

Neutral Citation No. - 2023:AHC-LKO:70224-DB

Court No. - 1

Case :- WRIT - A No. - 8340 of 2023

Petitioner :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy.
Revenue, Govt. U.P. Lucknow And Another

Respondent :- Raj Bahadur

Counsel for Petitioner :- C.S.C.

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

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) Heard the learned State Counsel representing the petitioners/
State authorities and Shri Raj Kumar Upadhyaya, learned
Counsel representing the respondent/claimant.
- (2) The petitioners-State authorities have filed the present petition
under Article 226 of the Constitution of India, seeking to
interdict the judgment and order dated 26.05.2023 passed by the
State Public Services Tribunal, Lucknow (hereinafter referred
to as '**the Tribunal**'), whereby it has been stated that the Claim
Petition No.1143 of 2022 filed by the respondent/ claimant has
been allowed and the order of punishment dated 22.03.2018 and
appellate order dated 07.04.2022 have been quashed with
consequential service benefits.
- (3) Apparently, vide punishment order dated 22.03.2018, the
respondent/claimant was inflicted with a punishment of censure
entry coupled with stoppage of one increment for one year.

- (4) Learned Counsel representing the petitioners/State authorities drawing our attention to the reasoning recorded by the learned Tribunal while allowing the claim petition, has argued that the learned Tribunal has not correctly appreciated the facts and circumstances of the case and has, in fact, recorded a vague finding that the enquiry conducted against the respondent/claimant was flawed. In this view, submission is that the judgment of the learned Tribunal which is under challenge herein, is not sustainable.
- (5) *Per contra*, learned Counsel representing the respondent/claimant has argued that in the facts and circumstances of the case, the impugned judgment passed by the learned Tribunal does not warrant any interference by this Court, for the reason that a clear finding has been recorded by the learned Tribunal to the effect that the enquiry conducted against the respondent/claimant was found to be not in conformity with the requirement of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (here-in-after referred to as 'the Rules, 1999') as neither any date, nor time or place has been fixed by the Enquiry Officer while conducting the enquiry. He has further submitted that as a matter of fact, the charges against the respondent/claimant were not proved and the enquiry officer has submitted his report only on the basis of the charge-sheet and reply submitted to it by the respondent/claimant. He has

further submitted that such a course adopted by the State-authorities while conducting the departmental proceedings against the respondent/claimant cannot be sustained for the reason that the charges were not proved. He has also argued that respondent/claimant has since retired. Thus, it has been submitted on behalf of the respondent/claimant that prolonging the enquiry by remittance would unsettle his peaceful life for no larger purpose.

- (6) We have given our thoughtful consideration to the rival submissions made by the learned counsel appearing for the respective parties and have also perused the records available before us on this writ petition.
- (7) Apparently, the respondent, while working on the post of Consolidation Officer in district Kannauj, was issued a charge-sheet on 20.05.2015 consisting of one charge. The respondent/claimant submitted reply to the said charge-sheet on 04.07.2015 denying the said solitary charge levelled against him and thereafter the enquiry officer submitted his enquiry report on 06.08.2015, holding him guilty. A show cause notice dated 16.11.2015 was issued to the respondent/claimant, requiring his explanation/ reply to the said notice. In response, the respondent/claimant submitted his reply dated 23.05.2017 to the show cause notice. Thereafter, the respondent/claimant was communicated the punishment order dated 22.03.2018. The

respondent/claimant, feeling aggrieved, has preferred a departmental appeal on 04.05.2018, which was rejected vide order dated 04.07.2022.

- (8) Feeling aggrieved by the punishment order dated 22.03.2018 and appellate order dated 07.04.2022, the claimant/respondent had preferred Claim Petition No. 1143 of 2022 before the Tribunal, which was allowed vide judgment/order dated 26.05.2023. It is this order dated 26.05.2023, which has been assailed by the petitioners/State authorities in this writ petition.
- (9) It is well settled principle of law that while judicially scrutinizing any disciplinary matter, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is primarily concerned with the decision making process and not the decision made by the authority.
- (10) From a perusal of the enquiry report, this Court finds that the enquiry officer did not fix date, time and place for conducting the enquiry in terms of Rules, 1999 and only by placing reliance upon the charge-sheet and reply submitted by the respondent/claimant, the Enquiry Officer has submitted enquiry report dated 06.08.2015 holding the respondent/claimant guilty. In the case of **Radhey Kant Khare vs. U.P. Co-operative Sugar Factories Federation Ltd.**, reported in 2003 (21) LCD 610, this Court had held that after a charge sheet is given to the

employee, an oral enquiry is mandatory, whether the employee requests for it or not. The said judgment further lays down that a notice should also be issued to charged employee indicating the date, time and place of the enquiry and further that on the said date the oral and documentary evidence against the employee should first be led in his presence. This court had held in the said judgment that in absence of proof of documents during the course of oral enquiry to be conducted in presence of the delinquent officer, the contents of the charge sheet cannot be proved.

(11) Learned Tribunal, while examining the matter, has clearly given a finding that during the course of enquiry, no oral enquiry was held nor any opportunity was afforded to the respondent/claimant nor any date, time and place was fixed by the Enquiry Officer. There is nothing on record, nor was the learned Counsel for the petitioners was able to point out anything contrary to the said finding recorded by the Tribunal. Thus, on the basis of such flawed enquiry, the punishment inflicted upon the respondent/claimant cannot be permitted to be sustained.

(12) At this juncture, learned counsel for the petitioners/State-authorities has submitted that in case some flaw has been found in the departmental proceedings, it is incumbent to grant liberty to the State-authorities to initiate the disciplinary proceedings afresh from the stage it has been found to be defective. He,

thus, prayed that such a liberty be granted to the State in this case as well.

(13) We have considered the said prayer made by the learned Counsel representing the petitioners/State-authorities, however, we decline the prayer for the reason that the respondent/claimant has already retired on 28.02.2022 and the punishment awarded is not so grave as may call for re-opening the proceedings.

(14) For the reasons aforesaid, we do not find any illegality or infirmity with the order passed by the learned Tribunal.

(15) The writ petition being devoid of merit, is hereby **dismissed**.

(16) There will be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 27.10.2023

Ajit/-