

Court No. - 6

Case :- WRIT - A No. - 18202 of 2020

Petitioner :- Som Prakash Srivastava

Respondent :- State Of U.P. Thru. Secy. Rural Development
Lko. And Ors.

Counsel for Petitioner :- Sunil Kumar Mishra, Atul Kumar
Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard.

2. Instant petition has been filed praying for the following reliefs:-

"(i) to issue a writ, order or direction in the nature of certiorari to quash impugned orders dated 28.5.2018, 06/14.11.1996 passed by opposite party no. 3, order dated 6.2.2013 passed by opposite party no. 4, order dated 6.8.2013 passed by opposite party no. 2 and order dated 20.10.2014 passed by opposite party no. 1 contained in Annexure No.1,2,3, 4 and 5 to the writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties directing them to ensure the payment of entire post retiral dues as well as arrears of salary including other service benefits to the petitioner.

(iii) Any other order which is deemed just and appropriate in the nature and circumstances of the case also passed in favour of the Petitioner in the interest of Justice.

(iv) Allow the cost of the writ petition."

3. The undisputed facts as have been set forth by the learned counsel for the petitioner are that the petitioner while working on the post of Accounts Clerk under the respondents had been dismissed from service vide order dated 14.11.1996, a copy of which is Annexure-2 to the writ petition. Being aggrieved, the petitioner filed Writ Petition No.1240 (SS) of 1997 in re: Som

Prakash Srivastava vs. State of U.P. and others, which was dismissed vide judgment and order dated 13.11.2007. Being aggrieved, the petitioner filed Special Appeal No.1003 of 2007 in re: Som Prakash Srivastava vs. Deputy Commissioner, Hardoi and others. The Division Bench of this Court vide judgment and order dated 12.04.2012, a copy of which is Annexure-9 to the writ petition, was of the view that as no date, time and place for holding the inquiry, cross examination of the witnesses cited in the charge sheet and personal hearing had ever been fixed as such the judgment of the writ Court was set-aside and the special appeal was allowed. However, the Disciplinary Authority was granted liberty to start a fresh inquiry from the stage it became vitiated.

4. In pursuance thereof, without reinstating the petitioner in service, fresh departmental proceedings were initiated against the petitioner in which the petitioner participated. The inquiry report dated 13.12.2012 was submitted by the Inquiry Officer in which the charges framed against the petitioner were found proved consequently the Disciplinary Authority vide order impugned dated 06.02.2013, a copy of which is Annexure-3 to the writ petition, was of the view that as in the earlier inquiry conducted against the petitioner the report of the Inquiry Officer dated 30.09.1996 and in pursuance to the inquiry initiated under the directions of the Division Bench of this Court the inquiry report dated 13.12.2012 both prove the charges against the petitioner consequently has affirmed the dismissal order dated 14.11.1996 and has stated that the said order would remain effective.

5. Being aggrieved, the petitioner filed an appeal which has been rejected by the appellate authority vide order dated 06.08.2013, a copy of which is Annexure-4 to the writ petition.

Still being aggrieved, the petitioner filed a revision which has also been rejected vide order dated 20.10.2014, a copy of which is Annexure-5 to the writ petition. Subsequent thereto, as the petitioner had worked for a substantial period of time he preferred an application for mercy for being paid his retiral dues which has also been rejected vide order dated 28.05.2018, a copy of which is Annexure-1 to the writ petition. Raising a challenge to all the aforesaid orders, instant petition has been filed.

6. The sole legal argument of learned counsel for the petitioner is that when the Division Bench of this Court vide judgment and order dated 12.04.2012 had set-aside the order of the writ Court dated 13.11.2007 and directed for a fresh inquiry and subsequent thereto the petitioner has again been issued the same charge sheet dated 12.06.1996 and the inquiry report was also submitted on 13.12.2012 in which charges have been found proved as such it was for the Disciplinary Authority to have passed a fresh order of punishment but there cannot be any occasion for the Disciplinary Authority to have affirmed the earlier order of dismissal dated 14.11.1996 which impliedly stood set aside considering the Division Bench judgment dated 12.04.2012 whereby a fresh inquiry was required to be conducted from the stage the inquiry became vitiated.

7. Placing reliance on the aforesaid arguments the further contention is that when the special appeal filed by the petitioner being allowed vide judgment and order dated 12.04.2012 which judgment has attained finality and the respondents in compliance of the judgment of the Division Bench dated 12.04.2012 re-issued the same charge sheet dated 12.06.1996 as such by no stretch of imagination could they have reiterated the earlier dismissal order dated 14.11.1996 which fact of the

matter has also not been considered by the appellate and the revisional authority while dismissing the appeal and revision of the petitioner vide orders dated 06.08.2013 and 20.10.2014 and as such both the dismissal orders merit to be set aside with all consequential benefits. It is also stated the petitioner has retired on attaining the age of superannuation on 31.07.2012.

8. On the other hand, learned Standing Counsel argues that in pursuance to the order of the Division Bench the earlier charge sheet was re-issued to the petitioner and as the charges were found proved in the inquiry report dated 13.12.2012 consequently the punishment of dismissal has been imposed upon the petitioner. However, learned Standing Counsel is unable to explain as to how the earlier dismissal order dated 14.11.1996 which impliedly stood set aside on account of Division Bench judgment of this Court dated 12.04.2012 whereby a fresh inquiry had been directed could be said to be in existence so as to have entailed the Disciplinary Authority to have re-affirmed/reiterated the earlier dismissal order dated 14.11.1996.

9. Heard learned counsels for the contesting parties and perused the records.

10. From perusal of the record, it emerges that the petitioner while working as Accounts Clerk had been dismissed from service after an inquiry vide order dated 14.11.1996. The writ petition filed against the said dismissal order had also been dismissed. Upon a challenge being raised to the said order, the Division Bench of this Court vide judgment and order dated 12.04.2012 was of the view that as no date, time and place for holding the inquiry was fixed consequently the inquiry held against the petitioner became vitiated and as such the order of the writ Court dated 13.11.2007 was set aside and a fresh

inquiry was required to be conducted against the petitioner from the stage the inquiry became vitiated. In pursuance thereof, without reinstating the petitioner in service the earlier charge sheet dated 12.06.1996 was re-issued to the petitioner and again the charges were found proved against him vide inquiry report dated 13.12.2012. The Disciplinary Authority after considering the earlier inquiry report dated 30.09.1996 and the second inquiry report dated 13.12.2012 was of the view that as the charges have been found proved against the petitioner in both the inquiry reports consequently the earlier dismissal order dated 14.11.1996 merits to be affirmed and as such by means of order impugned dated 06.02.2013 has affirmed the earlier dismissal order dated 14.11.1996. The appeal and revision filed by the petitioner against the said orders have also been dismissed vide orders dated 06.08.2013 and 20.10.2014 and even the mercy representation filed by the petitioner has also been rejected vide order dated 28.05.2018.

11. The sole ground which is to be considered by this Court is that when in pursuance to the earlier dismissal order dated 14.11.1996 the writ petition had been dismissed yet the Division Bench of this Court vide judgment and order dated 12.04.2012 was of the view that the inquiry held against the petitioner was vitiated and consequently the respondents were required to hold a fresh inquiry against the petitioner from the stage it became vitiated as to whether the Disciplinary Authority was within his right of affirming the earlier dismissal order dated 14.11.1996.

12. From perusal of the record, it is clearly apparent that the Division Bench vide judgment and order dated 12.04.2012 set aside the order passed by the writ Court and was of the view that as the inquiry held against the petitioner was held without

fixing any date, time and place for holding inquiry consequently the inquiry was vitiated. As such, the respondents were required to hold a fresh inquiry from the stage it became vitiated. The respondents themselves on their own accord have re-issued the earlier charge sheet dated 12.06.1996. In pursuance thereof the inquiry has been held and the inquiry report dated 13.12.2012 was submitted in which the charges have again been found proved against the petitioner. It was open for the Disciplinary Authority to have passed a punishment order based on the inquiry report dated 13.12.2012 but by no stretch of imagination or under any provision of law the Disciplinary Authority could have considered the earlier inquiry report dated 30.09.1996 and going a step further, could have re-affirmed the earlier dismissal order dated 14.11.1996 which impliedly stood set-aside considering the Division Bench judgment of this Court dated 12.04.2012 when the Division Bench required a fresh inquiry to be held against the petitioner.

13. The Apex Court in the case of **Heera Prasad vs. State Bank of India - 1993 (2) SCC 418**, has held as under:-

"It is patent that the order dated 8th July, 1988 contemplated a fresh enquiry. At best, the examination-in- chief of the witnesses of the respondent could be said to have been allowed to be incorporated in the second enquiry proceedings. The order certainly contemplated that the Enquiry Officer would apply his mind afresh to the evidence on record comprising the examination-in-chief and cross- examination of the respondents witnesses and that of the appellant's witnesses. It is patent from the "Additional enquiry report" made by the Enquiry Officer that there has been no fresh application of mind. It was impermissible for the Enquiry Officer, in these circumstances, to have borne his previous Enquiry Report in mind and to have confined the "Additional enquiry report" only to the cross-examination of prosecution witnesses and the examination and cross-ex- amination of defence witnesses "as the charges have been dealt with one by one in detail in my previous enquiry report". It was also impermissible for him to have stated that "the findings of the previous enquiry report remain as they are".

Having regard to the High Court's order dated 8th July, 1988, the Enquiry Officer was bound to consider the material on record afresh and not to take his earlier report into account and to say that he found "no reason to change that report".

We are, in the circumstances, not satisfied that the appellant has had a fair opportunity of presenting his case to an Enquiry Officer unbiased by pre-conceptions."

14. Keeping in view the aforesaid discussion and the judgment of the Apex Court in the case of **Heera Prasad (supra)**, the writ petition deserves to be allowed and is allowed. The orders impugned dated 06.02.2013 by which earlier order of dismissal of the petitioner dated 14.11.1996 has been reiterated as well as the dismissal order dated 14.11.1996, copies of which are Annexures 2 & 3 to the petition, are set aside. The appellate and revisional orders dated 06.08.2013 and 20.10.2014, copies of which are Annexures 4 and 5 to the writ petition, are also set aside. The order dated 28.05.2018, a copy of which is Annexure-1 to the writ petition, whereby the representation of the petitioner has been rejected is also set aside. Though the natural corollary to the dismissal order being set-aside entailed the matter to be remitted for fresh inquiry but considering that the petitioner retired on 31.07.2012 and a period of more than a decade has lapsed since then as such, respondents are not permitted to hold a fresh inquiry against the petitioner. The petitioner having retired from service on 31.07.2012 would be entitled for all consequential benefits along with 50% back wages.

15. Let the order be complied within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 3.5.2024

A. Katiyar