

Chief Justice's Court

Case :- WRIT - A No. - 3822 of 2022

Petitioner :- State Of U.P. Thru. Addl. Chief Secy/ Prin.Secy.
Revenue Govt. Of U.P. Civil Sectt. Lko. And Others

Respondent :- Saiday Husain

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Abhishek Shukla,Agendra Sinha

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Attau Rahman Masoodi,J.

1. Heard learned Standing Counsel for the petitioners-State and learned counsel for the respondent.
2. This writ petition has been filed by the State against the judgment and order dated 21.12.2021 passed by the U.P. State Public Services Tribunal in claim petition no. 876 of 2021 whereby the punishment order dated 29.01.2021 and the appellate order dated 5.4.2021 were set aside directing the respondent authorities to reinstate the respondent-claimant in service.
3. The respondent-claimant was initially appointed as a class IV employee in the revenue department in the year 1985 who on the basis of unblemished record was promoted on the post of Collection Ameen in the year 1992. The respondent-claimant was placed under suspension vide order dated 12.12.2019 by

the Sub-divisional Magistrate, Sandila. The charge-sheet was issued against the respondent on 30.01.2020 seeking clarification on the financial irregularities done during the period in question. The respondent-claimant demanded necessary documents to reply the same but the documents prayed for were not supplied to him. The respondent-claimant even though submitted his reply denying the charges levelled against him. The inquiry started after four months on submission of the reply. During the course of the said inquiry, supplementary charge-sheet dated 23.6.2020 was also issued against the respondent-claimant seeking clarification on the financial irregularities done during the period in question. The respondent-claimant submitted reply to the supplementary charge-sheet on 16.7.2020. The inquiry officer thereafter on conclusion of the inquiry submitted his report on 31.8.2020 and a show cause notice came to be issued to the respondent-claimant on 1.10.2020. The reply to the show cause notice was submitted on 29.10.2020 wherein flaws in the charges and the inquiry report were duly highlighted, yet, the disciplinary authority passed the punishment order on 29.1.2021 whereby the respondent was dismissed from service with immediate effect.

4. Being aggrieved, the respondent-claimant approached the appellate authority on 21.2.2021. The respondent-claimant on account of delay in disposal of the appeal by the appellate authority approached the Public Services Tribunal seeking a direction for expeditious disposal of the appeal which was issued on 24.3.2021 directing the appellate authority to dispose of the appeal within three months. The appeal filed by the respondent was dismissed by the appellate authority vide order dated 5.4.2021.
5. Learned counsel for the petitioners-State has submitted that there existed documentary evidence against the respondent-claimant, as such, no witnesses were required to be examined orally as the petitioner out-rightly admitted the charge of temporary embezzlement in his written statement of defence before the inquiry officer though he sought to justify his action on the ground of his wife's illness. Learned counsel has also stated that the respondent-claimant was earlier charged of the same allegation i.e. temporary embezzlement of government money.
6. Learned counsel for the petitioners has argued that in a catena of judgments the Hon'ble Supreme Court in the cases of temporary embezzlement has taken a strict view. In support of his contention, learned counsel for the respondent has

placed reliance upon the decision of the Hon'ble Apex Court passed in the case *Civil Appeal Nos. 7939 of 2022 (Union of India and others versus Subrata Nath)* decided on 23.11.2022.

7. Learned counsel for the respondent on the contrary has submitted that he was not afforded opportunity to participate in the inquiry nor was he afforded opportunity to cross-examine any witness adduced by the department to prove the documents. Learned counsel has submitted that the respondent had deposited the entire amount but with some delay, as his wife was ill, during the relevant period of time. The punishment awarded to the respondent-claimant, according to him, was too harsh looking to his unblemished service for long 36 years.
8. The punishment of dismissal inflicted upon the respondent was challenged to be disproportionate and not commensurate with the gravity of charges alleged against the respondent-claimant. The charge-sheet as well as supplementary charge-sheet served upon the respondent contained the charges which, though worded differently, are repetition of one and the same charge which as a matter of fact had not resulted into any financial loss. The substance of all the charges is almost similar i.e. the amount collected by the respondent-claimant was deposited with delay.

9. As per prevailing practice at that time, the cash collected by the respondent-claimant was to be deposited promptly and there was no period specified in the rules.
10. There is no doubt that the temporary embezzlement is also misconduct, however, in the present case, the respondent-claimant had deposited the entire amount and no loss whatsoever was caused to the department. There is allegation of temporary embezzlement and the respondent-claimant served the department for long 36 years, as such, awarding a lesser punishment would have also met the ends of justice.
11. It may also be relevant to note that the Tribunal while setting aside the punishment order dated 29.1.2021 and appellate order dated 5.4.2021 issued a direction to reinstate the respondent into service and gave liberty to the department to pass a fresh order awarding proportionate punishment except the punishment of removal/dismissal from service, after giving due opportunity on the issue of punishment.
12. The State, however, instead of giving opportunity to the respondent and passing orders commensurable to the offence in terms of the order passed by the Tribunal as upheld by the appellate authority, chose to file the present writ petition against the said orders. Thus, it appears that the State instead of awarding a lesser punishment after giving opportunity to

the respondent was bent upon to dismiss the petitioner from service knowing fully well that the temporary loss caused to the department was made good by the petitioner though belatedly and moreover, that he had retired from service after attaining the age of superannuation.

13. In our humble opinion, the Tribunal did not commit any error in setting aside the order of punishment that too leaving it open to the petitioner-State to pass fresh order on the quantum of punishment after giving opportunity to the respondent.

14. Besides the above, the respondent has retired from service in December, 2022 i.e. 14 months back and we find no reason for the department to award any punishment at this stage particularly when the department did not choose to issue fresh order in terms of the liberty granted by the Tribunal and the documents relied upon by the respondent, could not be proved by the State.

15. The Tribunal has well appreciated the evidence on record vis-a-vis the law applicable in the facts and circumstances of the case. The Tribunal has rightly observed that the delayed deposit of money by the respondent cannot be termed as misappropriation and that he has not caused any loss to the State exchequer and finding it a case of dereliction of duty,

the Tribunal taking a rightful view did not absolve the respondent of the accountability but finding the punishment of dismissal from service to be exorbitant, harsh and not commensurate with the offence committed, gave liberty to the department to pass an order of punishment afresh in keeping with the gravity of the charge. The department, however, not complying with the order passed by the Tribunal has filed the present writ petition wherein an order of stay was passed in its favour on 15.6.2022 and the respondent attained the age of superannuation during pendency of this writ petition in December, 2022.

16. We have carefully gone through the impugned judgement vis-a-vis the documents placed on record. In the circumstances of the case, we find ourselves in agreement with the findings arrived at by the Tribunal and, therefore, we dismiss the writ petition with the following directions:

(a) The impugned order passed by the Tribunal is upheld with the modification that no further proceedings shall be initiated against the respondent who has already attained the age of superannuation in December, 2022 for there is no financial loss caused to the State.

(b) No salary for the period the respondent remained out of service i.e. from the date of dismissal till the date of his retirement, however, the said period shall be counted

as a service period for the purpose of all pensionary benefits.

(c) All the consequential benefits in terms of this order shall be paid to the respondent within a period of two months from the date of production of a copy of this order before the competent authority.

17. No order as to cost.

.

[Attau Rahman Masoodi, J.] [Arun Bhansali, C.J.]

Order Date :- 23.2.2024
kanhaiya