

Neutral Citation No. - 2023:AHC-LKO:35985

Court No. - 8

Case :- WRIT - A No. - 7888 of 2022

Petitioner :- Anjali Chaurasia

Respondent :- State Of U.P. Thru. Addl Chief Secy. State Tax Deptt.
Govt Of U.P. Civil Sectt Lko And 5 Others

Counsel for Petitioner :- Avinash Chandra

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. The present petition, under Article 226 of the Constitution of India has been preferred by the petitioner, who is at present Assistant Commissioner, Commercial Tax, Government of Uttar Pradesh, for the following reliefs:-

"I) Issue an appropriate writ, order or direction in the nature of certiorari quashing the order dated 21.04.2022 annexed a Annexure No. 1;

II) Issue an appropriate writ, order or direction in the nature of mandamus directing the respondent to allow the petitioner to work on the post Assistant Commissioner, State Tax Department and pay her regular salary;

III) Issue ad-interim direction to the aforesaid effect.

III) to issue a writ, order or direction which the Hon'ble court may deem fit and proper in the interest of justice looking to the fact and circumstances of the case; and

IV) Issue order or direction commanding the opposite parties to pay the cost in favour of the petitioner."

2. The petitioner, after selection, was appointed on the post of Assistant Commissioner, Commercial Tax in the year 2014. On transfer of Mr. Sandeep Tiwari, Assistant Commissioner, Commercial Tax, Mobile Squad, Barabanki to Range-5 Ayodhya on 03.09.2020, the petitioner took charge of the post of Assistant Commissioner, Mobile Squad, Barabanki on 07.09.2020.

3. The Joint Commissioner, Special Investigation Branch (for short "SIB"), State Tax, Ayodhya Region-B, Ayodhya on 10.09.2020 issued

a direction that the petitioner should be accompanied with her subordinate officer, Commercial Tax Officer, during inspection/checks.

4. On 19.11.2020, the petitioner intercepted vehicle bearing registration no.HR38AA-6286 at Safedabad, Barabanki. Mobile Squad Unit Barabanki consists of one Assistant Commissioner and two Commercial Tax Officers, along with driver, peon and police staff. The work of the Mobile Squad is integrated team work. The Joint Commissioner, SIB, State Tax, Ayodhya Range-B, Ayodhya had issued written instructions dated 10.09.2020 that the petitioner should conduct road inspections with complete team.

5. The e-way bill, produced by the driver of the vehicle no. HR38 AA - 6286, was dated 18.11.2020. The gross weight of the vehicle no. HR38AA-6286 was found to be 15170 kilograms, whereas the bare weight of the vehicle was 5570 kilograms. Thus, the net weight of the goods/material in the vehicle was approximately 9.500 tons, contrary to the wight (7.500 tons) mentioned in the relevant documents for transporting the material in the vehicle.

6. According to the petitioner, the driver of the vehicle again produced the second invoice, mentioning 2505 kilograms of old metal scrap in the vehicle, without any e-way bill for the said material. When certain discrepancies were found in the documents, a detailed physical verification along with complete videography was required to have been done as per the settled enforcement norms. The petitioner had shown that the plastic scrap was 7.00 tons and metal scrap was only to the extent of 2.500 tons. The petitioner passed detention order under Section 20 of the Integrated Goods and Service Tax, 2017 read with Section 129(1) of The Central Goods and Services Tax Act, 2017. It is said that on 21.11.2020 itself a demand notice was issued by the petitioner. The owner of the goods, Mrs. Sweetly Goyal accepted the

liability and paid the tax and penalty to the tune of Rs.90,250/- on the same day, just after one minute of physical verification.

7. A complaint was received from one Mr. Raj Kumar, Patna, Bihar against the petitioner in respect of interception of the vehicle no. HR38AA-6286 on 19.11.2021-. The Additional Commissioner, SIB, Commercial Tax, Ayodhya Region, Ayodhya vide Office Letter No. 624 dated 11.02.2021 directed the Joint Commissioner, SIB to conduct a preliminary inquiry in respect of the allegation made by said Mr. Raj Kumar, Patna, Bihar after requiring from the said complainant an affidavit in respect of the allegation and giving opportunity of hearing.

8. As the complainant had not given his complete address, mobile number, e-mail id etc, notice sent to him was returned back and no contact could be established from the complainant, Mr. Raj Kumar. However, the owner of Shri Raj *Dharmkanta*, where the vehicle was weighted after it got loaded, told that the vehicle no. HR38AA-6286 was weighted on 16.11.2020, without any load on it. The allegations made in the complaint were independently enquired into.

9. The driver of the vehicle no. HR38AA-6286 was Mr. Nagendra Kumar, who was carrying the material of Khatoor Shyam Traders. He produced invoice issued by Khatoor Shyam Traders to Mr. Mukesh Kumar, Delhi dated 18.11.2020 after the vehicle was intercepted. During the preliminary inquiry, the petitioner was issued show-cause-notice to which she submitted her reply. Thereafter, the preliminary inquiry report dated 29.10.2021 was submitted.

10. The finding of the preliminary technical inquiry report would disclose that no physical verification of the vehicle in question was conducted and, no entry was made regarding physical inspection of vehicle no. HR38AA-6286. The petitioner submitted fabricated evidence in respect of the physical verification of the vehicle,

mentioning wrong facts. The CD in which videos were made by the petitioner would disclose that there was no plastic scrap in the vehicle no. HR38AA-6286, which was a container and the plastic scrap of 7.00 tons would not have been loaded in the said container. Whole material was metal scrap. It was further noticed in the technical inspection report that according to the report generated by the petitioner, the physical inspection of the vehicle was conducted on 21.11.2020 at around 5.1 p.m. and soon thereafter, within one minute i.e. at 5.2 p.m., the owner of the goods made payment of the tax and penalty. Notice and order was passed within 28 minutes after physical inspection got done. After technical inquiry report was received, a Three Members Inquiry Committee was constituted. The Three Members Inquiry Committee report dated 28.12.2021 would disclose the following findings recorded in it:-

- "(1) Physical verification is not done on the scheduled date.*
- (2) No record of physical verification is found in prescribed physical verification register.*
- (3) In complete and manipulated partial physical verification as well as incomplete videography is done by the petitioner for the purpose of tax evasion.*
- (4) No claim for payment for physical verification.*
- (5) The so-called incomplete videography of physical verification does not show any traces or evidence of plastic scrap.*
- (6) The show called incomplete videography shows exclusively the evidence of metal scrap.*
- (7) The owner of loaded truck deposited the exact amount of tax and penalty just after one minute of manipulated physical verification, even before issuing of show-cause-notice/final assessment order.*
- (8) The seized truck was a container vehicle (MCV) in which 7.00 ton plastic scrap (in bags or jhall) cannot be loaded because of its huge expanded volume.*
- (9) Audio clip recorded in mobile regarding conversation between the related parties and departmental officers are also against the petitioner's integrity."*

11. In the preliminary inquiry, it was concluded that the seized truck/container no. HR38AA-6286 was loaded with 9.500 tons metal scrap, but the petitioner conspired with the truck owner and converted it into 7.500 tons plastic scrap and 2.500 tons metal scrap on which the tax and penalty was imposed and the same was paid by the owner to the extent of Rs. 90,250/- within one minute of the physical inspection, however, the show-cause-notice and final order was passed subsequently.

12. Considering the said two reports i.e. technical and preliminary, the petitioner was placed under suspension by the competent authority vide the impugned order dated 21.04.2022 to secure the proper evidence and fair and impartial disciplinary inquiry against her.

13. As the vehicle in question was carrying 9.500 tons metal scrap, the tax and penalty would have been to the extent of Rs. 10 Lakhs, however, it is alleged that with the collusion and for extraneous reason/consideration, the petitioner had shown 2.500 tons plastic scrap for which the owner paid the tax and penalty within one minute after the inspection. Though the inquiry was set up after receiving the complaint from said Mr. Raj Kumar, but the subsequent technical inquiry report and preliminary inquiry report would disclose that all the relevant materials and evidence have been taken into account, including the reply submitted by the petitioner, before come to the preliminary findings against the petitioner.

14. Heard Mr. Vivek Raj Singh, learned Senior Advocate, assisted by Mr. Avinash Chandra, representing the petitioner, as well as Mr. Sandeep Sharma, learned Standing Counsel, representing the respondents-State Authorities, and gone through the entire record.

15. On behalf of the petitioner, Mr. Vivek Raj Singh, learned Senior Advocate, submits that no preliminary inquiry could have been instituted on complaint of Mr. Raj Kumar, as the same was not

supported by an affidavit, and his whereabouts and details could not be known later on, therefore, the said complaint was anonymous one. It is stated that the Government had issued Orders dated 09.05.1997 and 01.08.1997 that anonymous complaint should not be entertained. However, if the complaint is received from some important person then it should be ensured that whether it was actually sent by the said important person. If anonymous complaint is received from any other source, the affidavit of the complainant should be sought and, he should be directed to provide evidence in that regard. The Government issued again Order on 19.04.2012 that the earlier orders issued by it on 09.05.1997 and 01.08.1997 should be strictly complied with. It is, therefore, submitted that since the complaint was anonymous one, without being accompanied by an affidavit, the preliminary inquiry ought not to have been set up, and further action, taken pursuant to the preliminary inquiry, including placing the petitioner under suspension and setting up the departmental inquiry, are to be quashed.

16. The next submission made on behalf of the petitioner by the learned Senior Advocate is that the petitioner passed order imposing tax and penalty of Rs.90,250/- in exercise of quasi-judicial power. The said order has not been challenged in the revision or appeal and the same has attained finality, therefore, the departmental proceedings cannot be set in motion on the basis of the said quasi-judicial order dated 21.11.2020. The learned Senior Advocate, appearing for the petitioner, places reliance upon the following cases:-

1. ***(1993) 2 SCC 56 (Union of India and others Vs. K.K. Dhawan);***
2. ***(1999) 7 SCC 409 (Zunjarrao Bhikaji Nagarkar Vs. Union of India and others);***
3. ***(2006) 5 SCC 680 (Union of India and others Vs. Duli Chand);***
4. ***(2007) 4 SCC 247 (Ramesh Chander Singh Vs. High Court of Allahabad and another); and***

5. (2019) 10 SCC 640 (Krishna Prasad Verma (Dead) through Legal Representatives Vs. State of Bihar and others)

17. On the other hand, Mr. Sandeep Sharma, learned Standing Counsel, submits that the suspension order dated 21.04.2023 as well as disciplinary proceedings initiated are based on preliminary inquiry report and substantial evidence collected regarding misconduct and *malafide* exercise of power by the petitioner. If some complaint is received regarding misconduct of a Government servant though it is not supported by an affidavit, the Department is not barred to independently enquire into the matter of grave misconduct such as committed by the petitioner. It is submitted that the Government Orders dated 09.05.1997 and 01.08.1997 define general guidelines and norms related to general complaint disposal mechanism. If the allegations have been independently enquired into, and it has been found that the Government servant *prima facie* has committed grave misconduct, the Department is not barred from initiating the departmental proceedings for such misconduct against a Government servant. It is further stated that if a Government servant, functioning as quasi-judicial authority, passes an order in *malafide* exercise of the power, for extraneous consideration, and such allegations have been *prima faice* found to be correct in the preliminary inquiry, the departmental proceedings are to be instituted against such an employee, and he/she cannot get away by saying that the order was passed by him/her in exercise of quasi-judicial power, and since the same has not been challenged in revision or appeal, no disciplinary proceedings can be instituted against him/her.

18. I have considered the submissions advanced by the learned Senior Advocate, on behalf of the petitioner, as well as learned Standing Counsel, on behalf of the respondents.

19. Before proceeding with the merit of the case, some developments, which have taken place in the present case, are required to be taken note of, which are as follows:-

(i) When this writ petition was instituted, the coordinate Bench passed an interim order on 28.11.2022 to the extent that till the next date of listing, operation and effect of the impugned order dated 21.04.2022 would remain stayed. However, the respondents were given liberty to proceed with the disciplinary proceedings, without being influenced by the findings recorded in the interim order dated 28.11.2022. The respondents were also given liberty to post the petitioner at any place, considering the fact that disciplinary proceedings are pending against her.

(ii) The petitioner challenged the said interim order by filing intra-Court Special Appeal Defective No. 40 of 2023, which was allowed by the Division Bench vide judgment and order dated 01.02.2023, setting-aside the interim order dated 28.11.2022 whereby the coordinate Bench had given liberty to the respondents to proceed with the disciplinary proceedings, without being influenced by the findings recorded in the interim order dated 28.11.2022 as well as the liberty to the respondents to post the petitioner at any place, considering the fact that the disciplinary proceedings were pending against her. Paras 26, 27, 28 and 29 of the judgment and order dated 01.02.2023 passed by the Division Bench in intra-Court Special Appeal Defective No. 40 of 2023 are extracted herein below:-

"(26) The disciplinary proceedings against the appellant have been initiated merely because the assessee has deposited the penalty within a very short span of time which raised a suspicion with regard to the penalty order passed by the appellant. In Zunjarrao Bhikaji Nagarkar (Supra), the Hon'ble Supreme Court has categorically held that the disciplinary proceedings against an officer cannot take place on information, which is vague and

indefinite and suspicion has no role to play in such matters when the department has taken a conscious decision not to challenge the order passed by the appellant and has allowed the same to attain finality. Prima facie, it appears at this stage that the disciplinary proceedings cannot be drawn against the appellant to punish her for having passed the aforesaid order.

(27) In view of the aforesaid discussion, we are of the view that the respondents ought not to have been given liberty to proceed with the disciplinary proceedings against the appellant and to post her anywhere considering the facts that the disciplinary proceedings are pending against her.

(28) Accordingly, the instant special appeal is allowed. The order dated 28.11.2022 passed by the Hon'ble Single Judge in Writ-A No. 7888 of 2022 : Anjali Chaurasia Vs. State of U.P. and 5 others, so far as it provides that "Respondents are at liberty to proceed with the disciplinary proceedings, without being influenced by the findings recorded in this order. The respondents are also at liberty to post the petitioner at any place, considering the fact that disciplinary proceedings are pending against her" is hereby set-aside.

(29) It is clarified that while deciding the case on merits, Hon'ble Single Judge shall not be guided or influence by any observations made hereinabove, which have been made only for the purposes of disposal of the instant appeal.

(iii) The State Government had challenged the said order before the Supreme Court by filing Special Leave to Appeal No.9042 of 2023, and the Supreme Court has passed the following order on 18.05.2023 :-

"Issue notice.

Mr. Pankaj Singh, learned counsel appearing on caveat accepts notice on behalf of the sole respondent.

Respondent may file counter affidavit within six weeks. Petitioner will have two weeks' time thereafter to file rejoinder affidavit.

As an interim measure, it is provided that the disciplinary proceedings against the respondent may continue, however, no final decision would be taken without leave of this Court.

We further request the learned Single Judge of the High Court to decide the writ petition expeditiously, subject to other matters on Board.

It goes without saying that parties shall co-operate in the hearing of the writ petition.

List the matter after expiry of ten weeks."

(iv) The petitioner has been issued the charge-sheet on 06.07.2022. The petitioner, with the purposes of delaying the enquiry against her, had been demanding documents which have not been cited in the charge-sheet as evidence. The petitioner has written various letters and all the evidence and material, relied on by the Department in support of the charge-sheet, have been supplied to the petitioner. The petitioner had made inspection of the documents, which were permitted to her, but the facts, as narrated in the writ petition itself, would disclose that every time effort was made by the petitioner, to delay the proceedings, and in the meantime, she could secure the interim order dated 28.11.2022, and the order dated 01.02.2023 passed by the Division Bench.

20. If a complaint is received against an employee for grave misconduct without affidavit, the said complaint would not debar the Department to look at the allegation independently and conduct a preliminary inquiry with respect to the same. In the present case, the technical report as well as preliminary inquiry report would suggest the grave misconduct by the petitioner, as pointed out above. It is not the case of the petitioner that except for anonymous complaint, there is no evidence against the petitioner. The petitioner was fully associated with during conduct of preliminary inquiry, and the Three Members Committee has submitted a report regarding gross misconduct of the petitioner. Therefore, I am of the view that there is no violation of the Government Orders dated 09.05.1997 and 01.08.1997, as contended by the learned Senior Advocate on behalf of

the petitioner. The disciplinary proceedings have been initiated against the petitioner on the basis of the departmental preliminary inquiry report, and not on the basis of the complaint and, therefore, there is no illegality in initiation of the departmental proceedings against the petitioner. If a Government servant, exercising quasi-judicial function, passes an order, which is illegal, with *malafide* intention, for extraneous purposes, and where there is corruption involved, the Department is not precluded to proceed with the disciplinary proceedings against such an employee, if the order has not been challenged in revision/appeal. The judgments, cited by the learned Senior Advocate on behalf of the petitioner, are in respect of judicial officers where no such finding in the preliminary inquiry regarding extraneous consideration was recorded and, therefore, those judgments have no bearing in the facts of the present case.

21. The petitioner has been placed under suspension vide impugned order dated 21.04.2022. The suspension does not amount to punishment but an employee is placed under suspension to hold disciplinary inquiry against such an employee in a free, fair and impartial manner. When allegation against the delinquent employee are serious regarding his/her misconduct, the suspension order cannot be said to be invalid. Under Rule-7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, there is power of placing an employee under suspension, and I am of the view that the power has been exercised correctly for valid and cogent reasons for placing the petitioner under suspension.

22. In view thereof, I find no merit and substance in the present petition, which is hereby **dismissed**. It is, however, provided that the Department should proceed with the departmental inquiry expeditiously and conclude the same, preferably within a period of four months, subject to full cooperation by the petitioner. Any observation, made herein above, would not influence the inquiry

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officer, who should conduct the inquiry independently and record his finding based on the evidence.

[D.K. SINGH, J.]

Order Date :- 23.5.2023MVS/-