

Vijay Singh Chauhan vs State Of U.P. Thorough The Secy. Sports ... on 31 January, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:7544

Court No. - 6

Case :- WRIT - A No. - 2000561 of 2003

Petitioner :- Vijay Singh Chauhan

Respondent :- State Of U.P. Thorough The Secy. Sports Deptt. Govt. Of U.P.C

Counsel for Petitioner :- I.B.Singh,Akhilesh Kalra,Prashant Chandra,S K Singh Parmar,Vij

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Akhilesh Kalra, learned counsel for the petitioner and Sri Sanjay Sareen, learned Additional Chief Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner is challenging an order of reversion dated 28.4.2003 from the post of Director, Sports to the post of Joint Director, Sports and attaching the said post to Meerut. It has been prayed to issue writ, order or direction in the nature of mandamus, commanding the respondents to allow the petitioner to continue to discharge his duties as Director, Sports and not to interfere in the working of the petitioner as Director, Sports.

3. Factual matrix of the case is that the petitioner passed B.P.Ed. from Jiwaji University, Gwalior. He actively participated in various national and international level sports competitions. He created a

new Indian and Asian record in Munich Olympic record. In 1974, Asian games created new Asian record and was declared the best athlete in Asia. In the year 1972, he was awarded 'Arjuna Award', which is highest award in the field of sports in India.

4. In the year 1968, the petitioner was offered a job by TELCO, Jamshedpur as a Charge-man. He was promoted to the post of Supervisor Sports at TELCO in the year 1973. On 1.4.1974, Sports Directorate at U.P. was formed. The Chief Secretary, U.P. wrote a letter to the petitioner, offering him appointment on the post of Deputy Director, Sports in the pay scale of 800-1450 with five increments in advance together with other benefits. He was appointed on 13.3.1975 on the post of Deputy Director, Sports and was posted at Sports Directorate, Lucknow. Later on, the petitioner was confirmed on the said post vide order dated 8.9.1989. He was confirmed on the post of Deputy Director, Sports w.e.f. 1.1.1980. He was granted promotion on the post of Joint Director, Sports on 24.1.1987.

5. On 3.7.1989, he was sent on deputation as Principal, Sports College, Lucknow, which is a superior post. He was granted officiating charge of Director, Sports on 28.2.1990 in addition to the Principal, Sports College. He was posted on 24.1.1991, as Joint Director, Sports at Meerut. He was sent on deputation as Founder Principal, Sports College, Dehradun. Due to retirement of one Anand Shukla on 31.1.1999, the petitioner was given officiating charge on 3.2.2000 on the post of Director, Sports.

6. A meeting of the Departmental Promotion Committee was held on 10.10.2001 to fill up the post of Director, Sports, in which petitioner's name was considered. He was promoted on the post of Director, Sports, being found suitable in the Departmental Promotion Committee on 8.11.2001. An enquiry has been initiated against the petitioner in respect of some allegations for which the State Government has dropped the proceeding by order dated 20.5.2000.

7. He was awarded adverse entry in the year 2002-03 on 6.3.2003 and disciplinary proceedings were also initiated against him. The petitioner submitted reply to the charge sheet, requesting for opportunity to examine certain persons. Vide order dated 28.4.2003, the petitioner has been reverted to the post of Joint Director and the post of Joint Director has been attached to Meerut. In place of the petitioner, the respondent No.3 has been posted who is the enquiry officer against the petitioner. Submission of petitioner's counsel is that the order of reversion has been passed illegally, treating the petitioner on probation period on the post of Director, though the petitioner has already been confirmed in service.

8. Submission of learned counsel for the petitioner is that charge sheet issued to the petitioner was subject matter of challenge in Claim Petition No.565 of 2003, wherein the charge sheet was set aside and quashed by the tribunal vide judgment and order dated 5.1.2005. He submits that no disciplinary proceeding were pending when the order of reversion in respect of the petitioner was passed and, therefore, submitted that the impugned order is illegal, arbitrary and has no valid sanctity in the eyes of law. Next submission is that there is no rational justification to pass the order of reversion in the case of the petitioner without any basis. He next submits that the order of reversion has been passed without issuing notice and opportunity of hearing to the petitioner.

9. Learned counsel for the petitioner has next submitted that once the respondents could not proceed with the enquiry against the petitioner, they have resorted to passing of the impugned order dated 28.04.2003, according to which, various deficiencies were found in the working of the petitioner on the post of Director, Sports and opportunities were given to him to rectify his work but as he has been unable to improve himself, it has been found that there is no chance of him improving his work and consequently in exercise of power under Rule 19 (3) of the Uttar Pradesh Sports Directorate (Gazetted Officers Services) Rules, 1986 (hereinafter referred to as the 'Rules, 1986'), a decision has been taken to revert him. He has further submitted that the impugned order dated 28.04.2003 is illegal, arbitrary as well as mala fide considering the fact that the respondents have sought to initiate the disciplinary proceeding against the petitioner but because of the infirmity in the said proceedings which was subject matter of challenge before U.P. Public Services Tribunal, they could not proceed and consequently have resorted to proceeding under the Rules, 1986 and resorted to exercise of power under Rule 19 (3) of Rules 1986 to revert the services which power was not available to them and also the manner of the exercise of power is clearly arbitrary and dehors the rules.

10. In this regard, it was stated that according to the Rule 19 (1) of Rules, 1986, a person who is appointed to a post in the service or against a permanent vacancy shall be placed on probation for a period of two years and as per Rule 19 (2), the Appointing Authority may, for reasons to be recorded, extend the period of probation in individual cases specifying the date up to which the extension is granted and as per Rule 19 (3), if it appears to the Appointing Authority at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to the substantive post, if any, and if he does not hold lien on any post, his services may be dispensed with. He has further submitted that subsequently, the State of UP has promulgated the Uttar Pradesh State Government Servants Confirmation Rules, 1991 (hereinafter referred to as the 'Rules, 1991'). According to Rule 2 of Rules, 1991, the aforesaid Rules have an overriding effects on all the other rules existing inasmuch as it has been provided that Rules, 1991 shall have effect notwithstanding anything to the contrary contained in any other rules made by the Governor under the proviso to Article 309 of the Constitution, or orders, for the time being in force. He has submitted that the aspect of placing a Government servant on probation and subsequently confirming him after completion of period of probation is subject matter of the Rules, 1991 and to that extent, the said rules override the provisions of Rule 19 of the Rules, 1986. He has further submitted that as per the Rules, 1991, in Clause (5), If a government servant is promoted on a regular basis after following the prescribed procedure to aforesaid cadre where the promotion is only source of recruitment but in case he is so promoted and in place on probation and in case he is appointed without placing him on probation, then he shall be entitled to all the benefits as if he has been confirmed in the said post. He has further submitted that as per Clause (3) of Rule 5 of Rules, 1991, a major deviation has been made from the Rules, 1986 to the effect that it is only on completion of the period of probation, the work and conduct of the Government servant shall be assessed and in case, the conclusion is that the Government servant is fit to hold his higher grade, he would be confirmed on the said post, otherwise, he will be reverted. It has been emphasized that the stage of consideration would be the 'completion of probation' and not 'during the probation'. He has further submitted that as per Rule 19 of Rules, 1986, the said exercise could have been

conducted even during the period of probation but in coming into effect of the Rules, 1991, the said exercise can be conducted only after the completion of the said period of probation. In this regard, he has submitted that the petitioner was appointed and placed on probation by means of order dated 08.11.2001 and as such two years' period would have been completed only on 07.11.2003, the opportunity to assess the work of the petitioner would be only after 07.11.2003 and no any period prior in light of Rule 5 (3) of Rules, 1991. He has further submitted that exercise of reverting is otherwise a vulnerable extent of exercise of power inasmuch as when the respondents failed to initiate disciplinary proceeding, they have resorting to invocation of Rule 19 of the Rules, 1986. Accordingly, the order dated 28.04.2003 is without jurisdiction and contrary to the Rules and deserves to be set aside.

11. Learned Additional Chief Standing Counsel, on the other hand, has opposed the prayer of petitioner. He has submitted that firstly, it is undisputed fact that the petitioner was appointed on the post of Director, Sports and placed on probation as per the order dated 08.11.2001. During his working on the said post, several infirmities were found out and he was given several opportunities to rectify himself and it is during this period, a decision was also taken to initiate disciplinary proceeding against him. He does not dispute the fact that there was interference in the said proceeding by the UP Public Services Tribunal and ultimately charge-sheet itself was quashed by the Tribunal by means of judgment and order dated 05.01.2005. He also does not dispute this fact that, in the meanwhile, the Rules, 1991 came into effect which have an overriding effect but looking into the conduct of the petitioner, there is no infirmity in the impugned order, and consequently, the petition deserves to be dismissed.

12. I have heard the rival contention of learned counsel for the parties and perused the record. The question arises, as to whether, the order date 28.04.2003 could have been passed considering by the respondents assessing the work of the petitioner prior to completion of period of probation. It is noticed that the respondents have invoked the provision of Rule 19 of the Rules 1986, which provides for assessing the work of the probationer, and in case, he is not fit to hold the higher grade, then a suitable declaration in this regard could have been issued and the Government servant could have been reverted to his original place of posting. The respondents probably lost sight of the fact that Rule 19 ceased to exist in the manner as has been invoked by the respondents considering the fact that in the meanwhile, the Rules, 1991 had come into effect which had an overriding effect over the Rules, 1986 to the extent it provides for confirmation and further provides for the effects of confirmation on the Government servant. Accordingly, the relevant aspect while coming into effect of the Rules, 1991 was that the consideration pertaining to the assessment of work could have been done only after completion of period of probation and not during the period of probation.

13. In the present case, the exercise of assessment was undoubtedly conducted during the period of probation wherein he had six months remaining for completion of the probation. Accordingly, impugned order dated 28.04.2003 is in fact relatable to exercise of power under Rule 5(3) of the Rules, 1991, according to which, the said exercise is clearly arbitrary.

14. In light of the above, I find that the exercise of power is de hors the Rules, 1991. Apart from the said, I find that the said power has been invoked by the respondents, not in a bona fide manner, and

only after they had failed to proceed disciplinary proceeding against the petitioner. We also take note of the fact that the petitioner has since retired from service.

15. For the aforesaid reasons, I find the substantial grounds are made out for interference of this Court. Accordingly, the present writ petition is allowed and the order dated 28.04.2003 is hereby quashed.

(Alok Mathur,J.) Order Date :- 31.1.2025 V. Sinha