

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No.-2024:AHC-LKO:28068-DB

Court No. - 2

Case :- WRIT - A No. - 7366 of 2020

Petitioner :- Arvind Kumar

**Respondent :- U.P.State Public Services Tribunal Lucknow And
Ors.**

Counsel for Petitioner :- Shiv Pravesh Dhar Dubey

Counsel for Respondent :- C.S.C.,Shikhar Anand

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1) Heard.

2) By means of this petition, the petitioner has challenged the judgment and order dated 09.05.2019 passed in Claim Petition No.674 of 2015 filed by the petitioner herein. The facts of the case in brief are that some incident is said to have taken place in the night of 27.09.1999 and it is alleged that the petitioner in an inebriated state misbehaved with a colleague and entered into an altercation under the influence of liquor. Disciplinary proceedings were initiated and he was dismissed from service vide order dated 20.04.2000 which was put to challenge in appeal and the appeal was dismissed on 05.10.2000. A revision was filed which was also dismissed on 23.02.2001. All these orders were put to challenge in Claim Petition No.109 of

2002 by the petitioner-Arvind Kumar. The said petition came to be allowed on 21.10.2013. The Tribunal set aside the punishment order as also the appellate and revisional orders on the ground that punishment order has been passed without giving copies of documentary evidences relied upon in the chargesheet to petitioner and also the punishment of dismissal according to it was too harsh and disproportionate. A specific finding was recorded with regard to procedural and legal lapses in conducting the department proceedings and awarding punishment to the petitioner. Accordingly, all the three orders impugned before it were quashed. However, while directing the opposite parties to reinstate the petitioner in service forthwith, it granted liberty to consider the case of the petitioner for giving **lesser punishment**. Compliance of the judgment and order was to be made by the opposite parties within a period of three months from the date on which a certified copy of the same is presented.

3) On a reading of the said judgment, it is apparent that procedural lapses were found apart from the fact that dismissal was found to be disproportionate and too harsh. The liberty granted in this light was obviously to proceed and impose a lesser punishment than dismissal. This could be done by holding a fresh inquiry from the stage after submission of reply to the chargesheet or by initiating proceedings for imposition of minor punishment. A preliminary inquiry was instituted, show cause was issued and another order was passed on 28.04.2014 imposing a lesser punishment of withholding one annual increment for three years with further stipulation that the petitioner shall not be entitled to any salary/ emoluments for the

period he remained out of service consequent to the earlier order of dismissal which was quashed by the Tribunal.

4) Now, this order dated 28.04.2014 was put to challenge by the petitioner by means of Claim Petition No.674 of 2015 which has been dismissed by the impugned judgment. The Claim Petition has been dismissed on the ground that merely because a preliminary inquiry was initiated that by itself will not wash out the findings in the inquiry report of the earlier proceedings as the said inquiry report had not been quashed by the Tribunal while passing the earlier judgment. With respect, this basis for the impugned judgment and the reasoning in support thereof is absolutely fallacious. Once, the Tribunal in its earlier judgment recorded that documentary evidence relied in the chargesheet was not given to the petitioner and that there were procedural lapses then there is no way that Tribunal could have arrived at this finding in the subsequent claim petition that the findings in the inquiry report still hold good on the basis of which a lesser punishment could have been awarded. The earlier judgment is binding between the parties as rightly pointed out by Sri Nishant Shukla, learned Addl. C.S.C. It is binding on the State also. The findings therein are also binding. The same were also binding on the Tribunal while it was deciding the subsequent Claim Petition.

5) In fact, our attention has been drawn to the order dated 28.04.2014 contained in Annexure no.3 to the writ petition which speaks of a show cause notice dated 27.03.2014 having been issued to the petitioner proposing punishment of withholding of one annual increment for three years. Now, this show cause notice is of a date subsequent to the earlier

judgment of the Tribunal dated 21.10.2013. This show cause notice has been issued in terms of Rule-4(1)(b)(3) of U.P. Police Officers of Sub-ordinate Ranks (Punishment and Appeal), Rules, 1991 which deals with minor penalties and specifically deals with withholding of increment including stoppage at an efficiency bar. This notice was for imposition of a minor punishment as per the Rules of 1991. Rule-4(1)(b)(3) of the Rules, 1991 has never been challenged by the petitioner. The petitioner even submitted a reply to this notice on 31.03.2014. Thereafter, considering the reply, a minor punishment as aforesaid has been imposed upon the petitioner vide order dated 28.04.2014. In view of this, we are of the opinion that the Tribunal, of course, has proceeded in a wrong factual and legal premise as if minor punishment has been imposed vide order dated 28.04.2014 on the basis of the findings recorded in the earlier inquiry report based on the earlier proceedings, which are apparently erroneous and these reasons are set aside as subsequent to the earlier judgment dated 21.10.2013, fresh proceedings were initiated against the petitioner for imposition of a minor punishment as already referred and thereafter, minor punishment has been imposed. Therefore, there is no violation of the earlier judgment of the Tribunal. We do not find any error in imposition of minor punishment vide order dated 28.04.2014 for the reasons given by us hereinabove.

6) However, at the same time, we find that by the order dated 28.04.2014, the petitioner has been denied salary and emoluments for the period he remained out of service consequent to earlier dismissal order which was quashed vide judgment dated 21.10.2013 albeit with liberty to impose a lesser

punishment. Now, when a lesser punishment that too a minor punishment has been imposed then apparently there was no justification for keeping the petitioner under suspension as that could have been done only if a major punishment could have been imposed. The Tribunal ought to have considered entitlement of the petitioner for receiving salary for the period he was kept out of service as per law on the subject but it has not considered this aspect at all. As the petitioner was prevented from working on account of an erroneous dismissal as has already been found in the earlier proceedings, therefore, the question of principle of no work no pay will also not apply. We may in this regard refer to judgment of a Co-ordinate Bench reported in 2015 (33) LCD 1927 '**State of U.P. & Ors. vs. Arun Kumar Singh & Ors.**'. Although the said judgment was based on the provisions of U.P. Government Servant (Dismissal and Appeal) Rules, 1999 but the issue contained therein and the principle / ratio laid down applies squarely to the case at hand and rules which are applicable in this case. Of course, it will have to be seen as to whether petitioner was employed elsewhere during the period he remained out of service or not, but none of these aspects have been seen.

7) As the petitioner was placed under suspension during disciplinary proceedings which culminated in dismissal but the said dismissal was set aside as already stated above and subsequently only a minor punishment has been imposed, therefore, the Tribunal should have considered this aspect regarding salary and emoluments which would otherwise have been admissible to him had he not dismissed from service. Therefore, to this extent, we quash the judgment of the Tribunal

dated 09.05.2019. The Claim Petition is allowed only to this extent

8) With these observations/ direction, the writ petition is **allowed in part**. The judgment of the Tribunal is modified to this extent. Claim petition stands restored for reconsideration but only to the extent referred hereinabove. The Tribunal shall decide the matter, if possible, within eight months.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 5.4.2024

Shanu/-