

Court No. - 20

Case :- WRIT - A No. - 4419 of 2023

Petitioner :- Dr. Mukesh Kumar

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy.
Panchayati Raj Deptt. Govt. Of U.P. Lko. And 7 Others

Counsel for Petitioner :- Anu Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Anu Pratap Singh, learned counsel for petitioner and learned State Counsel for opposite party nos. 1 to 5. In view of order being passed, notice to opposite party nos. 6, 7 & 8 stands dispensed with.

2. Petition has been filed challenging order dated 23.05.2023 imposing the punishment of dismissal from service upon petitioner. Further prayer for reinstatement of petitioner in service on the post of Village Panchayat Officer with consequential benefits has also been sought. It has been submitted that initially a complaint dated 23.03.2022 was made by one Ravi Shankar against the Pradhan Smt. Vimla Devi. It is submitted that the impugned order itself makes it evident that the aforesaid complaint was not against petitioner and in fact there is nothing to advert to any role of petitioner with regard to the complaint. It is submitted that in pursuance of aforesaid complaint, a preliminary inquiry was held whereafter a charge-sheet dated 28.07.2022 was issued to petitioner indicating five charges against him. It has been submitted that the preliminary enquiry so directed was against Rule 2 (c) (iv) of the U.P. Panchayat Raj (Removal of Pradhan, Up-pradhan and Members) Inquiry Rules, 1997 inasmuch as such a preliminary inquiry was required to be conducted only after directions of the District Magistrate concerned whereas in the present case, no such direction has been issued by the District Magistrate.

3. It is further submitted that upon receipt of the charge-sheet, petitioner replied to same annexing all the relevant documents to deny his complicity in the charges levelled against him. It has

been further submitted that subsequently the inquiry report was submitted on 09.05.2023 finding petitioner's guilty of charges levelled against him whereafter the impugned dismissal from services order has been passed.

4. It has been further submitted by learned counsel that a bare perusal of the inquiry report will make it evident that it has been conducted in violation of Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 inasmuch as neither the complainant nor any other witnesses were ever examined or permitted to be cross-examined by the petitioner to arrive at the veracity of the charges levelled against petitioner. It is also submitted that the inquiry report in fact relies upon statements which were recorded in the inquiry proceedings pertaining to the Pradhan and Secretary of the Gaon Sabha to prove charges levelled against petitioner but none of the aforesaid persons whose statements were recorded in the aforesaid inquiry wherever produced in the present inquiry proceedings. It is therefore submitted that the inquiry report has found petitioner guilty of charges levelled without such guilt established by any documentary or oral evidence and that furthermore even the documentary evidence adduced by petitioner along with his reply as notice in the inquiry report itself have been ignored.

5. Learned counsel has placed reliance on judgments rendered by Hon'ble Supreme Court in the cases of **Roop Singh Negi versus Punjab National bank and others MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398** and **State of Uttar Pradesh and others versus Saroj Kumar Sinha reported in (2010) 2 SCC 772** to buttress his submission.

6. Learned State Counsel has however refuted submissions advanced by learned counsel for petitioner with the submission that a perusal of inquiry report will make it evident that charges levelled against petitioner were found clearly established in the inquiry report on the basis of statements of person's concerned as well as on the documentary evidence which was taken into account by the Inquiry Officer. It is submitted that the inquiry report itself indicates the detailed manner in which the inquiry was conducted.

7. Upon consideration of submissions advanced by learned

counsel for parties and perusal of material on record, particularly the charge sheet, it is quite evident that six charges were levelled against petitioner pertaining to transfer of amounts to be paid to labourers directly in the account of the Pradhan and not in the account of the said labourers. Other charges pertain to payments being made without any bill voucher being on record as also procedural irregularities in issue of tenders.

8. A perusal of the inquiry report dated 09.05.2023 also makes it quite evident that charges levelled against petitioner have been found to be established primarily on the ground that petitioner was unable to adduce any evidence to rebut the charges levelled against him. Inquiry report also places reliance on statement of witnesses whose statements were recorded in separate inquiry proceedings pertaining to the Secretary of Gaon Sabha. The inquiry report does not at all advert to the complaint or the complainant ever being produced in the inquiry proceedings or any opportunity of cross-examination being provided to petitioner vis-a-vis the complainant. The persons whose statements are recorded in separate inquiry proceedings pertaining to secretary of the Gaon Sabha have been specifically relied upon without even indicating the name of such persons whose statements were recorded. No such persons appears to have been produced in the inquiry proceedings in order to substantiate charges levelled against petitioner.

9. The inquiry report also indicates in detail, reply which was submitted by petitioner and also adverts to certain documentary evidence produced by petitioner such as bill vouchers etc. which were adduced by petitioner in order to absolve himself of the charges levelled against him. However, in the finding recorded in the inquiry report, such documentary evidence does not find any mention. It is also noticeable that although Charge no. 1 pertain to depositing of remuneration for labour directly in the account of Gaon Sabha instead of the accounts of such labourers but the inquiry report does not at all advert to any bank statement or pass-book of the account of the Gram Pradhan in order to substantiate such a charge.

10. It appears from a bare perusal of inquiry report that the same has not been passed on the basis of any material on record

or statement of witnesses in these particular proceedings and in fact recourse has been taken to such evidence recorded in separate proceedings. It is quite evident that inquiry was conducted in a very cursory and hasty manner.

11. With regard to conduct of inquiry against a Government Official, the procedure is very well prescribed in Rule 7 of the Rules of 1999 but the same does not appear to have been adhered to in the present case.

12. The procedure required to be followed in disciplinary proceedings in order to maintain transparency and fairness have also been discussed by Hon'ble Supreme Court in the cases of Roop Singh Negi (supra) and Saroj Kumar Sinha (supra). The relevant portion of Roop Singh Negi (supra) is as follows:

"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

The relevant portion of Saroj Kumar Sinha (surpa) is as follows :

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that

the inquiry officer has acted as a prosecutor as well as a judge."

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

13. Upon applicability of aforesaid judgment in the facts and circumstances of the case, it is quite evident that neither the Rules of 1995 nor even the judgments of Hon'ble Supreme Court as indicated hereinabove have been followed. The inquiry report dated 09.05.2023 is clearly full of such lacuna as has been indicated in proceeding paragraphs.

14. The impugned punishment order has also been passed primarily on the basis of inquiry report without adverting to such lacuna in the inquiry proceedings. In the considered opinion of this Court, even if such a lacuna was present in the inquiry proceedings, it was the bounden duty of disciplinary authority to have adverted to the same and to have passed appropriate order for conduct of inquiry in accordance with law. However, the impugned order has also overlooked such lacuna in the inquiry report.

15. In view of aforesaid discussion, it is quite evident that not only the inquiry report but even the punishment order has been passed in violation of the statutory Rules of 1999 as well as the judgment rendered by Hon'ble Supreme Court on the subject.

16. That being so, the impugned order dated 23.05.2023 dismissing petitioner from service is quashed by issuance of a writ in the nature of certiorari granting liberty to opposite parties to initiate fresh proceedings from the stage of submission of reply by its petitioner. It is expected that the inquiry officer will adhere to the statutory rules and judgments rendered by Hon'ble Supreme Court on the subject and will

conduct the inquiry without such lacuna as has been indicated hereinabove. In case such an inquiry is initiated, the same shall be concluded within a period of four months from the date of re-initiation of such inquiry. For the purposes of such re-inquiry the petitioner shall be reinstated and paid regular salary.

17. Resultatly, the writ petition succeeds and is allowed. Parties to bear their own costs.

Order Date :- 1.11.2023

Satish