

Court No. - 20

Case :- WRIT - A No. - 6585 of 2023

Petitioner :- Ashok Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Forest Civil
Sectt. Lko And 2 Others

Counsel for Petitioner :- Dinesh Kumar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. Dinesh Kumar Tripathi, learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 26.05.2023 whereby recovery amounting to Rs. 41,335/- has been directed to be effected from post retiral benefits of petitioner. Further prayer for release of withheld dues along with interest has also been made.

3. It has been submitted that when petitioner was posted as Audit Officer /Godown Incharge in the Dudhwa Tiger Reserve, a compliant was made against him on 20.12.2017 whereafter a committee was constituted to inquire into the same which submitted its report dated 18.05.2018 whereafter correspondence ensued between the opposite parties resulting in passing of the impugned order.

4. It has been submitted that the impugned order has been passed on the basis of an Inquiry Committee Report dated 24.05.2023 finding petitioner guilty of charges levelled against him whereby the aforesaid recovery has been effected. It is submitted that the aforesaid order would in fact amount to a measure of punishment for which the opposite parties were required to follow the procedure indicated in Rule 7 of U.P. Government Servants (Discipline and Appeal) Rules, 1999 but in fact petitioner was never issued any charge sheet nor any inquiry proceedings took place to establish guilt of petitioner. It is further submitted that impugned order has been passed without any issuing any show cause notice and therefore petitioner has been deprived of opportunity of hearing.

5. It has been submitted that since petitioner superannuated on 31.01.2022 as Senior Clerk but was not be paid his post retiral benefits, he filed Writ-A No. 3327 of 2023 seeking a direction to opposite parties to take a decision on the inquiry report dated

18.05.2018. The aforesaid petition was disposed of vide order dated 05.05.2023 directing opposite parties to take a final decision in the departmental inquiry against petitioner within a period of one month from the date of passing of the order and for payment of post retiral benefits due to him.

6. It is submitted that impugned order has been passed in pursuance thereof but the opposite parties have not provided any opportunity hearing to petitioner.

7. Learned State Counsel has however refuted submission advanced by learned counsel for petitioner with the submission that impugned order has been passed in pursuance and in compliance of the direction issued by this Court on 05.05.2023 and finding petitioner guilty of charges levelled against him particularly with regard to embezzlement of Government funds. It is submitted that since charges levelled against petitioner was found established, there is no occasion to interfere with the order impugned.

8. Upon consideration submission advanced by learned counsel for parties and perusal on material on record, it is evident that petitioner has superannuated on 31.01.2022 as Senior Clerk but prior thereto some complaints were made against him in the year 2017, in pursuance of which some preliminary inquiry proceedings were held by the opposite parties and report dated 18.05.2018 was submitted but no final decision thereupon was taken.

9. A perusal of the impugned order as well as the counter affidavit does not make it evident that prior to passing of impugned order, any departmental proceedings or even show cause notice was issued to petitioner. It appears that while passing the order dated 05.05.2023, this Court was not made aware of the fact that there was no departmental inquiry pending against petitioner at that time and only preliminary inquiry had been conducted. Neither the impugned order nor even the counter affidavit adverts to any show cause notice having been issued to petitioner prior to passing of the impugned order. The order on the face of it has been passed on ex-parte basis which amounts to civil penalty being imposed upon post retiral benefits of petitioner.

10. It is settled law that in case any order is required to be passed against an employee adversely affecting his rights, the least which is required to be done is provide an opportunity of hearing to such a person by means of the procedure indicated in the Rules of 1999. Such a course of action having not been taken by the opposite parties renders the impugned order

vitiated.

11. Ordinarily in such a case, the dispute is remitted to the disciplinary authority for taking a final decision after affording of hearing to the delinquent employee but since in the present case, petitioner has already admittedly superannuated from service, such a course of action is not available.

12. In view of aforesaid discussion, the impugned order dated 26.05.2023 is hereby quashed by issuance of the writ in the nature of certiorari. Further writ in the nature of mandamus is issued commanding the opposite parties to pay the withheld post retiral dues of petitioner amounting to Rs. 41,335/- within a period of four weeks from the date a certified copy of this order is produced before the said authority.

13. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 28.10.2023

Satish