

Surendra Kumar Singh vs State Of U.P And Others on 4 May, 2018

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Author: Abdul Moin

Bench: Abdul Moin

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR

Court No. - 28

Case :- SERVICE SINGLE No. - 1606 of 1998

Petitioner :- Surendra Kumar Singh

Respondent :- State Of U.P And Others

Counsel for Petitioner :- A.P.Singh,K.M. Dubey,P.N. Singh Kaushik,S.K. Kalia

Counsel for Respondent :- C.S.C.,R S Pandey,Sudeep Seth,V.K. Singh

Hon'ble Abdul Moin,J.

1. Heard Sri A.P.Singh, learned counsel for the petitioner and Sri Sudeep Seth, learned counsel representing respondents no. 1 and 2.

2. By means of the present petition, the petitioner has prayed for the following reliefs:

"Issue a writ, order or direction in the nature of certiorari quashing the orders of dismissal of the petitioner from service cum recovery contained in annexure 1.

Issue a writ, order or direction in the nature of mandamus commanding the opposite

parties to reinstate the petitioner with all benefits of service.

Issue such other writ, order or direction which may be deemed just and proper in the circumstances of the case.

Allow this writ petition with cost."

3. The case set forth by the petitioner is that petitioner who was working as Secretary (Sachiv) in Sadhan Sahkari Samiti Limited, Tikri Agaganj, Vikas Khand Tarun, District- Faizabad is governed by the service rules namely U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976 (hereinafter referred to as " Rules 1976") which are applicable to all the Primary Agricultural Co-operative Credit Societies.

4. The petitioner was placed under suspension vide order dated 19.02.1998 by Member Secretary. The petitioner had also been issued a charge sheet on 31.01.1998 containing 13 charges. Copy of the charge sheet dated 31.01.1998 is annexure 3 to the writ petition. By means of order dated 15.07.1998, the petitioner was informed that he should submit a reply to the charge sheet by 23.07.1998 else in a meeting scheduled on 25.07.1998 of the District Administrative Committee (hereinafter referred to as " Committee"), further decision would be taken. Copy of notice dated 15.07.1998 is annexure 4 to the writ petition. A press note was published on 19.07.1998 dated 17.07.1998 by the Member Secretary, District Administrative Committee, U.P. PACS Centralized Services, Faizabad informing seven persons including the petitioner that a meeting of the Committee has been called on 22.07.1998 at 5 P.M in the meeting room of the Collectorate and also informing the said persons to appear before the Committee and present their version failing which further decision would be taken. Copy of the press note as published on 19.07.1998 is annexure C7 to the counter affidavit.

5. In pursuance of the said press note, the petitioner submitted a letter on 22.07.1998 informing that as he is unwell, accordingly he should be excused from attending on the said date. Copy of the letter dated 22.07.1998 is annexure 5 to the writ petition. Thereafter, the petitioner was served with an order of dismissal from service dated 27.07.1998 informing him that as per the decision taken by the Committee on 22.07.1998, the petitioner was being dismissed from service and an amount of Rs. 1,31,887.80 and 26,861.95 is to be recovered from him. The dismissal order further reads that the petitioner had been suspended on 19.02.1998 on account of financial irregularities and that an Inquiry Officer had been appointed to enquire into the said charges. The Inquiry Officer had sent the charge sheet to the petitioner. The petitioner was informed through press note dated 17.07.1998 that he should appear before the Committee to submit his response but he failed to appear and submit any reply. Consequently, on the basis of the inquiry report, the petitioner has been found guilty of embezzlement and of the charges leveled against him and thus seeing the gravity of the charges, it was decided in the meeting of the Committee held on 22.07.1998 to dismiss him from service and to recover the aforesaid amount. Copy of the dismissal order dated 27.07.1998 is annexure 1 to the writ petition.

6. The petitioner contends that at no stretch of time, the inquiry report was ever made available to him despite the fact that reliance has been placed upon the said inquiry report while passing the impugned dismissal order. The petitioner further contends that it was incumbent upon the Inquiry Officer to have fixed a date, time and place of inquiry and in case the petitioner failed to participate in the inquiry then the Inquiry Officer should have considered the evidence after examining the witnesses and documents in support of the charges and only then could the Inquiry Officer have proceeded further with the inquiry. It is also vehemently argued by the learned counsel for the petitioner that once the respondents themselves had granted time vide notice dated 15.07.1998 to the petitioner to submit his reply to the charge sheet by 23.07.1998 failing which a decision would be taken in the matter on 25.07.1998 as such the respondents patently erred in passing the impugned dismissal order dated 27.07.1998 on the basis of a decision taken on 22.07.1998 meaning thereby that the respondents had prejudged the issue and without even waiting for the reply of the petitioner which he could have validly submitted by 23.07.1998, passed a dismissal order and hence the impugned dismissal order is patently vitiated on this short ground alone.

7. Per contra, Sri Sudeep Seth, learned counsel appearing for respondents no. 1 and 2 while placing reliance on the averments contained in the counter affidavit has contended that after the issue of the charge sheet dated 31.01.1998, it was expected from the petitioner to submit his written reply/explanation within 15 days and liberty was granted to the petitioner to adduce evidence and if at all he desired an opportunity of hearing, the same should have been intimated by him to the Inquiry Officer. Sri Seth argues that it goes without saying that once a person does not dispute the allegations/charges levelled in the charge sheet consequently it is to be presumed that he has admitted the charges and as such the respondents were fully competent to proceed in the inquiry ex-parte and accordingly the Inquiry Officer correctly submitted his inquiry report against the petitioner. It is also contended that as the petitioner failed to participate in the inquiry and submit any reply to the said charge sheet, consequently the Inquiry Officer held the inquiry and submitted an inquiry report dated 11.07.1998 holding the charges to be proved against the petitioner. Copy of the inquiry report dated 11.07.1998 has been annexed as annexure C6 to the counter affidavit. After submission of the inquiry report, the Member Secretary got published a press note dated 17.07.1998 in the newspaper dated 19.07.1998 about the meeting of the Committee convened on 22.07.1998 wherein the petitioner was required to submit his defence before the said Committee else further orders would be passed but the petitioner feigned illness and sent an application dated 22.07.1998 expressing his inability to attend on 22.07.1998. Thus the petitioner failed to submit any reply to the charge sheet nor appeared before the Committee nor expressed any desire for personal of hearing and as such the order of dismissal dated 27.07.1998 was passed after a decision was taken by the Committee in its meeting dated 22.07.1998.

8. Sri Seth further argues that once the petitioner failed to avail the opportunity of submitting any reply to the charge sheet or of participating in the inquiry consequently, the order of dismissal has correctly been passed and there is no illegality or infirmity in the same.

9. Having heard the learned counsels appearing for the contesting parties, the short question that arises in the instant petition is that when by means of notice dated 15.07.1998, time had been granted by the respondents to the petitioner to submit his reply by 23.07.1998 to the charge sheet

else a decision would be taken on 25.07.1998 by the Committee, as such whether the respondents were legally entitled to pass the order of dismissal dated 27.07.1998 on the basis of a decision taken by the Committee on 22.07.1998 ?

10. Upon a pointed query to Sri Seth, learned counsel for the respondents regarding this short question, Sri Seth while referring to para-10 of the counter affidavit has contended that the letter dated 15.07.1998 by which the petitioner had been granted time to submit his reply to the charge sheet by 23.07.1998 had inadvertently been sent by the then Member Secretary inasmuch as once the inquiry officer had submitted the inquiry report on 11.07.1998 then there was no occasion for sending of the said letter dated 15.07.1998. It is also argued that by means of the press note dated 17.07.1998 as published on 19.07.1998, the petitioner along with others had already been informed of the meeting of the Committee on 22.07.1998 for the purpose of submitting their replies to which the petitioner had submitted a letter on 22.07.1998 itself contending that he would not be able to attend on account of his illness. Thus it is argued that the petitioner was well aware of the meeting of the Committee which had been rescheduled to 22.07.1998 and the requirement of the petitioner to submit his reply, if any, and thus the notice dated 15.07.1998 loses its significance or value.

11. The argument raised by the learned counsel for the respondents though appears to be attractive and persuasive on the face of it yet when the press note dated 17.07.1998 is seen in the context of the notice dated 15.07.1998 that had been issued to the petitioner asking him to submit his reply by 23.07.1998, it clearly comes out that the said press note does not indicate anywhere that same is being issued in suppression to the letter/notice dated 15.07.1998 by which the petitioner was required to submit his reply by 23.07.1998. The press note also does not contain any reference to any preponement of the meeting of the Committee from 25.07.1998 (as indicated in the notice dated 15.07.1998) to 22.07.1998 (as indicated in the press note). It is also not the case of the respondents that the letter/notice dated 15.07.1998 was ever cancelled. Thus the natural presumption is that though the petitioner was required to submit his version in terms of the press note but the reply to the charge sheet could validly be submitted by him up to 23.07.1998 in terms of the notice dated 15.07.1998. In this view of the matter, it is apparent that the dismissal order dated 27.07.1998 dismissing the petitioner and directing for recovery of the alleged embezzled amount on the basis of a decision taken on 22.07.1998 by the Committee is patently bad in the eyes of law reflecting patent non application of mind to the fact that the petitioner had been given time by the respondents themselves to submit his reply to the charge sheet by 23.07.1998 itself. Thus the impugned dismissal order passed on the basis of the decision of the Committee dated 22.07.1998 virtually amounts to prejudging the guilt of the petitioner. Viewed in this manner, it is apparent that the impugned dismissal order is patently bad in the eyes of law and accordingly merits to be quashed on this short ground alone.

12. Faced with this situation, learned counsel for the respondents has taken us to the charges levelled against the petitioner in the charge sheet totalling 13 in number. This Court has perused the said charges and this Court prima facie finds that the charges levelled against the petitioner are extremely serious pertaining to embezzlement of funds and other charges indicating gross dereliction of the duty on the part of the petitioner. Once prima facie the charges are of such a serious nature, the question would now arise as to whether with the quashing of the impugned

dismissal order on the aforesaid ground, the petitioner deserves to be reinstated in service with all consequential benefits? This Court hastens to add that the merit of the charges have not been seen by the Court.

13. This aspect of the matter is no longer res integra having been settled beyond doubt by various judgments of the Hon'ble Supreme Court. In this regard, it has been held by the Hon'ble Supreme Court in the case reported in 1996 9 SCC 322 Inre:- State of Punjab and Ors Vs. Dr. Harbhajan Singh Greasy as under:-

"2. We have heard learned Counsel on both sides. The respondent was charged for being absent from duty in the Emergency of attending on the flood victims between July 18, 1975 and July 21, 1975. He was further charged for other derelictions of duty. The details are not necessary. Suffice it to state that enquiry was conducted and the Enquiry Officer submitted his report that respondent No. 1. had admitted that he was having a private practice at Moga during the period of his suspension in spite of the directions issued by the Government in the suspension order to remain at Head-quarter. Accordingly, the disciplinary authority removed him from service which came to be challenged in the High Court. The learned single Judge allowed the writ petition and directed reinstatement with consequential benefits. On appeal, the Division Bench confirmed the same in the impugned order dated November 17, 1993 in L.P.A. No. 398/92. Thus, this appeal by special leave.

3. It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing. Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon.....".

14. Likewise the Hon'ble Supreme Court in the case of Hiran Mayee Bhattacharyya Vs. S.M.School for girls reported in (2002) 10SCC 293 has held as under:-

"We, therefore, direct the disciplinary authority to furnish a copy of the enquiry report to the appellant and then permit her to submit her representation/explanation to the same and pass final orders thereafter. However, this will not lead to reinstatement or to back wages inasmuch as this Court had decided in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar that there need be no

reinstatement nor back wages need be paid when the Court directs that the principles of natural justice should be followed. We, therefore, remit the matter to the disciplinary authority, being Secretary, Shibarampur Madhyamik High School for Girls, Shibarampur, Calcutta 700061 for the aforesaid purposes. The termination order already passed will remain, but subject to the result of the fresh consideration as directed above."

15. Similarly Hon'ble Supreme Court in the case of U.P. State Spining Company Ltd. Vs. R.S.Pandey reported in (2005) 8SCC 264 has held as under:-

23. The residual question is what would the appropriate direction in such a case be. Stand of the employer is that it could have justified the order of termination by adducing any evidence even if it was held that there was some 'defect in the departmental proceedings. The solution is found in what was stated by this Court in Managing Director, ECIL v. B. Karunakar. In para 31, it was observed as follows:

"In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of non-supply of the report. If the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct re-instatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his re-instatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be re-instated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the re-instatement and to what benefits, if any and the extent of the benefits, he will be entitled. The

reinstatement made as a result of the setting aside the inquiry for failure to furnish the report, should be treated as a re-instatement. for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

16. Both the judgments in the case of Hiran Mayee Bhattacharyya and R.S.Pandey (supra) have been reiterated by the Hon'ble Supreme Court in the case of Union of India Vs. Y.S.Sadhu, Ex-Inspector reported in (2008) 12 SCC Pg 30 wherein the Hon'ble Supreme Court held that the course adopted in the said cases is to be followed and that there shall not be any reinstatement, but the proceedings shall continue from the stage where they stood before the alleged vulnerability surfaced.

17. This Court while exercising jurisdiction under Article 226 of Constitution of India has to weigh both sides of the matter. Here, the charges leveled against the petitioner are prima facie extremely serious pertaining to embezzlement and gross dereliction of duty and consequently, the effect of setting aside the impugned order of dismissal on the ground of technicality, may be for an error committed on the part of the office of the respondents as has been admitted in the counter affidavit, cannot result in any premium being placed on the same.

18. Accordingly, keeping in view the aforesaid settled proposition of law, what this Court finds is that once the impugned dismissal order is bad on the ground of the petitioner having been dismissed even prior to submitting his reply as called for vide letter dated 15.07.1998, consequently, the matter requires to be remitted back to the disciplinary authority to follow the procedure from the stage the fault has been pointed out by the petitioner and to take action according to law. Pending the said action, the petitioner must be deemed to be under suspension and in fact the petitioner had been placed under suspension vide order dated 19.02.1998.

19. Keeping in view the aforesaid facts, circumstances, discussions and the judgments of the Hon'ble Supreme Court, the petition is partly allowed. A writ of certiorari is issued quashing the impugned dismissal order dated 27.07.1998, copy of which is contained as annexure 1 to the writ petition. The petitioner would be deemed to be under suspension w.e.f 19.02.1998 but would be entitled for being paid the subsistence allowance under Rules subject to fulfilling the formalities specified for getting the same. The petitioner shall submit a reply to the charge sheet, as called for by the respondents, in pursuance to the letter dated 15.07.1998 and may take such pleas as may be available to him under law. The said reply would be submitted by the petitioner within four weeks of the date of the order of this Court, as has been stated by Sri A.P.Singh, learned counsel for the petitioner. The said reply shall be considered by the disciplinary authority in accordance with law and the Rules governing the same and the respondents shall proceed accordingly. The payment of salary and other consequential benefits for the intervening period of dismissal from service shall be subject to the final order that may be passed by the disciplinary authority in the disciplinary proceedings. The aforesaid exercise shall be completed within six months from the date of this order. It is also made clear that this order has been passed in open Court in presence of both the learned counsels appearing for the contesting parties.

Order Date :- 04.5.2018 Pachhere/-

(Abdul Moin, J.)