
(2009) 07 AHC CK 0170

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60503 of 2006

Yograj Sharma and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991 —
Rule 20, 8(2)(b)

Citation : (2009) 07 AHC CK 0170

Hon'ble Judges : B.K.Narayana, J

Final Decision : Disposed Of

Judgement

B.K. Narayana, J.—Heard Shri Anoop Trivedi, learned counsel for the petitioners and learned A.G.A.

2. By this writ petition, the petitioners have prayed for quashing the order dated 22.9.2006 passed by Superintendent of Police, Gautam Budh Nagar, respondent No. 4, dismissing the petitioners from service, dispensing holding of the enquiry, under the provisions of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, (hereinafter referred to as the Rules).

3. Learned counsel for the petitioners, challenging the order, contended that no reasons have been given for dispensing holding of the enquiry and dismissal of the petitioners, invoking the power under Rule 8(2) (b) of the Rules. The submission of counsel for the petitioners is that no reasons having been recorded for dispensing holding of the enquiry, invoking of power under Rule 8 (2)(b), is unjustified. He has placed reliance on judgment of the Apex Court in *Jaswant Singh v. State of Punjab and others*, (1991) 1 SCC 362.

4. Learned Standing Counsel on the other hand submitted that the Superintendent of Police, after considering the petitioners involvement in a case under Sections 354,323,504,506,I.P.C., and the entire facts and circumstances of the case was satisfied that retention of petitioners in police department was not at all in the public interest and their continuation in the police service may

adversely affect the image of police department and as such the impugned order was passed and there is no illegality or irregularity in the same.

5. He further submitted that reasons have been recorded in detail in the impugned order by respondent No. 4, for exercising power under Rule 8(2)(b) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991.

6. Learned Standing Counsel lastly submitted that the petitioners have efficacious alternative remedy by way of appeal under Rule 20 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal), Rules, 1991. The writ petition be, therefore, dismissed on the ground of alternative remedy.

7. I have considered the submissions made by the learned counsel for the parties and perused the record.

8. A supplementary affidavit has been filed by the petitioners stating therein that the petitioners have been acquitted in the criminal case on account of their involvement in which the petitioners had been dismissed from service and as such the impugned order is liable to be set aside on this count also. The fact that the petitioners have been acquitted in the Criminal Case is not disputed by the respondents.

9. Rule 8 of the Rules provides for dismissal and removal. Rules 8(1) and 8(2) of the Rules, which are relevant for the present case, are extracted below:

"8. Dismissal and removal.(1) No police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule shall not apply

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or

(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry."

10. From a bare reading of the aforesaid rule it follows that normal Rule is that a Police Officer can be subjected to major penalty only after holding a departmental enquiry as contemplated under the Rules. Departmental enquiry can be dispensed with as an exception for reasons to be recorded in writing as required by the proviso to Rule 8 of the 1991 Rules.

11. The Apex Court in Jaswant Singh's case (supra) had considered the provisions of Article 311(2) second proviso (b) of the Constitution of India. Rule

8(2)(b) of the Rules is pan mater/a with the second proviso (b) of Article 311, subclause (2). The Apex Court in the aforesaid judgment, laid down two conditions, for invoking the power under clause (b) of Rule 8(2) of the Rules. Following was laid down in paragraph 4 of the said judgment:

".....Insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable"; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: Satyavir Singh v. Union of India; Shivaji Atmaji Sawani v. State of Maharastra and Ikramuddin Ahmed Borah v. Superintendent of Police Darrang."

12. From the perusal of the impugned order it is apparent that no reasons for dispensation with the departmental enquiry before dismissing the petitioners from service have been recorded in the impugned order as to why it was not reasonably practicable to hold an inquiry.

13. In such circumstances the order not being supported by sufficient reasons recorded for dispensing with the enquiry is hit by Rule 8(2) proviso (b), and, therefore, is not legally sustainable.

14. Even in the counteraffidavit filed by respondents no reason has been given for not holding disciplinary enquiry against the petitioners.

15. The submission of the learned Standing Counsel that the present writ petition is liable to be dismissed on the ground of alternative remedy who has no force.

16. It is settled law that availability of statutory remedy is not an absolute bar for entertainment of writ petitions.

17. Considering the facts and circumstances of the present case this Court is of the view that it would be more appropriate to exercise discretion under Article 226 of the Constitution of India instead of declining to do so on the ground of availability of alternative remedy.

18. For the reasons stated above herein above the impugned order 22.9.2006, is hereby quashed.

19. The petitioners shall be reinstated in service forthwith. Respondent No. 2 may hold a departmental enquiry against the petitioners in respect of the charges on which the petitioners were dismissed from service by the impugned

order. In case any such departmental proceedings are undertaken against the petitioners by the respondent No. 2 the same shall be completed within one month from the date of the certified copy of this order in spite of before the respondent No. 2.

20. The writ petition is accordingly allowed.