

Court No. - 7

Case :- WRIT - A No. - 6024 of 2015

Petitioner :- Mumtaj Ahmad Ansari

Respondent :- Nagar Panchayat Katra Through Chairman
Gonda And Another

Counsel for Petitioner :- Yogendra

Mishra,D.K.Tiwari,Noorain Husain Khan,Rohit Tripathi,Shishir
Srivastava,Syed Zulfiqar Husain Naqv

Counsel for Respondent :- Rishi Kumar Tripathi,Virendra
Singh

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner as well as Shri Rishi Kumar Tripathi, learned counsel appearing for the respondents.

2. The instant petition has been filed praying for the following main reliefs:

"1. Issue a writ, order or direction in the nature of certiorari thereby quashing the impugned punishment order dated 06.08.2015 contained as annexure no.1 to the petition.

2. Issue a writ, order or direction in the nature of mandamus commanding the respondents to the allow the petitioner to work on the Tax cum Revenue Moharrir, Nagar Panchayat-Katra Bazar, Gonda and pay him salary and other benefits continuously since the date of termination order dated 06.08.2015, till the petitioner is in service."

3. The case set forth by the petitioner is that the petitioner was working on the post of Moharrir (tax cum revenue) under the respondents. The petitioner had been issued show cause notice in the year 2008 leveling allegations against him to which the petitioner submitted his supply. In pursuance thereof, an ex-parte Inquiry report was submitted. Thereafter the petitioner

was removed from service vide order dated 06.02.2009, a copy of which is annexure 2 to the petition.

4. Being aggrieved, the petitioner filed Writ Petition No.2289(S/S) of 2009 in Re: Mumtaz Ahmad Ansari Vs. Nagar Panchayat and Others. This Court vide judgment and order dated 07.08.2009, a copy of which is annexure 3 to the petition, set aside the removal order however, the respondents were granted liberty to initiate a proceeding afresh after giving a copy of the inquiry report to the petitioner. In pursuance thereof, the respondents issued a fresh charge sheet to the petitioner dated 22.06.2013, a copy of which is annexure 4 to the petition. The petitioner claims to have submitted his reply to the Inquiry Officer. An inquiry report dated 09.02.2015 was issued, a copy of which annexure 6 to the petition. The Inquiry Officer categorically recorded that in pursuance to the orders passed by this Court, the inquiry report was being given to the petitioner. He has further stated that as the earlier matter is the same as the present one, consequently he is not required to inquire into the matter. The earlier inquiry report dated 03.05.2008, a copy of which is annexure 8 to the petition, was also sent to the petitioner. The petitioner claims to have submitted reply to the same which did not find favour with the respondents, who vide order dated 06.08.2015, a copy of which is annexure 1 to the petition, have removed the petitioner from service.

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

6. The legal ground urged by learned counsel for the petitioner while challenging the order impugned is that this Court vide judgment and order dated 07.08.2009 set aside the earlier removal order and had given liberty to the respondents to initiate proceedings afresh after giving a copy of the inquiry

report to the petitioner. The respondents, instead of continuing with the matter after giving a copy of the earlier inquiry report to the petitioner, on their own accord, issued a fresh charge sheet dated 22.06.2013, but failed to hold any inquiry in pursuance to the said charge sheet rather the Inquiry Officer has indicated in his inquiry report that as the earlier matter is the same as the present one (in pursuance to the new charge sheet dated 22.06.2013) as such, he is not required to hold any inquiry and based on the said inquiry report, the removal order has been passed.

7. The argument is that when the respondents on their own accord issued a fresh charge sheet to the petitioner, consequently even if for the sake of argument, the petitioner did not submit any reply to the charge sheet, the respondents were required to go into the entire gamut of the inquiry and could have proceeded ex-parte but by no stretch of imagination could the earlier inquiry report have been relied upon while making new inquiry report rather no inquiry for name sake has been held by the Inquiry Officer and he has gone to the extent saying that he is not required to hold any inquiry as the matter is the same, as the earlier one.

8. It is contended that once no inquiry has been held consequently there cannot be any occasion for the respondents to have passed the impugned order of removal dated 06.08.2015 which merits to be set aside.

9. It is also contended that the petitioner has retired on attaining the age of superannuation on 31.01.2019.

10. On the other hand, Shri Rishi Kumar Tripathi, learned counsel appearing for the respondents argues that a full fledged inquiry has been held after issuing charge sheet dated

22.06.2013 considering the judgment passed by this Court dated 07.08.2009 and once the charges are one and the same i.e. the same charges as per the earlier inquiry report of the year 2009 and in terms of the fresh charge sheet dated 22.06.2013 consequently no error has been committed by the Inquiry Officer in not holding any inquiry and having ratified the earlier inquiry report and the disciplinary authority has correctly proceeded to pass the order impugned.

11. Having heard the learned counsel for the parties and perused the record, what emerges is that earlier the petitioner had been removed from service vide order dated 06.02.2009. The said order had been challenged before this Court by filing Writ Petition No.2289(S/S) of 2009. This Court vide judgment and order dated 07.08.2009 set aside the impugned order of removal granting liberty to the respondents to initiate proceedings afresh after giving a copy of the inquiry report to the petitioner so as to reach at a logical conclusion. The respondents, on their own accord instead of giving the inquiry report to the petitioner in terms of the order of writ Court, proceeded to issue a fresh charge sheet to the petitioner dated 22.06.2013. The Inquiry Officer submitted his report dated 09.02.2015 wherein he ratified / reiterated the earlier inquiry report dated 03.05.2008 and has said that as the charges of earlier inquiry are the same as per the new inquiry i.e. as initiated through charge sheet dated 22.06.2013, consequently the Inquiry Officer is not required to hold any inquiry and has found the charges proved. Based on the said inquiry report, the impugned order of removal dated 06.08.2015 has been passed.

12. As per the judgment of High Court dated 07.08.2009, the only thing which was required to be done by the respondents was to have given a copy of the earlier inquiry report to the

petitioner and to have proceeded from that stage yet the respondents on their own accord have issued a fresh charge sheet dated 22.06.2013. Consequently even if the petitioner did not submit his reply to the charge sheet (although reply has been submitted as stated by learned counsel for the petitioner) as such the respondents were required to hold a full fledged inquiry inasmuch as even for an ex-parte inquiry, the entire gamut of the inquiry has to be gone into. However, the Inquiry Officer has adopted a unique and a novel method while holding the inquiry in as much as he has stated in the inquiry report dated 09.09.2015 that as the basis of earlier inquiry is one and the same (as initiated against the petitioner vide charge sheet dated 22.06.2013), consequently he is not required to hold any inquiry. Once the respondents on their own accord have initiated fresh proceedings against the petitioner through charge sheet dated 22.06.2013, as such they were required to hold a full fledged inquiry against the petitioner and there was no occasion per which they would have been reiterated the earlier inquiry report and have restrained themselves from holding an inquiry in pursuance to the new charge sheet and only then would have passed the order of punishment. Thus for all practical purposes no inquiry was ever held against the petitioner in pursuance to the charge sheet dated 22.06.2013.

13. Keeping in view of the aforesaid discussion, the writ petition deserves to be allowed and is **allowed**. The impugned order of removal dated 06.08.2015, a copy of which is annexure 1 to the petition, is **quashed**. Consequences to follow.

14. However, it would be open to the respondents, if required, to proceed against the petitioner in accordance with law.

Order Date :- 6.11.2023
S. Shivhare