

Court No. - 18

Case :- WRIT - A No. - 17345 of 2020

Petitioner :- Dr. Om Prakash Gupta

Respondent :- State Of U.P. Thru Secy./Addl.Chief Secy. Ayush Deptt.
And Ors

Counsel for Petitioner :- Avinash Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. The present writ petition has been preferred for quashing of the impugned order of dismissal dated 08.07.2020 and order dated 20.02.2020 by which the petitioner was found guilty of unauthorised absence for a period of six years and six months which amounted to misconduct.

2. Learned counsel for the petitioner has submitted that the petitioner was initially appointed on the post of Medical Officer Ayurvedic, on 07.07.1998.

3. It is further submitted that a departmental enquiry was initiated against the petitioner on 28.10.2013 in which the chargesheet was issued against the petitioner. The petitioner made a representation to provide certain documents so the petitioner could submit his detailed reply but denied all the charges mentioned in the chargesheet. On the representation of petitioner demanding documents, no decision was taken, rather a supplementary chargesheet dated 15.01.2016 was also issued against the petitioner. Thereafter, without fixing any date, time and place of oral enquiry, the Enquiry Officer submitted the final enquiry report dated 14.01.2024 in respect of first chargesheet. It is further submitted that the petitioner has been exonerated for the charges levelled against him in the supplementary chargesheet.

4. The petitioner has made a specific averments in paragraph 16 (iii), (iv), (v), (vii), apart from other averments regarding contravention of principles of natural justice that no oral enquiry was conducted by the Enquiry Officer. Paragraph 16 (i) to (ix) is quoted below:-

"I. That after 1999 the terms of Departmental Inquiry in regard of petitioner is governed by The Uttar Pradesh Government Servant (Discipline and Appeal) Rule 1999 (hereinafter refers as Rule 1999) and inquires initiated on the basis of Charge sheet dated 28.10.2013 against the petitioner was held beyond the terms of Rule 7 of Rule 1999.

II. That petitioner requested for some very relevant documents and statement of witness for the purpose of his defence and cross examination and said request of petitioner in this regard was ignored by Opp-party.

III. That after reply of charge sheet the inquiry officer not informed any date, time and place for oral inquiry and statement of witness (if any recorded before Inquiry Officer) were recorded in absence of petitioner as petitioner was never informed about time,place and date of such examination of witness.

IV. That no any kind of inquiry was held by inquiry officer nor any witnesses or documents in support of charges, were examined before inquiry officer as per the provision of Rule 7 of Rules 1999 in presence of petitioner and all of such so called statements of witness were only letters of such witnesses

V. That inquiry officer not held any oral inquiry and in case kind hand of this Hon'ble Court no any kind of oral or documentary evidence was adduced during inquiry in presence of petitioner, for support of charges.

VI. That the document mentioned in charge sheet in support of charges were not proved by examination of witnesses before inquiry officer as per the provision of Rule 7 of Rules 1999.

VII. That inquiry officers submitted the inquiry report and reached it's conclusion that charges proved against the petitioner only on the basis of charge sheet and it's reply and inquiry report was based on conjecture and surmises, in totally illegal manner.

VIII. That there is at least some evidence adduced during inquiry in support of charges and inquiry report is based on valid evidence and reasons discussed by inquiry officer after giving opportunity to delinquent but in the present case same is totally missing.

IX. That an inquiry report dated 10.06.2019 hold that petitioner is not guilty of any misconduct but Opp-party while passing the impugned order dated 08.07.2020 rejected the said inquiry report dated 10.06.2019 without giving any notice or opportunity of hearing on same and passed the dismissal order of petitioner in very illegal manner."

5. The said averments made in paragraph 16 has been replied in paragraph 11 of the counter affidavit which is quoted herein below:-

" That the contents of paragraphs (16 (I-IX) of the Writ Petition are not admitted as stated in view of the contents of preceding paragraph 5 of this Counter affidavit, which are reiterated here"

6. In paragraph-11 it is averred that for reply see paragraph 5 of the same counter affidavit which is also quoted below:-

"(5.) That the contents of paragraph 3 of the Writ Petition are denied being misconceived, without any substance and force. It is relevant to submit here that :-

(A) That after selection through the Public Service Commission the petitioner was appointed on the post of Ayurved Medical Officer vide appointment letter dated 07.07.1998 issued by the State Government and in pursuance of the same the petitioner submitted his joining on 19.09.1998 in the Government Ayurvedic Hospital, Mau Garvi, District-Raibareli. From 01.07.2001 to 31.05.2013 the petitioner remained posted continuously in the Government Ayurvedic College and Hospital, Lucknow.

(B) That since the petitioner remained posted at one place for more than 12 years therefore the Director, Ayurved Services, U.P., Lucknow vide order dated 15.05.2013 transferred the petitioner in the transfer session

from the Government Ayurvedic College and Hospital, Lucknow to the Government Ayurvedic Hospital, Isauli, Sultanpur. In pursuance of the aforesaid transfer order the petitioner was relieved on 31.05.2013 but he did not submit his joining and he filed a Writ Petition No. 992 (S/B) of 2013 (Dr. Om Prakash Gupta Versus. State of U.P. and others) wherein this Hon'ble Court has been pleased to pass an order dated 08.07.2013 thereby directing to maintain status quo till the decision taken on the representation of the Petitioner.

(C) That the petitioner even without the issuance of any administrative order, on his own use to make the signature is in the attendance register in the medical department of the Government Ayurvedic College and Hospital, Lucknow. Not only this the petitioner also misbehaved with Mr. Abhijeet Chaudhari and he also acted in violation of the U.P. Government Servants Conduct Rules. Thus, the petitioner committed irregularities of serious and grave nature. The disciplinary authority took cognizance of the aforesaid irregularities and initiated disciplinary proceedings against the petitioner vide Office memorandum dated: 27.08.2013 under Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999. In the disciplinary proceedings, the Prospectus Director, Ayurved Services, was nominated as the Enquiry Officer.

(D) That in compliance of the order dated: 08.07.2013 passed by this Hon'ble Court in the Writ Petition No. 992 (S/B) of 2013 (Dr. Om Prakash Gupta Versus. State of U.P. and others) the State Government duly considered the claim of the petitioner in his representation dated 16.07.2013 and rejected the same vide Office memorandum dated: 08.08.2013 with the observation that keeping in view the 12 years period of posting of the Petitioner at one and same place the transfer of the Petitioner is justifiable.

(E) That it is pertinent to mention here that the Petitioner belongs to Ayurved Medical Officer cadre and he was selected through the Public Service Commission and he was attached in the Physiotherapy Department under temporary arrangement till regular selection of the Lecturers in the teaching cadre in the Government Ayurvedic College and Hospital, Lucknow.

(F) That against the office memorandum dated 08.08.2013 the petitioner again filed a Writ Petition No. 268 (S/B) of 2014 (Dr. Om Prakash Gupta Versus State of U.P. and others) before this Hon'ble Court, wherein this Hon'ble Court has been pleased to pass an order dated 04.08.2015, in compliance of which the State Government vide Office memorandum dated: 30.11.2015 amended the transfer order dated 15.05.2013 and keeping in view the qualification of the petitioner (M.D.) transferred the Petitioner to the Government Ayurvedic College, Handia, Allahabad (Prayagraj) the petitioner did not comply with the transfer order dated 30.11.2015 and he did not submitted his joining at the transferred place in the Government Ayurvedic College, Handia, Allahabad (Prayagraj).

(G) That the petitioner instead of complying with the transfer order and instead of joining at the transferred place, absconded from his duties continuously therefore disciplinary authority took cognizance of the Petitioner's aforesaid irregularity, and vide office memorandum dated 26.10.2017 initiated disciplinary proceedings under Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 and nominated

the Enquiry Officer. The enquiry officer after conducting the enquiry submitted his enquiry report.

(H) That as the disciplinary proceedings which were initiated against the petitioner vide office memorandum dated 28.10.2013 and 26.10.2017 remained pending without any decision therefore the petitioner filed another Writ Petition No. 37120 (S/S) of 2018 (Dr. Om Prakash Gupta Versus. State of U.P. and others) wherein this Hon'ble Court has been pleased to pass the order dated 07.01.2019 and thereafter in compliance of the aforesaid order dated 07.01.2019 passed by this Hon'ble Court, the disciplinary authority, examined the enquiry report and with the consent of the Public Service Commission, Allahabad on the proposed punishments, vide Office memorandum dated: 20.02.2020 concluded the disciplinary proceedings with the following decisions:-

"1. रिट याचिका 268/एसबी0/2014 डा0 ओम प्रकाश गुप्ता बनाम उत्तर प्रदेश राज्य व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 04.08.2015 के अनुपालन में निर्गत शासन के कार्यालय ज्ञाप दिनांक 30.11.2015 के क्रम में डा० गुप्ता द्वारा अद्यतन राजकीय आयुर्वेदिक कालेज एवं चिकित्सालय, हण्डिया इलाहाबाद में कार्यभार ग्रहण न कर मा० न्यायालय के आदेशों की अवमानना की है, जिसके दृष्टिगत कार्यालय ज्ञाप दिनांक 30.11.2015 यथावत रखा जाये।

2. रिट याचिका संख्या 8696 / एस0 बी0/2016 डा0 ओम प्रकाश गुप्ता बनाम उत्तर प्रदेश राज्य व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 25.04.2016 के अनुपालन में डा गुप्ता द्वारा प्रस्तुत प्रत्यावेदन में अनुपस्थित अवधि (दिनांक 15.05.2013 से अद्यतन तक) का वेतन दिये जाने के किये गये अनुरोध पर कार्यालय ज्ञाप दिनांक 29. 06.2016 द्वारा पूर्व में ही सम्यक रूप से विचार कर कार्य नहीं तो वेतन नहीं के सिद्धान्त के आधार पर वेतन न दिये जाने का निर्णय लिया जा चुका है, वर्तमान में भी उक्त स्थिति पूर्ववत ही है। ऐसी स्थिति में डा 0 गुप्ता को दिनांक 15.03.2013 से अब तक का किसी भी प्रकार का वेतन एवं भत्ता आदि दिये जाने का कोई औचित्य नहीं है।

उक्तानुसार वर्णित तथ्यों के आधार पर शासनादेश संख्या 1988 ६ 06-आयुष-1-2020-389 2013 दिनांक 08.07. 2020 द्वारा डा० ओम प्रकाश गुप्ता द्वारा अपने स्थानान्तरण आदेश दिनांक 15.05.2013 से लगभग 06 वर्ष 06 माह तक अपनी ड्यूटी से अनाधिकृत रूप से अनुपस्थित रहने तथा इनकी अनुशासनहीन प्रवृत्ति, स्वेच्छाचारी आचारण, मानमानेपन, अपने कर्तव्यों एवं दायित्वों का सम्यक रूप से निर्वहन न करने तथा शासकीय कार्यों में व्यधान उत्पन्न कर राजकीय कर्मचारी आचारण नियमावली का उल्लंघन किये जाने का दोषी पाया गया जिससे शासकीय कार्य प्रणाली एवं आम जनता को गम्भीर रूप से क्षति पहुंची जिसकी भरपायी किसी भी रूप में किये जाना सम्भव नहीं है, के दृष्टिगत डा० गुप्ता को उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1999 में उल्लेखित दीर्घ शास्ति (बृहद दण्ड) दिये जाने का निर्णय लेते हुये "सेवा से पदच्युति जो भविष्य में नियोजन से निरहित करता हो किया गया।"

Thus, the aforesaid order has been passed with the consent of the Public Service Commission, Allahabad, hence it does not suffer from any infirmity."

7. In none of the paragraphs in the counter affidavit, the respondents have denied the averments/case of the petitioner that no date, time and place was ever fixed and informed to the petitioner about the enquiry.

8. It is further submitted that the impugned order dated 20.02.2020 has also been passed without providing any opportunity of hearing and no chargesheet was served to the petitioner and he was never provided any opportunity and the same can be seen from the impugned order wherein it has been mentioned :-

"4) जहाँ तक इस मामले में आरोप पत्र न दिये जाने का प्रश्न है , इस संबंध में स्पष्ट करना है कि चूंकि शासन के कार्यालय ज्ञाप दिनांक 30.11.2015 के अनुपालन में आरोपी द्वारा राजकीय आयुर्वेदिक कालेज एवं चिकित्सालय , हण्डिया-इलाहाबाद में कार्यभार ग्रहण नहीं किया गया , का बिन्दु ही अन्तर्निहित था , ऐसी स्थिति में प्रधानाचार्य, राजकीय आयुर्वेदिक कालेज एवं चिकित्सालय, वाराणसी के पत्र दिनांक 17.04.2018 द्वारा स्थिति स्पष्ट करने का निर्देश दिया जाना ही पर्याप्त था , जिसमें अलग से आरोप पत्र दिये जाने की आवश्यकता नहीं थी। अतः इस बिन्दु पर आरोपी अधिकारी का कथन ग्राह्य नहीं है तथा उनके द्वारा अपने पत्र दिनांक 04.06.2018 के माध्यम से जो भी बिन्दु उठाये गये हैं वह सभी उक्त एक मात्र आरोप के सन्दर्भ में असंगत एवं सारहीन हैं।"

9. Learned counsel for petitioner, in support of his submission, has relied upon the judgments:-

(i) Bahrat Singh versus State of U.P and others [2021 (39) LCD 445]

(ii) State of U.P and others versus State Public Service Tribunal and others [2022 (40) LCD 1377]

(iii) Chamoli District Co-operative Bank Limited versus Raghunath Singh Rana and others [2016 (12) Supreme Court Cases 204]

(iv) State of Uttar Pradesh and others versus Saroj Kumar Sinha [2010 (2) SCC 772]

10. On the other hand, learned State Counsel has submitted that from counter affidavit, it appears that no oral inquiry was conducted and the dismissal order and the punishment order dated 20.02.2020 has been passed without providing any opportunity of hearing to the petitioner.

11. After hearing learned counsel for the parties and going through the record, it is clear that the dismissal order was passed without holding any oral inquiry as no date, place or time was ever fixed after the replies submitted by the petitioner to the charge-sheet and the statements of the departmental witnesses were recorded behind the back of the petitioner and no opportunity was provided to the petitioner to cross-examine and as per law settled in the cases of:-

(i) Bahrat Singh versus State of U.P and others [2021 (39) LCD 445]:- The petitioner was never afforded personal hearing as no date, time and place was fixed by the Enquiry Officer while holding the disciplinary proceedings in contravention of the principles of natural justice on that ground the punishment order is liable to be set aside. The rules of natural justice have also seriously been violated in the case of the petitioner and the punishment order is awarded on an ex-parte enquiry report in utter disregard of the principles of natural justice, is not sustainable in law. Hence, cases relied upon by learned counsel for the petitioner are squarely applicable in the present case.

(ii) State of Uttar Pradesh and others versus Saroj Kumar Sinha [2010 (2) SCC 772] :-

(28.) An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

(iii) State of U.P and others versus State Public Service Tribunal and others [2022 (40) LCD 1377]:-

(13.) The departmental proceedings pursuant to which the punishment order has been passed having thus not followed the procedure prescribed under the Rules, 1999 and there being several procedural infirmities in the conduct of enquiry, the order of punishment has rightly been held to be legally unsustainable.

(14.) It has been consistently held that a departmental inquiry against government servant is not to be treated as a casual exercise and the principles of natural justice are required to be observed so as to ensure not only that justice is done but is manifestly seen to be done; the object being to ensure that the delinquent is treated fairly in proceedings which may culminate in imposition of a major penalty against him.

(17.) In the present case, as the inquiry officer failed to fix any date, place or time in the conduct of inquiry and the absence of any witness having been examined to support the charges levelled against the respondent-employee has lead to a situation where the delinquent has been condemned unheard. The entire proceedings, being a violation of principles of natural justice and total disregard of procedural fairness, have rightly been held by the tribunal to be vitiated.

(18.) The principal contention sought to be raised by the learned counsel for the petitioner that once the charges stand proved, there is no need of any formal oral inquiry or cross-examination of the witnesses, cannot be held to be sustainable for the reason that the same would amount to gross denial of a fair opportunity to the delinquent to place his defence and would amount to by-passing the procedure under the Rules, 1999, apart from being violative of the principles of natural justice.

(iv) Chamoli District Co-operative Bank Limited versus Raghunath Singh Rana and others [2016 (12) Supreme Court Cases 204]:-

From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

22.1. After service of charge-sheet dated 16-1-1993 although the petitioner submitted his reply on 4-2-1993 but neither inquiry officer fixed any date of Oral inquiry nor any inquiry was held by the inquiry officer.

22.2. Mandatory requirement of a disciplinary inquiry i.e. is holding of an inquiry when the charges are refuted and serving the inquiry report to the Delinquent has been breached in the present case.

22.3. Respondent 1 employee having not been given opportunity to produce his witnesses in his defence and having not been given an opportunity of being heard in person, the statutory provisions as enshrined in Regulation 85(i)(b), have been violated.

12. In view of the discussion made herein above, in the present case, the inquiry officer did not fix any date, time or place to conduct the inquiry and recorded the statement of departmental witnesses behind the back of the petitioner has led to a situation where the delinquent has been condemned unheard. The entire proceedings are in contravention of principles of natural justice and in total disregard of procedural fairness prior to passing of the impugned order dated 08.07.2020 and 20.02.2020.

13. As far as, the impugned order dated 20.02.2020, itself shows that the petitioner was held guilty by the impugned order in which it has been mentioned that there is no requirement for issuing any charge-sheet meaning thereby that the punishment order was passed without hearing the petitioner. Learned counsel for the petitioner has informed that the petitioner has already attained the age of superannuation on 31.07.2023.

14. For the reasons discussed above and so far consequential benefits are concerned, the respondents are directed to pay the full salary with effect from 08.07.2020 when the dismissal order was passed upto 31.07.2023, the date on which petitioner retired within a period of two months from the date of certified copy of this order is served. The petitioner shall also be paid his pensionary benefits from the date of retirement on the basis of last pay drawn alongwith other post-retiral benefits. In case of

dues, if any, prior to the date of dismissal order, it will be open to the petitioner to make a separate representation to the competent Authority for the same and the concerned authority shall consider and decide the same in accordance with law expeditiously.

15. The present writ petition is **allowed** and the impugned orders dated 08.07.2020 and 20.02.2020 are hereby **quashed**.

Order Date :- 19.1.2024
DiVYa