

Court No. - 2

Case :- WRIT - A No. - 3579 of 2024

Petitioner :- State Of U.P. Thru. Addl. Chief Secy. Irrigation And Water Resources Deptt. Lko. And Another

Respondent :- Surahoo Ram

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Ajey Shanker Tewari, Ishaan Tewari

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. This writ petition has been filed challenging the judgment and order dated 07.02.2023 passed by the State Public Services Tribunal, Lucknow in Claim Petition No. 93 of 2022 (Surahoo Ram vs. State of U.P. and another).

2. Mr. Ajey Shanker Tewari, learned counsel for the respondent is present. He has also been heard apart from the Standing Counsel for the petitioners-State.

3. On 08.05.2024, we had passed the following order:

"1. Supplementary affidavit filed today is taken on record.

2. Heard.

3. After hearing the parties, apparently what comes out is that in the claim petition itself, the facts of the earlier disciplinary proceedings were mentioned, which did not tally with the facts mentioned in the punishment order.

4. The Tribunal had also believed the facts as stated in the claim petition without verifying it from the contents of the punishment order. Apparently, the Chargesheet, the Inquiry Report, the Show Cause Notice are of a different date in the case at hand, whereas those taken into consideration by the Tribunal pertain to the earlier proceedings of a different date.

5. We would like to have the original record of Claim Petition No.1842 of 2019 filed by the respondent and

decided on 28.9.2021, as also the original record of Claim Petition No.93 of 2022, which has been decided by the impugned judgement dated 7.2.2023.

6. Let the same be requisitioned by the Senior Registrar of this Court at Lucknow.

7. Prima facie, there is gross non-application of mind to the facts and documents on record, may be because of the wrong facts have been stated in the claim petition, but the Tribunal should have been able to see through the fact that incorrect facts have been stated in the claim petition and it could not be decided by the Tribunal without due and proper application of mind including proper scrutiny of record before it.

8. Put up this case day after tomorrow i.e. 10.5.2024 as fresh along with writ petition bearing Writ-A No.6146 of 2022."

4. On 10.05.2024, we had passed the following order:

"1. The record, which was requisitioned from the Tribunal, has been received in sealed cover from the Registrar, UP Public Services Tribunal, Indira Bhawan, Lucknow.

2. Let the record be put back in sealed cover and retained in the Records room and the same shall be reproduced on the next date.

3. List this case on 16.5.2024 as fresh.

4.The Tribunal is requested to adjourn the contempt proceedings before it till 22.5.2024."

5. Today, the matter has been heard.

6. We have opened the sealed cover and perused the records of Claim Petition No. 93 of 2022. The subject matter of Claim Petition No. 93 of 2022 was an order dated 01.02.2021 by which deduction of 10% pension had been ordered under Article 351-A of the Civil Services Regulation. In the said case, while the petitioner was in service, disciplinary proceedings were initiated against the respondent on 11.02.2013 and the charge-sheet was

issued on 13.12.2013. Reply to the charge-sheet had been submitted by the respondent on 07.12.2015 as is mentioned in the impugned judgment though it is submitted by Mr. Tewari that it was submitted on 07.02.2013. After the reply, inquiry report was submitted through letter dated 22.12.2015. Thereafter, a show cause notice was issued to the respondent on 05.03.2016. Respondent submitted his reply to the show cause notice on 12.04.2016. Thereafter, the order dated 01.02.2021 was passed. Against which, aforesaid Claim Petition No. 93 of 2022 was filed. Apart from the order dated 01.02.2021, another order dated 29.12.2020 by which remaining salary for the period of suspension in relation to the other inquiry which was initiated on 25.09.2012 was passed, was also challenged. Now, these facts are relevant in the context of Claim Petition No. 93 of 2022 out of which this writ petition bearing Writ A No. 3579 of 2024 arises.

7. Now, another disciplinary proceedings were initiated against the respondent on 25.09.2012. In this case the charge-sheet was issued to him on 04.01.2013. Reply to the charge-sheet was submitted on 18.02.2013. Inquiry was conducted and an inquiry report was submitted on 06.05.2013. Thereafter, a request for change of Inquiry Officer was made which was acceded and a fresh inquiry was held and the second inquiry report was submitted on 23.02.2018. Prior to it, a show cause notice dated 13.08.2013 was issued based on the earlier report dated 06.05.2013. After the second inquiry dated 23.02.2018 another show cause notice dated 28.03.2018 was issued to which respondent submitted his reply on 28.05.2018 and thereafter an order was passed on 30.08.2019

ordering recovery of Rs. 9,75,900/- from the pension of the petitioner under Article 351-A of the Civil Service Regulation. These facts pertaining to other proceedings relate to Claim Petition No. 1842 of 2019 which was decided on 28.09.2021 by the Tribunal out of which Writ A No. 6146 of 2022 arises.

8. The contention of State counsel is that while deciding Claim Petition No. 93 of 2022 the facts and documents of other proceedings which were referable to Claim Petition No. 1842 of 2019 which had already been decided on 28.09.2021, have been taken into consideration and referred which clearly goes to show total non application of mind by the Tribunal in deciding the claim and, therefore, on this ground itself, the judgment is liable to be set aside. It has been pointed out by the petitioner's counsel that, at some point of time, the judgment rendered on 28.09.2021 in Claim Petition No. 1842 of 2019 was placed before the Tribunal and for some inexplicable reasons all those facts of the said petition and judgment have crept into this judgment.

9. Learned counsel for the respondent faced with this difficult situation made a valiant effort to sustain the judgment by attempting to invite this Court to enter into the merits of the matter.

10. However, we see no reason to enter into the merits of the matter whether the charges were correctly levelled and whether they were ultimately found proved or not, as, from a bare reading of the judgment, we find that most of the documents which have been referred, except for few, are the documents relevant for the other Claim Petition No. 1842 of 2019 and the proceedings preceding filing of

the said claim petition and they had no relevance to the claim petition which has been decided by the impugned judgment. We may in this context refer that though the impugned order is correctly mentioned in the impugned judgment as dated 01.02.2021 and the reply to the charge-sheet has also been correctly mentioned, but, all other dates have been mentioned in relation to the other proceedings which were not the subject matter of the claim petition. Show cause notice dated 28.03.2018 and the inquiry report dated 23.02.2018 which has been referred at internal page 3 are in relation to the other proceedings which were initiated on 25.09.2012 and not of the proceedings which were the subject matter of the claim petition which had been initiated on 11.02.2013. Likewise, the charge-sheet relevant to the case is dated 13.12.2013, but, the charge-sheet dated 04.01.2013 pertaining to the other proceedings have been referred. In para 7 of the judgment five charges have been referred with reference to charge-sheet dated 04.01.2013. This charge-sheet and these five charges were the subject matter of Claim Petition No. 1842 of 2019 and the charge no. 4 quoted therein is also in relation to earlier charge-sheet dated 04.01.2013, whereas, the charge-sheet which was relevant in this case was dated 13.12.2013. No doubt, the fourth charge in the earlier proceedings was excluded and this was made the basis for initiating the other proceeding on 11.02.2013, but, all this jumbling of facts in the judgment clearly shows that the Tribunal was not clear as to what was the matter which was to be decided by it.

11. We are constrained to say that the facts were not clearly thrashed out. Reference to judgments by itself

does not amount to adjudication. Therefore, in view of non-application of mind, which is apparent from the record, we set aside the judgment impugned herein on this ground itself. However, we also direct the Tribunal to consider the Claim Petition No. 93 of 2022 afresh based on the correct records before it.

12. We direct the Tribunal to reconsider the matter as aforesaid and decide the claim petition at the earliest, say, within six months, as, the respondent is a retired person.

13. At this stage, Mr. Tewari, learned counsel appearing for the respondent says that at present there are only four Members functioning in the U.P. Public Services Tribunal including one Chairman, one Vice Chairman (Administrative). Out of other members, two of them are going to retire; one on 24.05.2024 and another in July, 2024. The Chairman of the Tribunal is going to retire in August, 2024. Apart from the fact that the number of Officers working as on date in itself is inadequate to meet the load of work, in the coming months, even their services would not be available, therefore, this Court should take cognizance of the matter having supervisory jurisdiction over such Tribunal and ensure that adequate Members/Vice Chairman are provided so that the functioning of the Tribunal continues in a smooth manner.

14. U.P. Public Services Tribunal Act, 1976 has been promulgated to provide for the constitution of a Tribunal to adjudicate the disputes in respect of matters related to employment of public servants of the State. One of the intentions was to provide speedy mechanism for resolution of disputes pertaining to service of public servants. As per Section 3 (2) of the Act 1976 the Tribunal

shall consist of a Chairman, a Vice Chairman (Judicial), a Vice Chairman (Administrative) and such number other Judicial and Administrative Members not less than five in each category, as may be determined by the State Government, therefore, there is a statutory mandate as to the minimum number of Members/Vice Chairman/Chairman of the Tribunal. We may also mention that this Tribunal caters to the need of public servants throughout the State of U.P. i.e. all the 75 districts, therefore, there is all the more reason that adequate number of the Members/Vice Chairman are made available so that the functioning of the Tribunal is not disrupted.

15. Today itself, we have taken judicial notice of Vacancy of the Member Administrative/Technical in the Real Estate Appellate Tribunal and have ordered for registration of a Suo Motu Public Interest Litigation in this regard. We are of the opinion that this issue shall also be considered in the same proceedings, as, ultimately the issues are similar and there is no need to register a separate PIL for the same. We request the Members of the Bar to assist the Bench on the next date when the matter is listed.

16. In the meantime, Mr. Kuldeep Pati Tripathi, learned Additional Advocate General is requested to seek instructions from the State Government as to what it proposes for providing adequate number of Members/Vice Chairman and Chairman in the Public Services Tribunal in the light of what has been stated hereinabove

17. The State should be aware of the need for smooth functioning of the Tribunal as it lessens the burden of the

High Court also and provides speedy remedy to the public servants, therefore, every effort should be made to ensure that the Tribunal functions in a smooth manner and the proceedings are not disrupted merely because of want of adequate number of Members. This issue shall also be considered on 27.05.2024 when the aforesaid Suo Motu proceedings will be heard.

18. A copy of this order shall be kept on the records of the said proceedings. Senior Registrar to take follow up action.

19. As far as this petition is concerned, the same is ***allowed*** in the aforesaid terms.

20. The records which were requisitioned be sent back to the Tribunal.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 16.5.2024

Santosh/-