

**Court No. - 20**

**Case :-** WRIT - A No. - 18702 of 2021

**Petitioner :-** Kashi Ram

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. P.W.D. Lucknow

**Counsel for Petitioner :-** Raj Kumar Upadhyaya R.K., Raj Kumar Upadhyaya (R.K.Upadhyaya)

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Mathur,J.**

**(Application No. 6 of 2022)**

Application has been filed seeking substitution of legal heirs of petitioner who is said to have passed away on 4.9.2022. The application is within time and no objection thereto have been filed till date. In the affidavit filed in support of application, it has been stated that applicants are the sole heirs of the deceased and cause to sue survives in them. In view of aforesaid, application is allowed. Consequential amendment in the memorandum of petition shall be incorporated during course of day.

**(Memo of Petition)**

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 3rd June, 2020 with regard to issuance of supplementary charge sheet against petitioner. Further prayer for quashing pending departmental inquiry as well as a direction to opposite parties to pay entire post retiral benefits including gratuity, leave encashment etc. along with interest has also been made.
3. It has been submitted that initially disciplinary proceedings were initiated against petitioner vide order dated 14th October, 2004 by issuance of charge sheet whereafter inquiry report was submitted on 29th June, 2007 and culminated in passing of punishment order dated 29th March, 2011 which was challenged in claim petition No. 424 of 2012 before Public Services Tribunal. The said claim petition was allowed vide judgment and order dated 30th July, 2015 setting aside the punishment order on the ground of defect in inquiry inasmuch as proper opportunity of hearing was not provided to petitioner. The said judgment and order was challenged by the State Government in writ petition No. 302 (S/B) of 2015 which was also allowed vide judgment and order dated 8th January, 2016

also setting aside the punishment order as well as order passed by the Tribunal while remitting the matter to inquiry officer to hold the inquiry afresh from the stage there was defect in inquiry proceedings.

4. It is submitted that in pursuance of aforesaid directions, inquiry was reinitiated and by means of report dated 26th December, 2017, charges levelled against petitioner were not found to be made out but by means of impugned order dated 3rd June, 2020, the disciplinary authority while noticing the said facts has directed issuance of supplementary charge sheet to petitioner. It has been submitted by learned counsel for petitioner that during pendency of aforesaid supplementary charge sheet and the present writ petition, the petitioner fell seriously ill and subsequently passed away on 4th September, 2022. It is submitted that since in the initial proceedings, petitioner has already been exonerated and proceedings pertaining to supplementary charge sheet has not attained finality, no further action can be taken against deceased petitioner and therefore the post retiral benefits are required to be paid to the heirs of deceased.

5. It has also been submitted that even otherwise once this Court by means of judgment and order dated 8th January, 2016 had remitted the matter to the inquiry officer to hold inquiry afresh from the stage of defect therein, it was beyond competence in jurisdiction of opposite parties to have issued a supplementary charge sheet particularly when in pursuance of directions issued by this Court, petitioner was exonerated by inquiry officer.

6. Learned State Counsel appearing for opposite parties has adverted to the counter affidavit to submit that after remand of proceedings by this Court vide judgment and order dated 8th January, 2016, the inquiry officer submitted his report on 26th December, 2017 whereby charges levelled against petitioner were not made out. It is submitted that thereafter the impugned order has been passed but could not culminate in passing of any final orders due to subsequent illness and death of petitioner.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that initial punishment order dated 29th March, 2011 already stands set aside which was also upheld by judgment and order dated 8th January, 2016 by Division Bench of this Court in Writ Petition No. 302 (S/B) of 2016. Even after remand, the inquiry report dated 26th December, 2017 has been submitted where also petitioner was exonerated as has been admitted in

paragraph 9 of the counter affidavit but by means of impugned order, a supplementary charge sheet dated 9th August, 2020 was issued to petitioner. It is admitted by opposite parties that even after issuance of supplementary charge sheet, no final orders have been passed thereupon and in the meantime the delinquent employee has passed away.

8. In view of aforesaid facts as well as the aspect that by means of judgment and order dated 8th January, 2016, this Court had remitted the dispute to the inquiry officer for reconsideration only with regard to charge sheet issued earlier and not for issuance of any supplementary charge sheet as well as the fact that in the meantime petitioner stood exonerated with regard to earlier charges and supplementary charge sheet has not culminated in passing of any final order, therefore is no further occasion for this court to advert to the impugned order dated 3rd June, 2020 as well as the supplementary charge sheet considering the death of delinquent employee since no useful purpose would be served in keeping the inquiry proceedings pending against a deceased person.

9. In view of aforesaid, the impugned order dated 3rd June, 2020 is hereby quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite parties to provide all service and post retiral benefits to heirs of the deceased Kashi Ram within a period of three months from the date a certified copy of this order is produced before the concerned authority.

10. Resultantly the petition succeeds and is allowed. Parties to bear their own cost.

**Order Date :- 27.10.2023**

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