

Court No. - 34

Case :- WRIT - A No. - 14623 of 2023

Petitioner :- Usman Kausar

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

Counsel for Petitioner :- Abhishek Rai

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the parties.
2. By means of this writ petition filed under article 226 of the constitution, the petitioner has questioned the order dated 09.08.2023 passed by Commissioner, Moradabad Division, Moradabad, whereby penalty has been imposed upon him in terms of award of adverse entry holding that his integrity is doubtful.
3. Though the order mentions that show cause notice was issued to the petitioner but the petitioner claims to have been never served with any show cause notice. It is on account of this argument advanced previously, this Court passed following order on 21st September, 2023:-

"1. Heard learned counsel for the parties.

2. The argument advanced by learned counsel for the petitioner is that while the Sub Divisional Magistrate concerned was served with a show cause notice for the alleged entry made regarding a case, petitioner was not served with any kind of show cause notice while he has been penalised as he was posted under the Sub Divisional Magistrate as Peshkar at the relevant point of time.

3. Learned Standing Counsel is allowed ten days' time to obtain instruction in the matter as to whether the petitioner was served with any show cause notice at any point of time prior to passing of the order which is quite penal in nature.

4. Put up this case immediately after fresh on 16.10.2023 amongst top ten cases."

4. Learned Standing Counsel has obtained instructions in the matter and placed the

same before this Court, which is taken on record.

5. As per the instructions, a show cause notice was issued to the Sub Divisional Officer and it was directed that appropriate decision would be taken after the reply was submitted by the Sub Divisional Officer concerned. However, it is very much clear that no decision has been taken in the matter till date and the petitioner has never been served with any notice, therefore, recital made in the order dated 09.08.2023 turns out to be false. Thus, on short question of non compliance of principles of natural justice, the order impugned dated 09.08.2023 deserves to be set aside and the writ petition, accordingly, deserves to be allowed.

6. In view of the above, the order dated 09.08.2023 is hereby quashed giving liberty to the respondents to issue a show cause notice to the petitioner afresh seeking his reply within a period of two weeks from today and petitioner would be submitting his reply within a further period of four weeks, thereafter appropriate decision shall be taken by the competent authority in accordance with law within next eight weeks after affording opportunity of personal hearing to the petitioner.

7. With the aforesaid observations, the writ petition stands allowed.

8. Learned Additional Chief Standing Counsel is directed to communicate this order to competent authority concerned within 48 hours.

Order Date :- 21.11.2023

Shiraz