(2014) 02 AHC CK 0228

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19485 of 2012

Z.U. Ansari APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 156, 166, 166-(1), 309

Citation : (2014) 3 ADJ 671 : (2014) 104 ALR 173 : (2014) 4 AWC 4329 : (2014) 141 FLR 1022 : (2014) 2 UPLBEC 1323

Hon'ble Judges : Arvind Kumar Mishra-I, J;Arun Tandon, J

Bench : Division Bench

Advocate : Swam Kumar Srivastava, Anil Kumar Srivastava, Chandrajeet Tiwari and V.S. Tiwari, Advocate for the Appellant; Pankaj Saxena, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner before Court seeks quashing of the charge-sheet dated 27.6.2011 issued by the Enquiry Officer under letter dated 28.7.2011 with the approval of the Principal Secretary, Rural Engineering Services. Petitioner has prayed for payment of his entire retiral dues alongwith interest. Facts in short leading to the petition are as follows:

Petitioner before this Court was employed as Assistant Engineering in the Rural Engineering Department of the State of U.P. He attained the age of superannuation on 30.9.2008. After more than three years of his retirement, a charge-sheet dated 27.6.2011 has been served upon the petitioner alongwith covering letter dated 28.7.2011. The charge-sheet has been signed by the Junior Engineer (Western Region) Rural Engineering Department in his capacity as Enquiry Officer. It is his case that in view of Regulation 351-A read with 370 of Civil Services Regulations, departmental enquiry against the petitioner cannot be instituted/continued without the sanction of the Governor. In the facts of the case, no sanction from the Governor has been obtained, the charge-sheet after more than three years subsequent to his retirement is bad.

2. On behalf of the respondent authorities a counter-affidavit has been filed and it has been stated in paragraph 9 that before initiating the departmental proceedings against the petitioner with the service of charge-sheet dated 27.6.2011, approval of the minister of the department had been obtained on 7.1.2011 and this according to the respondents would be deemed to be the sanction referred to under Article 351-A of the Governor having regard to the provisions of the U.P. Secretariat Instructions 1982 framed under the Rules of Business, 1975.

3. Counsel for the respondents has placed reliance upon the judgment of the Apex Court in the case of State of Orissa Vs. Kanhu Charan Majhi, .

4. On behalf of the petitioner in rejoinder-affidavit it is submitted that the judgment is clearly distinguishable in the facts of the case having regard to the specific language of Civil Services Regulations which have been framed under Article 309 of the Constitution of India, therefore, statutory in nature. The Rules of Business, 1975 have been framed under Article 156 of the Constitution of India and they deals with the executive decisions of the State Government which are completely foreign to the service rules framed under Article 309 of the Constitution of India.

5. We have heard learned counsel for the parties and have examined the records of the present petition.

6. It is not in dispute that the petitioner had retired in the year 2008 and that departmental proceedings have been initiated against him in the year 2011 i.e. after expiry of three years subsequent to his retirement. It is also not in dispute that under Regulations 351-A of the Civil Services Regulations framed under Article 309 of the Constitution of India for any departmental enquiry being initiated against a retired employee, prior sanction of the Governor is but necessary. The issue in that regard has been settled by the High Court in the case of State of U.P. and Others Vs. R.C. Misra, , wherein Regulation 351-A had been taken note of. It has been laid down that once the Government servant has retired and no proceedings have been earlier initiated then the limitations imposed by sub clause (i) or sub-clause (ii) of clause (a) of proviso to Regulation 351-A will apply.

7. We may also record that under Explanation A to Article 351A, it has been explained that the departmental proceedings against a retired employee shall be deemed to have been instituted when a charge framed against the person concerned is issued to him.

8. It is therefore, clear that as per Regulations 351-A of Civil Services Regulations, the departmental enquiry would be deemed to have been instituted on the date charge-sheet is served upon the petitioner i.e. in the year 2001. The petitioner had neither been placed under suspension nor any charge-sheet has

been served upon him while he was in service. Therefore, in the facts of the case, it has to be determined as to whether any sanction from the Governor has been obtained or not.

9. It is admitted on record that there is no order of the Governor sanctioning the departmental proceedings. The stand taken by the State before us is that since the minister of the department had granted approval to the initiation of the departmental proceedings vide order dated 7.1.2011, this order of the minister read with Chapter 7 of U.P. Secretariat Instructions, 1972 framed under the Rules of Business, 1975 has to be deemed to be the sanction of the Governor. In support of this contention the State has placed reliance upon paragraph 12 of the judgment in the case of State of Orissa v. Kanhu Charon Majhi (supra). Paragraph 12 reads as follows:

We have considered the provisions of Rule 31 of the Rules, whereby power has been given to the Governor to review the order dated 16.10.1995. Now the question is whether the order was passed by the Governor. It is true that when any statute empowers the Governor to pass an order, the Governor himself need not sign and need not pass the order. The rules of business of any particular State deal with the procedure as to how an order is to be passed by the Governor or in the name of the Governor. In the instant case, the order dated 4.9.2000 was passed by the Under-Secretary, Food Supplies and Consumer Welfare Department of the Government of Orissa. According to Rules 11 and 12 of the Orissa Government Rules of Business, an Under-Secretary is empowered to sign in the name of the Governor. Thus, in view of said legal position, the order dated 4.9.2000 can be said to have been passed by the Governor, exercising power under Rule 31 of the Rules.

10. We may record that the provisions of the Regulations 351-A of the Civil Services Regulations have been framed under Article 309 of the Constitution of India and are statutory in nature. The legal position in that regard is well-settled. Reference in that regard may be had to the judgment of the Apex Court in the case of Inder Parkash Gupta Vs. State of Jammu and Kashmir and Others, wherein it has been laid down as follows:

28. The Jammu & Kashmir Medical Education (Gazetted) Services Recruitment Rules, 1979 admittedly were issued u/s 124 of the Jammu and Kashmir Constitution which is in pari material with Article 309 of the Constitution of India. The said Rules are statutory in nature. The Public Service Commission is a body created under the Constitution. Each State constitutes its own Public Service Commission to meet the constitutional requirement for the purpose of discharging its duties under the Constitution. Appointment to service in a State must be in consonance with the constitutional provisions and in conformity with the autonomy and freedom of executive action. Section 133 of the Constitution imposes duty upon the State to conduct examination for appointment to the services of the State. The Public Service Commission is also required to be consulted on the matters enumerated u/s 133. While going through the selection

process the Commission, however, must scrupulously follow the statutory rules operating in the field. It may be that for certain purposes, for example, for the purpose of shortlisting, it can lay down its own procedure. The Commission, however, must lay down the procedure strictly in consonance with the statutory rules. It cannot take any action which per se would be violative of the statutory rules or makes the same inoperative for all intent and purport. Even for the purpose of shortlisting, the Commission cannot fix any kind of cut-ff marks.

11. So far as the Rules of Business, 1975 are concerned, it is admitted to the State that these rules have been framed under Article 166 of the Constitution of India. Article 166 of the Constitution of India deals with the conduct of Government business and provides that all executive actions of the Government/ State shall be expressed to be taken in the name of the Governor and it is with reference to these actions of the State Government that a power has been conferred upon the Governor to frame the business rules. Article 166 of the Constitution of India reads as follows:

Article 166-(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business insofar as it is not business with respect to which the/ governor is by or under this Constitution required to act in his discretion.

12. We are of the considered opinion that the provisions of Article 309 of the Constitution of India operate in a separate field vis-?-vis the conduct of Government business under Article 166 of the Constitution of India. They are not overlapping. Therefore, if under the service rules framed under Article 309 of the Constitution of India namely the Civil Services Regulations, 1975, it has been provided that sanction of the Governor would be necessary before initiation of the departmental proceedings with the service of the charge-sheet upon the retired employee then such sanction has to be that of the Governor and not of the minister with reference to the U.P. Secretariat Instructions 1982 framed under the Rules of Business, 1975. We may also record that the U.P. Secretariat Instructions 1982, Chapter VII only provide that all business allocated to a department under the Rules of Business, 1975 is to be disposed of by or under the General or special directions of the minister in charge (Reference Business Regulations 3). It is, therefore, clear that only such business as allocated to the department under the Rules of Business, 1975 can be disposed of under the general or special directions of the minister in charge.

13. Nothing has been demonstrated before us to lead us to accept that the power to sanction the departmental proceedings in respect of a retired Government servant has been allocated as a business to be disposed of under the general or special directions of the minister concerned under the Business Regulations.

14. We have, therefore, no hesitation to hold that the sanction of the minister referable to the Business Regulations in the facts of the case will not amount to the sanction of the Governor as contemplated by Regulation 351-A of the Civil Services Regulations, 1975.

15. So far as the judgment relied upon by the counsel for the respondent in the case of State of Orissa (Supra), we may record that the same is clearly distinguishable in the facts of the case specifically with reference to the Rules of Business, 1975 of the State of U.P. referred to by us.

16. In absence of sanction of the Governor, no departmental proceedings can be initiated against a Government servant after his retirement, the impugned charge-sheet cannot be legally sustained. Accordingly, the charge-sheet dated 27.6.2011 is hereby quashed as also the departmental proceedings initiated thereto against the petitioner. The petitioner shall be entitled to all the consequential benefits with the result of the quashing of the charge-sheet and the departmental proceedings. The State is directed to take appropriate action in that regard within two months from the date a certified copy of the order is served upon the State Government. Writ petition is allowed subject to the observations/direction made herein above.

