

Neutral Citation No. - 2024:AHC-LKO:49807

AFR

Reserved On:- 31.05.2024

Delivered On:- 23.07.2024

Court No. - 28

Case :- WRIT - A No. - 1644 of 2024

Petitioner :- Arvind Kumar Pandey

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 3 Others

Counsel for Petitioner :- Ajay Pratap Singh

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

Hon'ble Shree Prakash Singh,J.

1. Heard Sri Ajay Pratap Singh, learned counsel for the petitioner, Sri Ravi Shankar Tiwari, learned counsel for the opposite party no. 3 and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the State.

2. By means of the present writ petition the petitioner has assailed the impugned order dated 19 September 2023 passed by opposite party no. 1, whereby, the petitioner has been punished while withholding two increments permanently and further awarded censure entry and the recovery of ₹1,06,661/- was also imposed upon him. The approval order dated 4 August 2023 passed by the Public Service Commission, opposite party no. 3 is also under challenge.

3. It is the case of the petitioner that the petitioner was initially appointed on the post of District Basic Education Officer and subsequently, was promoted as Joint Director of Education and also held the post of Incharge, Joint Director of Education at Azamgarh Region, Azamgarh with effect from 27 June 2008 to 16 October 2008 and 12 January 2009 to 19 June 2009. Fact remains that one Tarkeshwar Rai who was appointed as adhoc Principal and once the vacancy arose, Sri Umesh Kumar Rai was appointed on the said post of Assistant Teacher (Physical Education) by the Committee of Management and that was approved by the then, District Inspector of Schools, Ballia on 17 January

1991. Later on, against the requisition sent to the UP Secondary Education Service Selection Board, one Kushmakar Mishra joined on the post of Assistant Teacher (Physical Education) in the institution in question on 6 January 2004, but on place of ceasing the continuance of Umesh Kumar Rai on the post of Assistant Teacher (Physical Education), he was allowed to continue and the salary was also being paid. Subsequently, on 18.10.2007, the District Inspector of School stopped the salary, but, just after four days, it was again released. Thereafter, on 29 September 2008 his salary was stopped, but on 13 October 2008 Joint Director Education cancelled the order dated 29 September 2008 and called report from the District Inspector of Schools regarding the status of appointment of Umesh Kumar Rai, but despite submitting any report, the District Inspector of Schools, Ballia, neither submitted the report nor stopped the salary and the salary was being paid to Umesh Kumar Rai, up to the year 2011.

4. Charges against the petitioner is that the petitioner cancelled the stopped order dated 29 September 2008, on 13 October 2008 and by virtue of the said order, Umesh Kumar Rai was being paid salary and therefore, the present petitioner is accountable for unlawful payment of salary to Umesh Kumar Rai.

5. The ground of challenge to the impugned orders is of two folds; one that the petitioner after passing the order on 13 October 2008 while calling a report from the District Inspector of Schools, transferred on 16 October 2008, and therefore, it was incumbent upon the then District Inspector of Schools, Ballia to take further course of action or to submit a report to the Joint Director of Education, but he failed to do so for the reasons best known to him and therefore, no liability can be fasten upon the present petitioner. Further submission is that, enquiry report of the subsequent order of approval as well as the punishment order dated 19 September 2023 are arbitrary and unlawful as the enquiry officer is appointed on 13 October 2017 and on the same day, the chargesheet was

issued and without affording any opportunity of hearing and without fixing date, time and place, the enquiry officer submitted the report on 19 December 2017. Further contention is that the averments made in paragraph 20, 21 and 23, have not been denied in the counter affidavit and therefore, the whole enquiry proceeding vitiates in the eyes of law and the punishment order itself is also against the settled proposition of law and suffers from illegality and infirmity.

6. On the other hand learned counsel appearing for the State has opposed the contention aforesaid and submitted that it is an admitted fact on behest of the petitioner, he was working as Joint Director of Education on 27 June 2008 to 16 October 2008, and the order dated 13 October 2008 was passed by the present petitioner, wherein, the order of the District Inspector of Schools dated 29 September 2008, by which the salary of Umesh Kumar Rai was stopped had been cancelled and as a result, thereof, Mr Rai was unlawfully receiving payment of salary till 2011. He added that there was no occasion to the petitioner to cancel the order of the District Inspector of Schools dated 29 September 2008, unless the reports are received and the petitioner reaches to the conclusion that there is any ground to interfere. He also submits that the charge-sheet, enquiry report and the final punishment order do not suffer any illegality as after the appointment of the enquiry officer, he has framed the charges and after due approval, the same was served upon the petitioner and the enquiry report was submitted before the disciplinary authority. Further, the disciplinary authority on the basis of the enquiry report has passed the final punishment order coupled with the fact that the approval from Public Service Commission was also accorded. Therefore, the submission of the counsel for opposite parties is that there is no merit in the writ petition.

7. Having heard the learned counsel for the parties and after perusal of the material placed on record, it transpires that the charges against the petitioner was that he unlawfully passed the order dated 30 October 2008, while cancelling the order of District Inspector of Schools, while

favouring Mr. Umesh Kumar Rai. The petitioner was holding the charge of Joint Director of Education at Azamgarh Region, Azamgarh with effect from 27.06.2008 to 16.10.2008. In the meantime, the payment of salary to Umesh Kumar Rai was stopped by an order dated 29 September 2008 by the District Inspector of Schools, as a regular selected candidate appointed by the UP Secondary Education Service Selection Board had joined, whereafter, a report was called from the District Inspector of Schools by the petitioner and after three days he was transferred and it seems that he could not further look into the matter.

8. This court has also taken the note of the fact that the chargesheet was issued by the enquiry officer on 13 October 2017, and the enquiry report is submitted on 19 December 2017. From perusal of the enquiry report, it transpires that no date, time and place was fixed and even opportunity of personal hearing was not accorded. In paragraph 23 of the petition, it has specifically been stated that the enquiry report has never been served to the petitioner, wherein, in reply to the same, in the counter affidavit in paragraph 19, it has been stated that the 'same needs no comments', which amounts to admission on the part of the State. Further in paragraph 17 and 18 of the supplementary affidavit filed in support of the petition, it has been stated that no proper opportunity of hearing was ever accorded to the petitioner and at the same time, it has also been stated that the provisions of Rule 7 and Rule 9 of the UP Government Service (Discipline and Appeal) Rules 1999 (hereinafter referred as 'Rules 1999') has also been violated but this fact has not been rebutted by the opposite parties. Since, the petitioner is a government servant and therefore, the Rules 1999 would prevail in the present matter. The relevant extract of the 'Rules 1999' are reproduced here in under :-

“(vii) Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry

Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.”

9. The aforesaid rules provides that the opportunity of hearing including opportunity of personal hearing shall be accorded to the delinquent employee, but in the present matter, after serving the chargesheet, no date, time and place is fixed and opportunity of personal hearing has not been given and further, admittedly, copy of the enquiry report was also not served upon the petitioner, which is also against the settled proposition of law.

10. It has long been settled that it is always incumbent upon the enquiry officer to fix a date, time and place for personal hearing to the delinquent employee and in case of violation, the enquiry proceeding shall vitiate.

11. The abovesaid principal is reiterated in the case of **State of U.P. and Others Vs. Saroj Kumar Sinha, (2010) 2 SCC 772**. Paragraph 25 and 26 of the judgement are quoted hereinunder:-

“25. A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the Department in flagrant disregard of the mandate of Rule 7 sub-rule (v). Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub-rule (v) of Rule 7 of the 1999 Rules.

26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

12. In the judgement and order rendered by the the coordinate Division Bench of this Court, Smt. Karuna Jaiswal Vs. State of U.P. (Writ Petition No. 1516 (SB) of 2003), it has been held as follows:-

“In the instant case, no oral enquiry was held, neither the petitioner was given any notice to participate in any oral enquiry by fixing date, time and place for oral enquiry. It is only that the Enquiry Officer after noticing that despite sufficient time having been given to the petitioner, she did not furnish her reply to the charge-sheet, he proceeded to submit ex-parte report without conducting any oral enquiry by fixing date, time and place for such an oral enquiry. Accordingly, the Enquiry Officer, in this case, has violated the aforesaid principles, which clearly vitiates the enquiry proceedings and any punishment order based on such a vitiated enquiry, is clearly not sustainable.”

13. In the above said matter, the Division Bench is of the considered opinion that the enquiry proceeding would vitiate if no date, time or place is fixed by issuing notice to the delinquent, for getting recorded his statement, as an opportunity of personal hearing.

14. Apart from above, this Court is also not unmindful to the judgement and orders rendered in case of **Subhash Chandra Sharma Vs. Managing Director and another (1999 SCC OnLine All 1331)**, **Shafat Ullah Vs. Commissioner, Varanasi and others (2002 SCC OnLine All 218)**, **Sahngoo Ram Arya Vs. Chief Secretary, State of U.P, Lucknow and others (2002 SCC OnLine All 1566)**, **Ambika Prasad Srivastava Vs. State Public Services Tribunal and others (2005 (4) L.L.N 84)**, **Yog Narain Dubey Vs. Managing Director and Others (2011 SCC OnLine All 2414)** and **Chamoli District Cooperative Bank Limited Vs. Raghunath Singh Rana and Others ((2016) 12 SCC 204)**.

15. In view of the aforesaid submissions and discussions, this Court is of considered opinion that the whole enquiry proceeding, including the final punishment order vitiates in the eyes of law.

16. Consequently, the writ petition is hereby **allowed**.

17. The impugned orders dated 19.09.2023 and 04.08.2023 are hereby **quashed**.

18. Further, liberty is also accorded to the State-respondent to hold a fresh enquiry, if so desires.

Order Date :- 23.7.2024

Anurag