

Court No. - 20

Case :- WRIT - A No. - 6751 of 2023

Petitioner :- Ajay Singh

Respondent :- State Of U.P. Thru. Chief Secy. Lko. And 5 Others

Counsel for Petitioner :- Vireandra Kumar Pandey, Surya Mani Singh

Counsel for Respondent :- C.S.C., Raj Kumar Upadhyaya
(R.K.Upadhyaya)

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties 1 to 5 while notice on behalf of opposite party no.6 has been accepted by Mr. R.K.Upadhyaya, Advocate.

2. On 15.09.2023, the following order had been passed:-

"1. Heard learned counsel for petitioner and learned State Counsel for opposite parties 1 to 5 and Mr. R. K. Upadhyaya, learned counsel for opposite party no.6.

2. Petition has been filed challenging orders dated 01.05.2023 and 29.05.23 suspending petitioner from service while initiating disciplinary proceedings against him.

3. It has been submitted by learned counsel for petitioner that aforesaid impugned action has been initiated against petitioner only on the basis of complaint made by one Bhagat Singh as indicated in the charge sheet itself. It is further submitted that aforesaid complaint is unaccompanied by an affidavit as is required in terms of Government Order dated 01.08.1997 without which cognizance of complaint could not have been taken.

4. With regard to said submissions, learned State Counsel is granted a week's time to seek instructions.

5. List on 22.09.2023, as fresh."

3. In pursuance thereof, the opposite parties have filed a better affidavit dated 06.12.2023 and in paragraph 5(iv), it has been admitted that an undated complaint was made against petitioner by one Mr. Bhagat Singh which was not supported by any affidavit.

4. Learned State Counsel on the basis of instructions and affidavits filed already on record, however, seeks to distinguish the matter with submission that although the complaint made against petitioner was not only undated but unsupported by any affidavit but at the same time it was acted upon and preliminary

enquiry was held in which prima facie illegal gratification was found having been received by petitioner. It is therefore submitted that in pursuance thereof, the enquiry has been instituted.

5. However, despite the distinction sought to be drawn by learned counsel for opposite parties, it is evident from their own admission that the enquiry initiated against petitioner was on the basis of a complaint which was not only undated but not supported by any affidavit and was therefore in violation of Government Order 01.08.1997 which specifically provides that no cognizance of any complaint can be taken until and unless it is duly supported by an affidavit.

6. In such circumstances, not only impugned suspension order but even the initiation of present enquiry against petitioner being clearly against aforesaid Government Order, the said orders are hereby quashed by issuance of a writ in nature of Certiorari leaving it open to the opposite parties to act independently instead of on the basis of complaint in case there is sufficient material to record a prima facie finding against petitioner.

7. Consequently, the petition succeeds and is allowed. The parties shall bear their own costs.

Order Date :- 15.12.2023

kvg/-