

Court No. - 20

Case :- WRIT - A No. - 9858 of 2023

Petitioner :- Mahendra Kumar Singh

Respondent :- State Of U.P Thru. Prin. Secy. Home Deptt. Govt. Civil
Secrt. Lko. And Another

Counsel for Petitioner :- Satendra Jaiswal, Ashwini Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging order dated 30th August, 2023 whereby order of punishment dated 23rd May, 1995 passed earlier dismissing petitioner from service has been reiterated.
3. It has been submitted that earlier petitioner was dismissed from service by means of order dated 23rd May, 1995. Appeal and revision thereagainst were also dismissed vide order 15th April, 2002 and 20th September, 2002. The said orders were thereafter challenged in writ A No. 2774 of 2003 which was allowed by means of judgment and order dated 19th May, 2022 quashing the aforesaid orders and remanding the matter back to the stage of providing opportunity of hearing by the inquiry officer.
4. It has been submitted that after quashing of punishment of appellate and revisional orders and remand of the matter, opposite parties were required to follow the procedure as indicated in Appendix-I of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 pertaining to Rule 14(i) of the said Rules whereby opposite parties were under an obligation to admit oral inquiry and evidence and also to give an opportunity to the petitioner to cross examine the witnesses. It is submitted that inquiry officer thereafter was required to record sufficient reasons for holding the petitioner guilty. It is submitted that rule also provide that in case of refusal to call a witness, inquiry officer has to record reasons for such refusal.
5. Learned State Counsel however has refuted submissions advanced by learned counsel for petitioner with submission that by means of judgment and order dated 19th May, 2022, an opportunity of hearing was required to be given to the petitioner, which has been provided as indicated in the

impugned order itself and therefore there is no occasion to interfere with the order under challenge. He further submits that petitioner even otherwise has an alternative and equally efficacious remedy of filing appeal which has not been availed of.

6. Upon considerations of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that by means of judgment and order dated 19th May, 2022, earlier punishment order was quashed on the ground as indicated in paragraph 14 thereof that the inquiry officer did not provide any opportunity of hearing to petitioner and occasion to cross examine witnesses and to file his defence. The order also indicates the copy of the inquiry report along with show cause notice was not made available and therefore violation of principles of natural justice was found established due to which the entire dispute was remanded back to the stage of providing opportunity of hearing by inquiry officer to petitioner.

7. Once this Court had clearly found violation of principles of natural justice in the inquiry proceedings as specifically indicated in paragraph 14 thereof, then after remand, the opposite parties were under a bounden obligation to follow the rules regarding inquiry proceedings as indicated in Appendix-I of Rules 1991 pertaining to Rule 14(1) thereof. The aforesaid appendix clearly provides the procedure required to be followed in inquiry proceedings and indicates an opportunity to be given to the delinquent employee to produce his witnesses and also to be provided an opportunity to cross examine the witnesses. The procedure further indicates that in case the inquiry officer refuses to call any witness, reasons thereof are also to be indicated in writing. The procedure also indicates that inquiry officer shall submit his report after consideration of all the material evidence.

8. Upon perusal of impugned order, it is quite evident that except for reproducing the petitioner's reply verbatim and thereafter reiterating earlier punishment order dated 23rd May, 1995 nothing more has been done by the concerned authority. The order impugned on the fact of it has been passed in clear violation not only of directions issued by this Court earlier but also against provisions indicated in Appendix-I of the Rules of 1991, which have statutory character.

9. In view of aforesaid, the fact that impugned order has been passed in violation of statutory provisions and against principles of natural Justice, there is no occasion for this Court to remand the matter for decision by the appellate authority and therefore the petition is held to be maintainable.

10. In view of aforesaid discussion made herein above, it is evident that impugned order dated 30th August, 2023 is clearly vitiated and is hereby quashed by issuance of writ in the nature of Certiorari.

11. From a perusal of material on record particularly the fresh charge sheet issued on 18th September, 2022 after remand, it is evident that charges levelled against petitioner pertain to the year 1993 and was specifically with regard to petitioner having not reported on duty initially for a period of seven days with effect from 22nd February, 1993 but thereafter for a period of 2 years.

12. It is thus evident that charges levelled against petitioner were quite minor in nature and without any charge having financial implications.

13. It is also evident that now almost 30 years have passed and in the meantime petitioner has also attained superannuation on 8th December, 2010 i.e. also more than 13 years ago. It is also evident that the opposite parties have already been granted an opportunity to correct the mistakes made in the inquiry by means of earlier judgment and order dated 19th May, 2022. Despite having been granted an opportunity, the opposite parties on the contrary have passed an order which is completely non speaking in nature and instead of passing fresh orders have instead reiterated the earlier order dated 23rd May, 1995 which already stood quashed by this Court.

14. The Hon'ble Supreme Court in the case of **Allahabad Bank and others versus Krishna Narayan Tewari** reported in **[2017 (2) SCC 308]** has held that although there is no quarrel with the proposition that in case the inquiry is found to be deficient, procedurally or otherwise, the proper course is always to remand the matter but there may be situations where because of a long time lag or such other supervening circumstances where the court considers it unfair, harsh or unnecessary to direct a fresh inquiry. I am in respectful agreement with the aforesaid judgment of the Hon'ble Supreme Court which squarely applies to the present case.

15. In view of such circumstances particularly long intervening period and opposite parties themselves having not availed of opportunity granted to them by means of judgment and order dated 19th May, 2022, this Court does not find any good ground to remand the case for consideration afresh.

16. In view of the fact petitioner has been dismissed from service by means of impugned order dated 30th August, 2023

and reasons thereof having already been indicated in the impugned order itself, which on the face of it is indicative of the fact that impugned order has been passed de hors the statutory rules as well as directions issued by this Court, this court following the dictum of Hon'ble Supreme Court in the the case of **Mohinder Singh Gill versus Chief Election Commissioner, New Delhi and others** reported in **A.I.R. 1978 SC 851** does not find any need for calling for a counter affidavit.

17. In view of aforesaid facts, particularly quashing of punishment orders passed against petitioner, the opposite parties are directed by writ in the nature of Mandamus to provide service and pensionary benefits to petitioner within a period of four months from the date a certified copy of this order is produced before the concerned authority.

18. Resultantly the petition succeeds and is allowed at the admission stage itself. Parties to bear their own cost.

Order Date :- 21.12.2023

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