

Court No. - 20

Case :- WRIT - A No. - 2786 of 2023

Petitioner :- Pradeep Kumar Singh

Respondent :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Yuva Kalyan Lko. And Another

Counsel for Petitioner :- Sudhir Pande

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Sudhir Pande, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Under challenge is the order dated 22.03.2023 whereby petitioner working on the post of In Charge Zila Yuva Kalyan Evam Pradeshik Vikas Dal Adhikari, Hardoi has been suspended from service pending departmental proceedings.

3. Learned counsel has submitted that a perusal of impugned order will make it evident that petitioner has been suspended on the ground of feeding wrong data entries regarding P.R.D. Home Guards.

4. It is submitted that impugned order is being challenged on the ground that they have been passed by the disciplinary authority on the dictates of the State Government without independent application of mind and recording any subjective satisfaction on the basis of material available with the disciplinary authority. It is also submitted that since impugned order has been passed in terms of Rule 4 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 at the dictates of the State Government, it deprives the petitioner from a right to appeal under Rule 11 of the aforesaid Rules. Learned counsel has also submitted that factually as well, petitioner cannot be held accountable for the allegations levelled against him since he was not posted in the relevant place at that time.

5. Learned counsel has placed reliance on judgments in Union of India and Another Vs. Ashok Kumar Aggarwal, (2013) 16 Supreme Court Cases 147 to buttress his submission.

6. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with the submission that Rule 4 of the Rules 1999 clearly provide a discretion on the disciplinary

authority for suspending any employee pending departmental proceedings. It is submitted that it is in exercise of discretionary power vested on the disciplinary authority that the impugned order has been passed. He has sought to distinguish the judgments cited by learned counsel for petitioner on the premise that the aforesaid judgments have not taken into account Rule 4 of the Rules 1999. It is also submitted that a charge sheet has already been issued to the petitioner to which he has filed his reply and inquiry proceedings shall be culminated shortly.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly the impugned order, it is evident that the same has been passed on account of directions issued by the State Government as has also been admitted in the counter affidavit in which the order dated 02.03.2023 passed by the State Government has been brought on record. The order dated 02.03.2023 has clearly issued a direction to the disciplinary authority to suspend petitioner pending disciplinary proceedings.

8. Hon'ble Supreme Court in the case of Ashok Kumar Aggarwal (supra), while placing reliance on judgment in the case of State of Orissa Vs. Bimla Kumar Mohanty (1994) 4 SCC 126, has clearly held as follows:-

"20. In State of Orissa v. Bimal Kumar Mohanty this Court observed as under: (SCC p. 133, para 13)

13. ... the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ... In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry, etc. ... It would be another thing if the action is actuated by mala fides, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing

departmental inquiry or trial of a criminal charge."

"22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc."

9. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is quite evident from a perusal of impugned order that there is absolutely no discussion by the disciplinary authority regarding independent application of mind to the material before the disciplinary authority which would require suspension of petitioner from service pending disciplinary inquiry. The order quite evidently states that petitioner is being suspended in pursuance of direction issued by the State Government dated 02.03.2023.

10. It is thus quite evident that impugned order of suspension has been passed at the dictate of the State Government without any independent application of mind by the authority concerned.

11. It is also quite evident that suspension order has been passed in terms of Rule 4 of the Rules of 1999 against which petitioner had right of appeal under Rule 11 of the aforesaid Rules but petitioner has been deprived of such a right of appeal since impugned order has been passed at the dictates of the appellate authority itself.

12. Hon'ble Supreme Court in case of Surjeet Ghosh (supra) as with regard to the aforesaid held as follows:-

"6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority. no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no

appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority, higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation, cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent/Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

13. The aforesaid judgment is also squarely applicable in the present facts and circumstances of the case.

14. Considering aforesaid discussion, it is evident that impugned order dated 02.03.2023 has been passed contrary to settled law has indicated hereinabove and is therefore quashed by issuance of writ in the nature of certiorari leaving it open to the opposite parties to conclude disciplinary proceedings against petitioner expeditiously in accordance with law. Since it has been submitted that petitioner has not yet been paid any subsistence allowance, liberty is granted to him to approach the authority for grant of such benefit which shall be considered in accordance with law within a period of two weeks from the date a certified copy of this order is produced before the concerned authority.

15. Consequently the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 11.10.2023

Satish