

Court No. - 10

Case :- WRIT - A No. - 8568 of 1998

Petitioner :- Constable 2108 Dharmendra Kumar Yadav

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.K. Srivastava,A. Khare,B.B. Paul,M. Kumar,Siddharth Khare

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra,J.

1. Short counter affidavit on behalf of respondent no.1 and counter affidavit on behalf of respondent no.4 filed today are taken on record.
2. Shri Siddharth Khare, learned counsel for the petitioner states that he does not propose to file rejoinder affidavit against any of the aforesaid affidavits.
3. In view of the above, this Court proceeds to decide the matter finally.
4. Heard Shri Siddharth Khare, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.
5. The petitioner was appointed as Constable in Civil Police and a First Information Report was lodged against him which was registered as Case Crime No.209/97 under Sections 302, 120-B I.P.C. read with Sections 3/5 of the Explosive Substance Act, 1908. While the trial concerning the said case was pending, by the first order impugned dated 28.12.1997, the petitioner was dismissed from service, against which, he preferred a departmental appeal which was dismissed on 31.10.1998.

6. The submission of Shri Siddharth Khare is that the order of termination of services of the petitioner was passed by observing that in view of Rule 8(2)(b) of the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 (in short 'the Rules, 1991'), it was not reasonably practicable to hold inquiry and, therefore, dispensing with the inquiry, dismissal order was passed. As far as the ground for punishing the petitioner is concerned, it was observed that in view of the aforesaid case, the petitioner has been found to be involved in conspiracy with certain criminals and, therefore, by keeping the petitioner in service, the reputation of the Police Department would stand adversely affected.

7. It is contended that only criminal trial was pending against the petitioner on the date of dismissal and the petitioner had not been convicted and, therefore, the punishment awarded is contrary to Rule 8(2)(a) of the Rules, 1991. Further submission is that during the pendency of the departmental appeal, the petitioner was acquitted by the Special Judge, Gorakhpur by order dated 25.07.1998 and when the said order was brought before the Appellate Authority, instead of allowing the appeal, the Authority has dismissed the appeal observing that despite his acquittal, it is clear that the petitioner somehow had been associated with the criminals and, hence, he was rightly dismissed invoking Rule 8(2) (b) of the Rules, 1991.

8. Learned counsel for the petitioner has further argued that no specific reason has been assigned as to why it was not reasonably practicable to hold inquiry against the petitioner though he was in jail since 16.02.1997. Shri Khare, in support of his submissions, has placed reliance upon the following Authorities:-

(a). Om Prakash Yadav v. State of U.P. & Ors. reported in 2012 SCC OnLine All 4112;

(b). Order dated 31.07.2023 passed in Writ A No.12271 of 2023 (Sushil Kumar v. State of U.P. And 3 Others).

9. Learned Standing Counsel, by referring to counter affidavit, submits that inquiry was not held as the petitioner was in jail, however, a contrary stand has been taken in various paragraphs of the counter affidavit that the petitioner did not participate in the inquiry and during inquiry on the basis of evidence collected, order impugned has been passed which does not require interference by this Court.

10. Having heard learned counsel for the parties, I find that law with regard to applicability of Rule 8(2)(b) of the Rules 1991 is well-settled as considered in the aforesaid Authorities.

11. Insofar as Rule 8(2)(a) is concerned, the argument of Shri Khare is misplaced as the said Rule was not invoked by the respondents while passing the orders impugned, therefore, "no conviction" on the date of passing of the dismissal order has no relevance. However, if the respondents relied upon non-holding of inquiry on the ground that petitioner was involved in the aforesaid case crime, the same also loses its significance, particularly, when the petitioner has been acquitted during the pendency of appeal.

12. Once, the Court is satisfied that no reason has been assigned as to why it was not reasonably practicable to hold inquiry against the petitioner and once, the dismissal order was passed by placing reliance upon registration of single case against the petitioner, in which he has already been acquitted and the order of acquittal

records that prosecution has failed to establish alleged guilt of the petitioner beyond reasonable doubt and there was no evidence against the petitioner, the orders impugned cannot sustain.

13. Since this Court has under identical circumstances remanded the matter to Authorities for holding inquiry in terms of Rule 14 of the Rules, 1991, while this Court proceeded to allow the writ petition with a direction for remand, Shri Siddharth Khare, learned counsel for the petitioner has argued that though in the aforesaid Authorities relied by him, this Court had remanded the matter to the Authorities, the matter should not be remanded in the present case as the matter is quite old and in every case remand is not necessary. In support of his submissions on this line, learned counsel has placed reliance upon judgment of Apex Court in the case of **Allahabad Bank And Others v. Krishna Narayan Tewari** reported in **(2017) 2 SCC 308**.

14. I have perused the aforesaid judgment of the **Allahabad Bank And Others** (supra). Insofar as the necessity to remand or not to remand the matter to the Disciplinary Authorities is concerned, following observations were made by the Hon'ble Apex Court in paragraphs 8 and 9 of the judgment which read as follows:-

"8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise

unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.

9. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30.11.2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the Bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised."

15. It is clear from the aforesaid observations that the concerned employee had attained the age of superannuation on 30.11.2011 i.e. during the pendency of the writ petition and on the date of decision by the Apex Court, he was 65 years of age. The Apex Court considering the physical ailments of the said employee i.e. heart-attack and stroke and physical disability and confinement to bed and also retirement during pendency of the writ petition, upheld the decision of the High Court in not remanding the matter back to the Authorities. In the present case, no such situation exists and the petitioner is still in service and even otherwise, considering the ground for dismissing the petitioner from service and in view of the order of acquittal, the scope of inquiry which this Court

proposes to be held, remand to the Disciplinary Authority would be appropriate exercise of power, the writ petition succeeds and is **allowed.**

16. The orders impugned dated 28.12.1997 and 31.10.1998 are **quashed.**

17. The respondents are at liberty to hold inquiry under the relevant provisions of Rules 1991 against the petitioner.

18. Since the matter is quite old and the order impugned was passed 26 years ago, in case there is no other allegation against the petitioner during the period for which this writ petition has remained pending and the inquiry is to be held only in relation to the registration of Case Crime No.209/97, in which, petitioner has already been acquitted, appropriate orders shall be passed taking into consideration the order of acquittal.

Order Date :- 26.10.2023
Jyotsana