

Court No. - 20

Case :- WRIT - A No. - 17503 of 2017

Petitioner :- Smt. Punita Singh

Respondent :- State Of U.P. Thru. Secy. Basic Education And Others. Civil Se

Counsel for Petitioner :- Raj Kumar Mishra,Dhirendra Pratap Singh,Dileep Kumar Tiwari,Pradeep Singh Somvanshi

Counsel for Respondent :- C.S.C.,Prashant Arora,Shachindra Pratap Singh

Hon'ble Shree Prakash Singh,J.

Heard Mr. Pradeep Singh Somvanshi, learned counsel for petitioner, learned State Counsel appearing on behalf of opposite party and Mr. S.S. Rajawat, learned counsel appearing for opposite party nos.3 and 4 and Mr. S.P.Singh, learned counsel for the opposite party no. 5.

Counter and rejoinder affidavit have been exchanged.

Under challenge is the order dated 15.7.2017 passed by the opposite party no. 3, whereby the service of the petitioner has been terminated w.e.f. 7.8.2010.

Learned counsel for petitioner submits that the petitioner was initially appointed as Assistant Teacher on 7.8.2010 and has continued in service thereafter. It has been submitted that the impugned order has been passed on the basis of certain charges leveled against petitioner not only with regard to his functioning but also indicating that he had procured appointment on the basis of forged document. Learned counsel for petitioner submits that a bare reading of the entire order makes it apparent that the same has been passed in a completely arbitrary manner, without application of mind and merely on the basis of report that was submitted by various authorities. Learned counsel has also drawn attention to the fact that the impugned order itself mentions that the petitioner was required to submit his reply by 5.12.2015 but when reply was submitted on 5.12.2015, it was rejected as not being worthy of taken cognizance. It is submitted that no reason whatsoever has been indicated by the authority for ignoring the reply submitted by petitioner and that the order itself clearly indicates that it has been passed dehors the Service Rules pertaining to termination of services of teacher. As such, it has been submitted by learned counsel for petitioner that the order has been passed behind

back of the petitioner without even advertent to or substantiating the charges and documents against him.

Learned counsel has placed reliance on the judgment and order dated 28.03.2012 passed in ***Writ Petition No.2248 (SS) of 2011 (Ram Sajeevan Yadav vs. State of U.P & Ors.)*** passed in similar circumstances in which it was held that Assistant Teacher such as the petitioner would be covered by the U.P. Basic Education Staff Rules, 1973 and that the Civil Services (Classification, Control and Appeal) Rules shall also be applicable upon Assistant Teacher such as petitioner including the Rules of 1999. It was further held that it has been submitted that in view of aforesaid judgment, opposite parties were obligated to hold disciplinary inquiry proceeding and could not have terminated the services of petitioner in such a cursory manner as has been done.

Learned counsel appearing for opposite parties submits that the petitioner has an alternative and equally efficacious remedy of filing an appeal under Rule 5 of the aforesaid Rules of 1973. It has further been submitted that the petitioner was afforded an opportunity of hearing prior to passing of the impugned order, which in any case has been passed on the basis of report submitted by Sampurnanand Sanskrit University, Varanasi in which it was clearly found that petitioner had procured a employment on the basis of forged documents.

Upon consideration of material available on record and submissions advanced by learned counsel for parties, particularly upon a perusal of the impugned order, it is apparent that the entire proceedings have been conducted and concluded without even advertent to the submissions made by petitioner in pursuance to the show cause notice. No reasons whatsoever has been indicated in the impugned order for rejecting the reply that has been submitted by petitioner on 5.12.2015. It is quite apparent from reading of the impugned order that the procedure as required to be followed in terms of Rule 7 of the Rules of 1973 with regard to imposition or major penalty has not been followed at all.

Rules 7 of the aforesaid Rules of 1973 is as follows:

"Rule 7. Procedure for imposing major penalties: *Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :*

i.The Disciplinary Authority may himself inquiry into the charges or appoint an Authority Subordinate to him as Inquiry Officer to inquire into the charges.

ii. The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority.

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

iii. The charge framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

iv. The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.

v. The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The inquiry officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental inquiries (Enforcement of Attendance of witnesses and production of documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to

obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government Servant.

xi. The disciplinary Authority, if it considers if necessary to do so, may by an order appoint a Government Servant or a legal practitioner to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

xii. The Government servant may take the assistance of any other Government Servant to present the case on this behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner of the disciplinary Authority having regard to the circumstance of the case so permits.

Provided that the rule shall not apply in following cases :

i. Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge.
or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor satisfied that, in the interest of the security of the state, it is not expedient to hold an inquiry in the manner provided in these rules."

It is not disputed that the aforesaid Rules of 1973 are applicable upon petitioner and therefore Rule 7, necessarily would also be applicable upon petitioner with regard to procedure required to be followed prior to termination of services. That having not been done renders the impugned against the said Service Regulations.

The procedure required to be followed in disciplinary proceedings in order to maintain transparency and fairness have also been discussed by Hon'ble Supreme Court in various other judgments such as **Roop Singh Negi versus Punjab National bank and others MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398 and State of Uttar Pradesh and others versus Saroj Kumar Sinha reported in (2010) 2 SCC 772. The relevant portion of Roop Singh Negi (supra) is as follows:**

"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The

purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

The relevant portion of **Saroj Kumar Sinha (surpa)** is as follows :

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge."

"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."

It is thus apparent that the order impugned has been passed not only dehors the Rules but also against the principles of natural justice therefore, it is unsustainable.

So far as submissions of learned counsel for opposite parties with regard to availability of alternative remedy is concerned, it is settled law that an alternative remedy does not absolutely bar for entertaining writ petition under Article 226 of the Constitution of India, which even otherwise is the appropriate remedy in case of violation of fundamental rights of a citizen of the country particularly with regard to Article 14 of the Constitution of India. In the present case, it is clear that the order impugned has been passed in a completely cursory and arbitrary manner and is thus against the provision of Article 14 of the Constitution of India, rendering the writ petition maintainable.

In view of aforesaid discussion, a writ in the nature of certiorari is issued quashing the order dated 15.07.2017 granting liberty

to opposite party to pass fresh order strictly in accordance with Rule 7 of the Rules of 1973 and adhering to the principles of natural justice. The petitioner shall be reinstated in service and shall be paid regular salary for the post.

In case, inquiry proceedings are conducted by the opposite parties the same shall be concluded within a period of three months from the date, the petitioner is required to submit his reply.

It is further clarified that the back-wages and other benefits shall be subject to the final outcome of the disciplinary proceedings.

The writ petition is allowed accordingly.

Order Date :- 16.4.2024

Anuj Singh