

Court No. - 35

Case :- WRIT - A No. - 44621 of 2017

Petitioner :- Islamuddin

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Siddharth, Manoj Kumar Singh, Vatsala, Yugul Kishore Narayan

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar, J.

1. Heard Ms. Vatsala, learned counsel for the writ petitioner as well as Sri Shailendra Singh, learned Standing Counsel who appears for the respondents.
2. Since counter and rejoinder affidavits have been exchanged between the parties and they do not propose to file any further affidavits, thus, with the consent of the learned counsel for the parties, the writ petition is being decided at the admission stage.
3. The case of the writ petitioner is that he was employed as Daily Wager in the office Assistant Waqf Survey Commissioner/District Minority Welfare Officer, Meerut in the year 1988 and thereafter his services stood regularized in the month of January, 2010. While the writ petitioner was working as class IV employee, he received a charge sheet dated 23.09.2015 containing as many as 3 charges. The writ petitioner after receipt of the charge sheet tendered its reply to the same on 07.11.2015 denying the charges sought to be levelled against him pursuant whereto without holding any oral inquiry as contemplated under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, the Inquiry Officer tendered its report before the Disciplinary Authority holding the charges to be proved on 20.04.2016 pursuant whereto a show cause notice is stated to have been issued to the writ petitioner to which the writ petitioner tendered its reply and thereafter the punishment order is stated to have been passed on 06/07.09.2016 by the Survey Commissioner, Waqf, U.P., Lucknow, third respondent whereby punishing a permanent reduction of the pay scale from 5200-20200 starting pay of 5200/- and Grade Pay 1800/- total pay 7,000/- and a censure entry was imposed.
4. Being aggrieved against the said order the writ petitioner preferred statutory appeal before the appellate forum which came to be rejected on 20.06.2017 by the second respondent, Principal Secretary, Department of Minority Welfare and Waqf Government of U.P., Lucknow.
5. Questioning both the orders, the writ petitioner has filed the present writ petition.
6. This Court entertained the writ petition thereafter a counter affidavit has been filed sworn by the District Minority Welfare Officer, Allahabad dated 26.05.2018 to which a rejoinder affidavit has been filed.

7. Learned counsel for the writ petitioner while assailing both the orders has sought to submit that in principal, there are three charges sought to be levelled upon the writ petitioner relatable to the allegations that the writ petitioner while concealing material facts had taken certain benefits for which he was not entitled the scheme of the Government "**Hamari Beti Uska Kal**" while showing less income and a monetary benefits of Rs. 33,600/- was taken. Apart from the same, the second allegation was referable to the act and omission relatable to submission of a forged income certificate in order to derive benefit of Rs. 58,040/- as whereas the third allegation is concerned, the same was relatable to the benefit availed by his son Nadim while getting a sum of Rs. 30,000/-. Learned counsel for the writ petitioner submits that the writ petitioner has submitted its response/objection to the said charge sheet on 07.11.2015, however, the Inquiry Officer in the zeal of holding the charges to be proved against the writ petitioner without conducting the oral inquiry and without proving the documents which were being sought to be relied upon in order to bring home the charges while giving opportunity to cross examine the witnesses which became the basis of passing of ultimate punishment order which stood confirmed by the appellate authority. Submission is that Rule 7 of the 1999 Rules postulates that an oral inquiry is to be conducted while holding the charges to be proved and, in case, the oral inquiry is not conducted then the inquiry proceedings stands vitiated. Learned counsel also seeks to rely upon the judgment in the case of **Randhir Singh Duhan Vs. State of U.P. & 5 Others, Writ A No. 6129 of 2018** decided on 06.10.2023 so as to contend that this Court has the occasion to deal with contingency wherein the delinquent did not ask for oral inquiry then to this Court has mandated that in absence of any request for oral inquiry it is incumbent upon the Inquiry Officer to conduct oral inquiry in order to prove the charges. Reliance has also been placed upon the decision in the case of **Divisional Forest Officer, Kothagudem Vs. Madhusudhan Rao (2008) 3 SCC 469** so as to contend that even while confirming the order of punishment, reasons are required.

8. Sri Shailendra Singh, learned Standing Counsel who appears for the respondents submits that the charges so levelled upon the writ petitioner are grave and serious and they warrant major punishment and it has been rightly held to be proved, however, according to him, in view of the law laid down by this Court in catena of decisions as well as the provisions contained under Rule 7 of the 1999 Rules, the Inquiry Officer was under legal obligation to conduct oral inquiry, he submits that since the oral inquiry has not been conducted as revealing from the impugned order, the order impugned in question be set aside, matter be remitted back to the authorities to conduct inquiry from the stage when the defect stood occurred.

9. I have heard the learned counsel for the parties and perused the record carefully.

10. The facts of the case are not in dispute. It is also not in dispute that the writ petitioner was served with the charge sheet to which the writ petitioner submitted reply and thereafter, the Inquiry Officer conducted the inquiry though the said inquiry was conducted in direct teeth of the under Rule 7 of the 1999 Rules as no

oral inquiry was held. The Court finds that once the delinquent denies the charge then it is the duty of the disciplinary authority/inquiry authority to prove the charges and the only way for proving the charges as contemplated under Rule 7 of the 1999 Rules is to conduct oral inquiry. Since the said procedure has not been adopted and its virtually absent, thus, in the opinion of the Court the orders impugned cannot be sustained and they are liable to be set aside. Moreover, once the appellate order also does not contain reasons in coming to the conclusion while confirming the order of the disciplinary authority then in view of the decision in the case of Divisional Forest Officer (supra), the appellate order cannot be sustained in the eyes of law.

11. Accordingly, the writ petition is being decided in the following terms: (a) the order dated 06.09.2016 passed by the Survey Commissioner, Waqf U.P., Lucknow, third respondent as well as the appellate order dated 20.06.2007 passed by the Government of U.P., Lucknow are set aside (b) the matter stands remitted back to disciplinary authority while encouraging them to conduct an inquiry against the writ petitioner while appointing an Inquiry Officer from the stage of submission of the reply to the charge sheet and the said inquiry be concluded within a period of three months from the date of production of certified copy of the order strictly in accordance with Rule 7 of the 1999 Rules.

12. With the aforesaid observation, the writ petition stands allowed.

Order Date :- 11.12.2023

Rajesh