

Neutral Citation No. - 2023:AHC-LKO:76773

Court No. - 7

Case :- WRIT - A No. - 3044 of 2022

Petitioner :- Mukesh Kumar Singh

Respondent :- State Of U.P. Thru. Addl. Prin. Secy. Deptt. Of Transport Lko. And 2 Others

Counsel for Petitioner :- M.P. Raju

Counsel for Respondent :- C.S.C., Ratnesh Chandra

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, Shri Vaibhav Krishna and Shri Ratnesh Chandra, learned counsels appearing for respondents no. 2 & 3 and learned Standing Counsel appearing for respondent no. 1.
2. Instant petition has been filed praying for quashing of the order dated 27.10.2021 passed by respondent no. 3, a copy of which is Annexure No. 1 to the petition. Further prayer is for a writ of mandamus commanding the respondents to consider the case of the petitioner for promotion on the post of senior clerk with effect from the date batch-mates of the petitioner have been promoted.
3. Bereft of unnecessary details, the facts of the case are that the petitioner had been issued a charge sheet dated 26.02.2009. After inquiry, the services of the petitioner were terminated vide order dated 23.12.2010. The appeal and the revision filed by the petitioner against the said order were also rejected vide orders dated 25.04.2012 and 04.02.2015 respectively. Being aggrieved, the petitioner filed a claim petition No. 915 of 2015 in re: Mukesh Kumar Singh Vs. State Of U.P. and Others before the learned Public Services Tribunal (hereinafter referred to as "Tribunal"). The learned Tribunal, vide judgment and order dated 29.04.2016, a copy of which is Annexure No. 2 to the petition, set aside the impugned order of punishment, the appellate order as well as the order passed by the revisioning authority and directed for reinstatement of the petitioner. The respondents were given liberty to proceed against the petitioner afresh

after providing him the documents demanded by him and after obtaining the reply to the show cause notice.

4. In pursuance to the order passed by learned Tribunal, the petitioner was reinstated in services on 06.04.2016.

5. Subsequent thereto, the petitioner was issued with notice dated 16.07.2016 to show cause as to why the gratuity of the petitioner be not forfeited and the period of suspension be only treated for subsistence allowance.

6. The petitioner raised a challenge to the show cause notice by filing **Writ Petition No. 17594 (S/S) of 2016 in re: Mukesh Kumar Singh Vs. M.D. U.P. State Road Transport Corporation Tedhi Kothi and Others** and this Court, vide order dated 01.08.2016, a copy of which is Annexure No. 5 to the petition, directed that no proceedings pursuant to the letter dated 16.07.2016 shall be drawn against the petitioner.

7. Learned counsel for the petitioner states that the aforesaid interim order is still continuing till date and the writ petition is still pending.

8. Subsequent thereto, the petitioner staked his claim for promotion to the post of senior clerk w.e.f the date his juniors were promoted. His claim has been rejected by means of order impugned dated 27.10.2021 on the ground that as the disciplinary proceedings are pending against him consequently his case for promotion to the post of senior clerk cannot be considered.

9. Being aggrieved, the instant petition has been filed.

10. Contention of learned counsel for the petitioner is that when the learned Tribunal had itself quashed the proceedings and even the show cause notice that had been issued by the respondents subsequent thereto has been stayed by this Court and this Court has restrained the respondents to proceed further consequently, it cannot be said that the

disciplinary proceedings are pending against the petitioner and therefore, the respondents have patently erred in rejecting the claim of the petitioner for promotion on the ground of pending of disciplinary proceedings.

11. Placing reliance on the judgment passed by the Hon'ble Apex Court in the case of **Union of India Vs. K. V. Jankiraman** reported in **(1991) 4 SCC 109**, the contention is that the sealed cover procedure is to be adopted against the delinquent employee where a charge-sheet on the charge memo has been issued either in departmental proceedings or in criminal proceedings.

12. On the other hand, Shri Vaibhav Krishna and Shri Ratnesh Chandra, learned counsels appearing for respondents no. 2 & 3 argue that a perusal of the order passed by learned Tribunal would indicate that though the learned Tribunal had quashed the order of punishment, appellate order and revisional order yet the liberty had been granted to the Corporation to continue the proceedings from the stage of providing of documents demanded by the petitioner and obtaining his reply to the show cause notice. Thus, it is contended that the charge-sheet as issued to the petitioner dated 26.10.2009 still stands and consequently it would be deemed that the disciplinary proceedings are still pending against the petitioner and as such, there is no illegality and infirmity in the order impugned.

13. Having heard the learned counsels for the contesting parties and having perused the records what emerges is that initially the petitioner had been issued the charge-sheet dated 26.10.2009. After the departmental proceedings, the services of the petitioner had been terminated vide order dated 23.12.2010. The appeal and the revision filed by the petitioner were also rejected vide orders dated 25.04.2012 and 04.02.2015 respectively. Upon a challenge being raised to the aforesaid orders, the learned Tribunal, vide order dated 29.04.2016,

quashed the termination order, the appellate order and the revisional order and required the respondents to proceed afresh against the petitioner from the stage of providing him the documents demanded by him and after obtaining the reply to the show cause notice.

14. Thus, it is apparent that the learned Tribunal never quashed the charge-sheet rather it indicated the stage from which the proceedings were to be initiated i.e. to proceed against the petitioner after providing him the documents demanded by him.

15. Thus for all practical purposes, the disciplinary proceedings as initiated against the petitioner in pursuance to the charge-sheet dated 26.10.2009 are still pending against the petitioner.

16. The question which arises is that when disciplinary proceedings are pending against the petitioner whether the consideration for promotion of the petitioner cannot be done.

17. The issue is no longer res integra taking into consideration the law laid down by the Hon'ble Apex Court in the case of **K. V. Jankiraman (supra)** wherein the Apex Court has held that in case of pendency of disciplinary or criminal proceedings, the sealed cover procedure is to be adopted.

18. A perusal of the order impugned dated 27.10.2021 would indicate that the respondents have rejected the claim of the petitioner for promotion to the post of senior clerk on the ground that the departmental proceedings are pending against him. The said order cannot be said to be legally justified in the eyes of law keeping in view the law laid down by Hon'ble Apex Court in the case of **K. V. Jankiraman (supra)** wherein, as already indicated above, in case of pendency of disciplinary or criminal proceedings, the sealed cover procedure has to be adopted. Non adoption of the seal cover procedure against the petitioner during pendency of the disciplinary proceedings and rejection of consideration of his claim for promotion as emerges

from perusal of the order impugned dated 27.10.2021 cannot be countenanced in any manner.

19. Keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 27.10.2021, a copy of which is Annexure No. 1 to the petition, is quashed.

20. The matter is remanded back to the competent authority to consider the case of the petitioner for promotion to the post of senior clerk w.e.f the date his juniors were promoted in accordance with law and keeping in view the law laid down by Hon'ble Apex Court in the case of **K. V. Jankiraman (supra)**.

21. Let such consideration be done within a period of six weeks from the date of receipt of certified copy of this order.

Order date:-22.11.2023

Mohit Singh