

## **Kailash Chander Asthana vs State Of U.P. And Ors. on 5 May, 1988**

**Equivalent citations: AIR1988SC1338, 1988(36)BLJR574, JT1988(2)SC291, (1988)IILLJ219SC, 1988(1)SCALE884, (1988)3SCC600, 1988(2)UJ260(SC), AIR 1988 SUPREME COURT 1338, 1989 LAB IC 1166, (1988) 2 JT 291 (SC), 1988 BLJR 574, 1988 (3) SCC 600, (1988) 2 CURLR 80, (1988) 14 ALL LR 663, (1988) 2 ALL WC 926, (1988) 2 LAB LN 588, (1988) 56 FACLR 741, 1988 UJ(SC) 2 260, 1988 SCC (L&S) 869**

**Author: Lalit Mohan Sharma**

**Bench: R.S. Pathak, L.M. Sharma, M.N. Venkatachaliah**

### **JUDGMENT**

Lalit Mohan Sharma, J.

1. These four cases have been heard together and are being disposed of by this judgment.

2. Kailash Chander Asthana, petitioner in Writ Petition No. 817 of 1980, was initially appointed as a Munsif Magistrate in Uttar Pradesh in 1969 and was promoted in 1974 as a Civil Judge. In 1975 an application for transfer of a case pending before him was made by the plaintiffs in the case inter alia on the ground that the writ petitioner had demanded bribe from plaintiff No. 2 Krishna Murari who had refused to oblige. The Allahabad High Court directed the Vigilance Bureau, which is under its control, to make a preliminary inquiry. After receipt of a report by the Bureau, the Administrative Committee of the High Court considered the matter and decided to get a full-fledged disciplinary inquiry to be made, on three charges, the Charge No. 3 being the demand of illegal gratification from Krishna Murari. The High Court also decided that the petitioner should be placed under suspension, and on receipt of a recommendation to that effect an order dated 23.3.1978 by the Governor was placed. In accordance with the direction of the High Court the inquiry was conducted by an Administrative Tribunal framed under the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 (hereinafter referred to as the Rules) and the evidence of the witnesses examined was recorded. After completion of the inquiry the entire matter was placed before the High Court and it was considered by the Full Court of the High Court, which approved the findings of the Administrative Tribunal, holding the writ petitioner to be guilty of the third charge. The High Court, thereafter by its letter dated 18.12.1979 requested the Governor to remove the petitioner from service and the impugned order terminating the services of the writ petitioner was accordingly passed. The petitioner has challenged the order under Article 32 of the Constitution by Writ Petition No. 817 of 1980. It is stated by Mr. R.K. Garg, learned Counsel for the petitioner, that in view of

certain observations of this Court the writ petitioner also filed an application under Article 226 of the Constitution before the Allahabad High Court, which was dismissed in limine on 14.8.1981. The order is under challenge in Civil Appeal No. 2523 of 1981.

3. Ami Chand, petitioner in Writ Petition No. 3782 of 1981, is also a Judicial Officer in Uttar Pradesh and has directly challenged the order dated 5.11.1910 reducing him in rank. A disciplinary proceeding was started against the petitioner in Writ Petition No. 8253 of 1981 Ram Kumar Prajapati, Munsif Magistrate in Uttar Pradesh, on two charges, namely, those of bigamy and of forging and making use of a document with a view to support his false defence of separation from his first wife. The charges were found to be correct. On the first charge the petitioner was punished with stoppage of three increments for five years and on the second charge his services have been terminated, vide order dated 13.10.1981. He has challenged the order by Writ Petition No. 8253 of 1981.

4. Mr. Garg, learned Counsel for petitioner Kailash Chander Asthana, contended that the finding recorded on the third charge is erroneous and should, therefore, be set aside. The finding is based on the evidence of three witnesses, namely, Krishna Murari Plaintiff No. 2, Prakash Chandra Pandey, who is running a cloth shop by the side of the electric shop of Krishna Murari, and Vishwanah Prasad, Krishna Murari's uncle. Krishna Murari has in his evidence supported the allegations and has given the details with regard to the illegal demand. Prakash Chandra Pandey stated that the officer, Sri Kailash Chander Asthana went to the shop when he (the witness) was talking to Krishna Murari and the two went inside the shop. Later, on inquiry the witness was informed about the incident. Vishwanath Prasad claimed that Krishna Murari had mentioned about the demand of bribery to him. All the three witnesses were cross-examined by the petitioner and the counter affidavit indicates that the matter was considered thoroughly on merits by the High Court before the impugned order was passed. The scope of writ petitions here as well as before the High Court is limited and we do not agree with the request of Mr. Garg to re-assess the evidence.

5. Mr. Garg next contended that a copy of the report of the Administrative Tribunal was not made available to the petitioner and this must be held to have vitiated the subsequent proceeding including the impugned order of punishment. A reference was made to the Explanation to Sub-rule (3) of Rule 9 of the Rules, stating that a copy of the recommendation of the Tribunal as to the penalty should be furnished to the charged Government servant. It has been pointed out by the learned Counsel for the respondents that after the amendment of Article 311 of the Constitution by the 42nd Amendment, the Explanation was dropped. The question of service of copy of the report arose on account of a right of a second show cause notice to the Government servant before the 42nd Amendment, and since present disciplinary proceeding was held later, the petitioner can not legitimately demand a second opportunity. That being the position, non-service of a copy of the report is immaterial.

6. Although many questions have been raised in the writ application in W.P. No. 817 of 1981, they were not pressed before us during the hearing of the case, and it is not necessary, therefore, to examine the same. It was however, faintly suggested by Mr. Garg at one stage that in view of Article 235 of the Constitution the inquiry by the Administrative Tribunal is vitiated in law and has to be

annulled. The point has been discussed in great detail in the counter affidavit indicating that the relevant provisions of the Rules do not in any way militate against the control of the High Court over the subordinate courts and all the steps against the petitioner were taken at the instance of the High Court. We do not, in the circumstances, consider it necessary to discuss this aspect in any detail.

7. In the other two cases, namely, Writ Petition No. 3782 of 1981 Writ Petition No. 8253 of 1981, also the High Court was satisfied that on the evidence led in the proceedings the charges mentioned earlier were fully established.

8. In the result, we do not find any merit in these cases which are dismissed but without costs.