. However, no one has appeared on behalf of the opposite party Nos.8 & 9.

3. By means of this writ petition, the petitioner has prayed for the following reliefs:

“(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.08.2018 passed by the opposite party No.3, as contained in Annexure No.1 to the writ petition.

(ii) to issue a writ, order or direction in the nature of certiorari quashing the decision dated 08.06.2018 and 17.07.2018 taken by the interim Committee Management of Uttar Pradesh Rajya Nirman Sahkari Sangh Limited, Lucknow to

dismiss the petitioner from service and recovery of Rs.7.55 lakhs from the service benefits/ assets of the petitioner, after summoning it in original from the opposite parties.

(iii) to issue a writ, order or direction in the nature of certiorari quashing the enquiry report dated 14.05.2018, as contained in Annexure No.2 to the writ petition.

(iv) to issue a writ, order or direction in the nature of certiorari quashing the order of approval No.863/Mandal/Anu-1-92, dated 09.08.2018 passed by the opposite party No.6, as referred in the impugned order date 10.08.2018, after summoning in its original from the opposite parties.

(v) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioner to work on his post of Executive Engineer, Uttar Pradesh Rajya Nirman Sahkair Sangh Limited, Lucknow till the age of superannuation i.e. 31.08.2018 and pay him salary with all consequential service benefits including the ritiral benefits.”

4. The brief facts of the case are that the petitioner was initially appointed on the post of Manager, in General Cadre of U.P. Cooperative Processing Unit and Cold Storage Centralized Services with the approval of the Chairman of the Administrative Committee on ad-hoc basis on 18.05.1989.

5. The date of superannuation of the petitioner was 31.08.2018 but before the date of superannuation the opposite party No.3 i.e. the Managing Director, Uttar Pradesh Rajya Nirman Sahkari Sangh Limited, Lucknow passed the impugned dismissal order on 10.08.2018 with the further direction that a sum of Rs.7,55,000/- would be recovered from the petitioner from his post retiral dues.

6. Since learned counsel for the petitioner has vehemently submitted that the impugned punishment order has been passed on the basis of enquiry report wherein no date, time and place was fixed by the Enquiry Officer to conduct the oral enquiry to prove the charges against the petitioner, therefore, I am not considering the other facts of the issue in question. Further, instead of conducting the departmental enquiry strictly in accordance with law the Enquiry Officer telephonically instructed the Project Engineer of Azamgarh Division to send the material and the Project Engineer vide his letter dated 05.10.2017 sent some material/ false report and on the basis of such report the Enquiry Officer held that the charge Nos. 1 and 2 are proved.

7. Attention has been drawn towards paras-54 & 55 of the writ petition, wherein the specific recital has been given to the effect that no date, time and place to conduct the oral enquiry has been fixed by the Enquiry Officer. For convenience, paras-54 & 55 of the writ petition read as under:-

“54. That it is further submitted that the Enquiry Officer had become party in the disciplinary proceedings as he instructed on telephone to the Project Engineer, Azamgarh Division to send the material and on the telephonic instructions, the

Project Engineer vide his letter dated 05.10.2017 sent the material/ false report on the basis of which the Enquiry Officer has held the charges No.1 and 2 proved. This action of the Enquiry Officer is unknown to settled principle of disciplinary proceedings.

55. That it is further submitted that although the Enquiry Officer has not mentioned in the enquiry report that any date, time and place was fixed by him for conducting the oral enquiry but surprisingly, in the impugned order, the opposite party No.3 has mentioned that the Enquiry Officer had fixed 17.08.2017 for personal/ oral hearing but the petitioner did not avail the same, whereas the correct fact is that at no point of time any notice, letter or order was communicated to the petitioner fixing the date by the Enquiry Officer on 17.08.2017 or any other date to appear before him for personal hearing/ oral enquiry."

8. Replying the aforesaid contents of the petition, the opposite parties in para-25 of the counter affidavit could not dispute the aforesaid categoric submission regarding fixing the date, time and place for oral enquiry but has vaguely submitted that the enquiry against the petitioner was conducted and concluded in terms of the Regulation 85 of the Regulations, 1975. It has nowhere been indicated in the aforesaid para as to how and when the date, time and place for oral enquiry has been fixed.

9. Learned counsel for the respondent-Bank was asked to show any other para of the counter affidavit wherein the aforesaid contention of the petitioner has been replied, but nothing has been shown to the effect that the Enquiry Officer had fixed the date, time and place to conduct an oral enquiry to prove the charges. Sri Alok Sharma has shown para-16 of the counter affidavit wherein it has been categorically indicated that the Enquiry Officer has conducted and concluded enquiry proceeding after considering reply of the petitioner and other relevant papers available in this regard and submitted enquiry report vide letter dated 14.05.2018. Sri Sharma has been confronted on the point that the enquiry could have not been concluded only considering the reply of the delinquent employee but the charges must have been proved by the department itself on the basis of oral enquiry fixing the date, time and place, but Sri Sharma could not defend that contention of the petitioner, however, he has submitted that before passing the impugned order the petitioner has given an opportunity of hearing seeking explanation from him issuing show cause notice. For convenience, para-25 of the counter affidavit reads as under:-

"25. That the contents of paragraphs-54 & 55 of the writ petition are not admitted as stated and in reply thereto the submissions made in preceding paragraphs of this counter affidavit are being reiterated here as correct. As detailed reply have already been given, therefore, no need to repeat the same again to avoid unnecessary lengthiness. The deponent respectfully submits that after institution of the enquiry, the Enquiry Officer directed to the Project Engineer, Construction Division, Azamgarh to make him available the necessary

information and in pursuance thereto the Project Engineer, Construction Division, Azamgarh vide letter dated 05.10.2017 provided the information based of documents. The deponent reiterates that the Enquiry Officer conducted the enquiry as per Regulation 85 of the U.P. Cooperative Societies Employees Service Regulations, 1975 and as per this regulation ample opportunity of defence was allowed to the petitioner.”

10. Notably, in para-4 of the rejoinder affidavit, the petitioner had again taken the same ground of defective enquiry and in para-22 of the rejoinder affidavit the contents of para-25 of the counter affidavit have been denied indicating therein that the departmental enquiry against the petitioner could have not been conducted in terms of Regulation 85 of U.P. Cooperative Societies Employees Service Regulations, 1975 (here-in-after referred to as the “Regulations, 1975”). However, in para-5 of the supplementary counter affidavit dated 24.03.2025, it has been indicated that the petitioner was afforded an opportunity of personal hearing fixing date for 17.08.2017 by means of letter dated 31.07.2017 but the petitioner did not avail such opportunity.

11. On being further confronted to Sri Sharma on the point that since the departmental enquiry has not been conducted and concluded strictly in accordance with law, therefore, the impugned punishment order, which is dependent upon the enquiry report, may likely to be set aside, Sri Sharma has stated that in any case if the impugned punishment order goes on account of faulty and illegal enquiry report, the department may be given liberty to conduct the denovo departmental enquiry from the stage of the defect in the departmental enquiry even if the petitioner had already retired. In support of his aforesaid submission, Sri Sharma has placed reliance upon the dictum of the Apex Court rendered in the case in re:- U.P. Cooperative Federation Ltd. and others vs. L.P. Rai reported in (2007) 7 SCC 81 whereby the Apex Court has held that in case of defective enquiry, fresh departmental enquiry ought to have been conducted if the charges are serious.

12. Having heard learned counsel for the parties and having perused the material available on record, one fact is very clear that the Enquiry Officer did not conduct the departmental enquiry strictly in accordance with law by fixing the date, time and place for oral enquiry to prove the charges which have been levelled against the petitioner, therefore, the findings of the Enquiry Officer are illegal inasmuch as such findings are based on the defective enquiry.

13. The Apex Court in the case in re: Roop Singh Negi vs. Punjab National Bank and others reported in (2009) 2 SCC 570 has held that mere production of documents is not enough but the contents of the documentary evidence has to be proved by examining the witnesses fixing the date, time and place for oral enquiry. The Apex Court in the case of Roop Singh Negi (supra) went to the extent that even if the delinquent employee confessed his guilt before the police relating to the same charge, so called confession itself would not be sufficient and some evidence ought to have been brought on record that the delinquent

employee was involved in the offence in question. Since the department has levelled the charges against the delinquent employee, therefore, it is responsibility and duty of the department to prove those charges through oral enquiry.

14. The Apex Court in the case in re: State of U.P. and others vs. Saroj Kumar Sinha reported in AIR 2010 SC 3131 has reiterated the aforesaid proposition of law and held that if the Enquiry Officer has not fixed the date, time and place to conduct oral enquiry to examine the witnesses to prove the charges against the delinquent employee, the entire enquiry proceedings would be vitiated being violative of principles of natural justice and in total disregard of the fair play. Therefore, in that case, such enquiry report would be liable to be set aside/quashed and the impugned punishment order, which is based upon the enquiry report, would also be liable to be set aside/quashed.

15. Even if any opportunity of personal hearing was given to the petitioner, though the same has been denied by the learned counsel for the petitioner, but that opportunity of personal hearing would not suffice the purpose inasmuch as even if the delinquent employee did not avail such opportunity of personal hearing, the Enquiry Officer will have to prove the charges against the employee examining the witnesses and the documents by fixing the date, time and place for oral enquiry. Notably, in the present case, no date time and place has been fixed by the Enquiry Officer to conduct oral enquiry to prove the charges against the petitioner.

16. Since I am of the considered view that the impugned punishment dated 10.08.2018, which has been issued on the basis of faulty enquiry report dated 14.05.2018, is non est in the eyes of law being violative of principles of natural justice, therefore, I also hold that the impugned punishment order and the enquiry report are non est in the eyes of law and no punishment order can be passed against the petitioner on the basis of the aforesaid faulty enquiry report in view of legal maxim 'SUBLATO FUNDAMENTO CADIT OPUS'.

17. The Hon'ble Apex Court in re; State of Punjab Vs. Davinder Pal Singh Bhullar and others connected with Sumedh Singh Saini Vs. Davinder Pal Singh Bhullar and others, reported in (2011) 14 SCC 770 has considered the aforesaid maxim in paras-107 to 111, which are being reproduced here-in-below:-

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. State of Tamil Nadu & others, AIR 2000 SC 3243; and State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr,, (2001) 10 SCC 191, this Court observed that once the basis of a proceeding is gone, all consequential acts,

actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in *Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.*, (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In *C. Albert Morris v. K. Chandrasekaran & Ors*, (2006) 1 SCC 228, this Court held that a right in law exists only and only when it has a lawful origin. (See also: *Upen Chandra Gogoi vs. State of Assam & Ors.*, (1998) 3 SCC 381; *Satchidananda Misra v. State of Orissa & Ors.*, (2004) 8 SCC 599; *Regional Manager, SBI v. Rakesh Kumar Tewari*, (2006) 1 SCC 530; and *Ritesh Tewari & Anr. v. State of U.P. & Ors.*, AIR 2010 SC 3823).

111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/ orders/ FIR/ investigation stand automatically vitiated and are liable to be declared non est."

18. In view of the aforesaid dictums of the Hon'ble Apex Court considered in re; *Davinder Pal Singh Bhullar (supra)*, I am of the considered opinion that the impugned punishment order dated 10.08.2018, passed by the opposite party No.3, contained as Annexure No.1 to the writ petition, as well as the enquiry report dated 14.05.2018 are hereby set aside/ quashed in view of the legal maxim 'SUBLATO FUNDAMENTO CADIT OPUS'.

19. In view of what has been considered above and also in view of the settled proposition of law by the Apex Court, I am of the view that the findings of the Inquiry Officer/ inquiry report is liable to be set aside/ quashed inasmuch as the departmental inquiry has been conducted and concluded without fixing date, time and place for oral inquiry and without affording ample opportunity of hearing to the petitioner. Since the very foundation of the impugned punishment order is based on the defective inquiry report which is not liable to be sustained in the eyes of law, therefore, the impugned punishment order is liable to be set aside/ quashed. Consequently, the impugned punishment order dated 10.08.2018 and the enquiry report dated 14.05.2018 are hereby set aside/ quashed on the basis of maxim "sublato fundamento cadit opus", which means that if the very foundation of any structure goes, the superstructure erected thereon would also fall.

20. Since the impugned punishment order and the enquiry report have been set aside/ quashed for the reason that the departmental enquiry could not be conducted strictly in accordance with law and the same is against the settled proposition of law by the Apex Court in catena of cases, therefore, the Competent Authority may take appropriate decision as to whether any denovo departmental enquiry may be conducted and concluded against the petitioner after his retirement as more than six years and eight months period have passed

since the date of superannuation of the petitioner. Such decision may be taken within a period of three weeks from the date of production of a certified copy of this order and if no denovo departmental enquiry is permissible against the petitioner, who is a retired employee of the Cooperative Society, he shall be paid his all consequential service benefits within a further period of two months.

21. In view of the aforesaid discussions, the instant writ petition is allowed.

22. Consequences to follow.

23. No order as to the cost.