

Court No. - 20

Case :- WRIT - A No. - 7161 of 2023

Petitioner :- Kamla Pati Chaudhary

Respondent :- State Of U.P Thru. Addl. Chief Secy. /Prin. Secy. Excise Deptt. Lko. And And Another

Counsel for Petitioner :- Birendra Kumar Yadav, Satendra Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Rejoinder affidavit filed on behalf of the petitioner today is taken on record.
2. Heard Shri Kapil Dev, learned Senior counsel assisted by Shri B.K. Yadav, learned counsel for the petitioner and learned counsel for the State.
3. The instant writ petition has been filed seeking a direction to opposite parties to open the sealed cover envelope pertaining to petitioner for implementing recommendations of the Departmental Promotional Committee dated 14th August, 2023 regarding consideration of petitioner for promotion to the post of Deputy Excise Commissioner, ignoring the effect of disciplinary proceedings initiated by charge sheet dated 6th April, 2022.
4. It has been submitted that earlier a charge sheet was issued to petitioner on 6th April, 2022, by which petitioner was placed under suspension, which was challenged by the petitioner in Writ-A No.995 of 2023. The said petition was disposed of vide order dated 15th February, 2023, in which statement of learned counsel for the State regarding completion of inquiry as well as passing of final orders were indicated. It is submitted that the inquiry report was required to be submitted within a period of two months and disciplinary authority was also required to pass final orders within a period of one month thereafter. Although, the inquiry report was submitted within the time frame, but final orders have not been passed till date.
5. Learned counsel for petitioner has placed reliance on the Full Bench decision of this Court in the case of ***Abhishek Prabhakar Awasthi Vs. New India Assurance Company Limited reported in 2014 (6) ADJ 641*** to claim benefit of the same, particularly in view of the fact that no application for extension of time to conclude inquiry proceedings has been filed by the opposite parties. Learned counsel has also adverted the Rules 8 and 9 of U.P. Government Servant (Discipline and

Appeal) Rules, 1999 and submitted that the inquiry has not been concluded in stipulation of the aforesaid Rules either.

6. Learned counsel for the State appearing on behalf of opposite parties has refuted submission advanced by learned counsel for petitioner placing reliance on the counter affidavit with the submission that after submission of the inquiry report, petitioner was issued a show cause notice, to which he replied, but thereafter he was granted opportunity of personal hearing by letter dated 29th March, 2023 indicating a date for his appearance. However, the petitioner did not appear and, therefore, another opportunity of hearing was granted to him twice thereafter by letters dated 29th April, 2023 and 3rd June, 2023, but petitioner failed to avail such opportunity and subsequently appeared only on 14th June, 2023, whereafter, by order dated 4th October, 2023, suspension order pertaining to petitioner was revoked and the matter was referred to Public Services Commission for advice, whereafter final decision is to be taken in the matter. It is also submitted that even in the directions issued by this Court vide order dated 15th February, 2023, petitioner was directed to cooperate in the inquiry proceedings and since petitioner has not fully cooperated in the proceedings as indicated herein-above, he is not entitled to benefit of the decision of Full Bench of this Court.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that vide order dated 15th February, 2023 passed by this Court earlier, the statement of learned counsel for the State indicating a time frame of two months for filing of the inquiry report and of one month thereafter for conclusion of the proceedings was indicated. The petitioner was directed to fully cooperate with the same, failing which, it was kept open to the opposite party to extend time to the said extent.

8. A perusal of order dated 15th February, 2023 will make it evident that petitioner was directed to cooperate fully in inquiry proceedings and the inquiry report was required to be submitted within a period of two months. It is undisputed that the inquiry report has thereafter been submitted within the aforesaid time frame on 06th March, 2023. It is also evident that a show cause notice was issued to petitioner on the same date, i.e., 6th March, 2023, whereafter reply was also submitted by petitioner on 20th March, 2023 through speed post.

9. In such circumstances, in considered opinion of this Court, the petitioner cannot be said to have not cooperated fully in the inquiry proceedings as required in the order dated 15th February, 2023. Delay on the part of the opposite parties has

occasioned due to requiring the petitioner to attend personally for giving opportunity of hearing subsequent to the submission of the inquiry report.

10. Rules 8 and 9 of U.P. Government Servant (Discipline and Appeal) Rules, 1999 pertain to procedure required to be adopted after submission of inquiry report. There is no such provision either in the rules or any such circular indicated by opposite parties, where an opportunity of hearing is required to be granted to a delinquent employee after submission of the inquiry report particularly in case the disciplinary authority is in agreement with the inquiry report. Even otherwise, once a time frame had been stipulated by this Court, it was incumbent upon the opposite parties to have adhered to the same and in case petitioner did not avail himself of an opportunity of hearing, final orders were required to be passed within the time frame indicated by this Court.

11. In the Full Bench decision in the case of Abhishek Prabhakar Awasthi (supra), consequences of not adhering to the time frame indicated by this Court, have clearly been enunciated. The Full Bench decision has clearly adverted to the effect that in case, time frame as directed by this Court cannot be adhered to, the employer has to file an application seeking extension of time for conclusion of such inquiry proceedings. In paragraph 20 of the writ petition, it has been specifically averred that despite expiry of time frame for conclusion of the inquiry proceedings, no application for extension of time has been sought by opposite parties. The contents of paragraph 20 of the writ petition, have not been denied in paragraph 11 of the counter affidavit.

12. In such circumstances, it is quite evident that petitioner had fully cooperated in the inquiry proceedings as directed by this Court and there was no occasion for opposite parties to have repeatedly insisted on his personal appearance thereafter.

13. In view of aforesaid facts and particularly admission on part of opposite parties as indicated in the counter affidavit that final orders have not been passed even till today, this Court is of the considered opinion that the opposite parties cannot take benefit of their own wrong. Although, in the counter affidavit, it has been indicated that the matter has thereafter been referred to the Public Services Commission for its advice/opinion, but no date of any such letter has been indicated.

14. In view of aforesaid discussions, it is evident that continuation of inquiry proceedings against the petitioner is against the dictum of Full Bench of this Court in the case of

Abhishek Prabhakar Awasthi (supra).

15. Considering the aforesaid, inquiry proceedings pending against the petitioner initiated vide charge sheet dated 6th April, 2022 are hereby declared to be null and void. Consequently, a writ in the nature of mandamus is issued directing opposite parties to open the sealed cover envelope for implementing recommendations of the Departmental Promotional Committee pertaining to petitioner dated 14th August, 2023 and for taking consequential action forthwith.

16. In view of aforesaid, the writ petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 3.11.2023

Ashutosh Pandey