

Court No. - 20

Case :- WRIT - A No. - 7017 of 2023

Petitioner :- Rajendra Ram

Respondent :- State Of U.P. Thru. Prin. Secy. Irrigation And Water Resource Deptt. U.P. Govt. Lko. And 5 Others

Counsel for Petitioner :- Amit Kumar Awasthi, Shubham Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Counter affidavit filed today is taken on record.
2. Heard learned counsel for the petitioner and learned State Counsel for opposite parties.
3. On 21.09.2023, the following order had been passed:-

"Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

Petition has been filed challenging charge sheet dated 4th August, 2023 and the order dated 14th August, 2023.

It has been submitted that petitioner superannuated in the year 2020 on the post of Junior Engineer whereafter recovery was directed against him vide order dated 9th September, 2020 which was challenged in writ A No. 8531 of 2021. The said writ petition was allowed vide judgment and order dated 15th February, 2023 primarily on the ground that due opportunity of hearing had not been given to petitioner. However liberty was granted to opposite parties to proceed against petitioner in accordance with law if they so desired.

It is submitted that impugned charge sheet has been passed about three years from petitioner's superannuation without any sanction under Article 351-A of the Civil Service Regulations.

Learned State Counsel with regard to aforesaid is granted two weeks time to file a short affidavit to bringing on record any sanction order passed under Article 351-A of the Civil Service Regulations.

List on 6th October, 2023 as fresh."

4. In pursuance thereof, a short counter affidavit filed today by the opposite parties is taken on record.
5. A perusal of the aforesaid short counter affidavit makes it evident that no sanction as required under Article 351-A of the

Civil Service Regulations has been accorded prior to issuance of the impugned charge-sheet dated 04.08.2023 although the petitioner has superannuated on 30.06.2020.

6. It has been submitted that earlier petitioner had filed Writ-A No.8531 of 2021 challenging order dated 09.09.2020 whereby recovery was initiated against petitioner. The said petition was allowed vide judgment and order dated 15.02.2023. The judgment and order records the fact after perusing the counter affidavit that order impugned therein was passed without any proper departmental proceeding or without affording him any opportunity of hearing. It has also been observed that merely requiring a person to hand over charge of a post cannot result in issuance of recovery of such a huge amount against petitioner. However, liberty was granted to opposite parties to proceed against petitioner in accordance with law.

7. Considering the aforesaid facts and particularly the observations of this Court in the earlier judgment and order dated 15.02.2023, it is evident that even prior to petitioner's superannuation, no departmental proceedings were held and straight away the recovery order dated 09.09.2020 had been passed which was quashed in Writ-A No.8531 of 2021.

8. In view of liberty granted to the opposite parties in the aforesaid writ petition, the impugned charge-sheet dated 04.08.2023 has been issued.

9. The aforesaid facts make it evident that even prior to superannuation of petitioner, no charge-sheet had been issued to him instituting departmental inquiry against him and the charge-sheet has been issued to petitioner only on 04.08.2023.

10. Provisions of Article 351-A of the Civil Service Regulations clearly indicate that the Governor reserves to himself the right of withholding or withdrawing a pension or ordering recovery from the pension only if a person has been found guilty of grave misconduct or of having cause pecuniary loss to the State during services rendered by him. The proviso indicates exceptions whereunder such departmental proceedings can be instituted after superannuation of such a person.

11. The mandatory condition of Article 351-A of the Civil Service Regulations therefore, clearly stipulate that once an employee has superannuated from service, disciplinary proceedings can be initiated against him only by issuance of a charge-sheet after due sanction of the Governor under Article 351-A of the Civil Service Regulations.

12. In the present case, as has already been observed by this Court in the earlier writ petition that no departmental proceedings were held prior to issuance of the earlier recovery order dated 09.09.2020 coupled with the fact that a completely new departmental proceedings has been initiated by means of the impugned charge-sheet dated 04.08.2023 without sanction of Governor, such a charge-sheet is clearly vitiated for being contrary to the mandatory conditions of Article 351-A of the Civil Service Regulations.

13. In view of aforesaid, the impugned charge-sheet dated 04.08.2023 is quashed by issuance of a writ in the nature of certiorari.

14. Ordinarily in such circumstances a liberty is generally granted to the State Government to initiate fresh proceedings in accordance with law but in the present case, this Court observes the facts that such a liberty has already been granted to the opposite parties in the first round of litigation by means of judgment and order dated 15.02.2023. It is also a fact that the petitioner has superannuated in the year 2020 and neither any departmental proceeding was initiated against him at the time of his service nor even three years thereafter. In such circumstances and particularly the observations made by this Court in its judgment and order dated 15.02.2023 that recovery may not ensue for the charge levelled against petitioner, this Court does not find any occasion to grant liberty to the opposite parties for the proceeding afresh against the petitioner.

15. Accordingly, the writ petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 1.11.2023

Satish