

Court No. - 4

Case :- WRIT - A No. - 6961 of 2024

Petitioner :- Om Prakash Kashyap

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of
Secretariat Administration Lko. And Another

Counsel for Petitioner :- Alok Mishra, Priyanshu Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard.

2. This Court has passed the order dated 13.09.2024, which reads as under:-

"Heard.

This Court has passed order dated 28.8.2024, which reads as under:

"Heard Sri Alok Mishra, learned counsel for the petitioner and Ms. Parul Bajpai, learned Additional Chief Standing Counsel.

By means of the present petition, the petitioner has prayed for the following relief:-

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 09-09- 2022, 19-05-2022 as well as modified order dated 28-06-2022 passed by the State Government, contained as Annexure Nos. 1 & 2 to this writ petition respectively;

(ii) to issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 15-07-2022 passed by the State Government, continuing the departmental proceedings pending against the petitioner under Regulation 351(A) of Civil Services Regulations after retirement of the petitioner on 31-03-2022 after summoning the originals of the same;

(iii) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to give effect to the aforesaid impugned orders dated 09-09-2022, 19-05-2022 as well as modified order dated 28-06-2022 and also 15-07-2022 for continuation of departmental proceedings against the petitioner under Regulation 351(A) of Civil Services Regulations, after summoning the originals of the same, passed by the State Government, contained as Annexure Nos. 1 & 2 to this writ petition respectively;

(iv) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to take a decision on the inquiry report dated 07-02-2022, which was submitted prior to passing of the orders impugned in the instant writ petition and thereafter, pay all the post-retiral dues to the petitioner, including full Pension, Gratuity, Group Insurance

etc. with all consequential benefits, including 18% interest thereupon."

Sri Mishra has further submitted that more or less similar controversy has been settled in various cases, therefore, this petition may also be decided finally.

Sri Alok Mishra has referred the judgement and order dated 26.07.2024 passed by this Court in two writ petitions, i.e., Writ-A Nos. 4201 of 2024 and 4780 of 2024.

List/Put up this matter on 06.09.2024 as fresh to enable the learned Additional Chief Standing Counsel to seek specific written instructions in an issue particularly on the point as to whether this writ petition may be decided finally in terms of the aforesaid order being passed in Writ-A Nos. 4201 of 2024 and 4780 of 2024.

Matter may be taken up after fresh cases."

Sri Surendra Pratap Singh, learned Standing Counsel has stated that in the present issue the inquiry has been concluded. He has informed on the basis of instructions that the inquiry has been concluded on 3.9.2024, however, the inquiry report has not been shown to the Court.

List / put up on 18.9.2024 in the Addl. Cause List.

This matter may be taken up immediately after fresh.

On that date the inquiry report shall be shown to the Court failing which the matter may be decided finally on the next date."

3. Sri Sandeep Sharma, learned Standing Counsel has provided a detailed instructions letter dated 17.09.2024 preferred by the Special Secretary, Government of U.P., Lucknow addressing to the Chief Standing Counsel annexing therewith the copy of inquiry report dated 03.09.2024 of the Inquiry Officer, namely, Sri Amit Singh Bansal, who is Special Secretary, Niyojan Vibhag, Government of U.P., the same is taken on record.

4. Sri Sharma has also provided the copy of letter dated 17.09.2024 preferred by the Competent Authority on behalf of the Appointing Authority addressing to the petitioner apprising that the inquiry has been concluded on 03.09.2024 and the Discliplinary Authority has his disagreement on the aforesaid inquiry report on two points which have been indicated in para-3 of the report, therefore, the explanation on disagreement has been sought from the petitioner. The copy of letter dated 17.09.2024 is also taken on record.

5. Sri Alok Mishra, learned counsel for the petitioner has submitted that in an identical matter the inquiry has been conducted against Sri Santosh Kumar Awasthi, Sri Ram Naresh Tripathi and against the present petitioner. All the aforesaid three persons were placed under suspension on 27.12.2018. Sri

Santosh Kumar Awasthi and Sri Ram Naresh Tripathi are in service whereas the petitioner has retired on 31.03.2022 and he remained under suspension till his retirement.

6. Sri Santosh Kumar Awasthi has filed writ petition bearing Writ-A No.4201 of 2024; Santosh Kumar Awasthi vs. State of U.P. & others and Sri Ram Naresh Tripathi has also filed writ petition bearing Writ-A No.4780 of 2024; Ram Naresh Tripathi vs. State of U.P. & others. Both the aforesaid writ petitions have been decided vide judgment and order dated 26.07.2024. Since both the orders are more or less identical in nature, therefore, order dated 26.07.2024 passed in the case in re:Ram Naresh Tripathi is being reproduced here-in-below:-

"1. Heard.

2. This Court has passed the order dated 15.07.2024, which reads as under:-

"1. Heard Shri Alok Mishra, learned counsel for the petitioner and Shri Sandeep Sharma, learned Standing Counsel for the State-respondents.

2. This Court has passed the order dated 4.7.2024 which reads as under:-

"1. Heard Sri Alok Mishra, learned counsel for the petitioner and Sri Diwakar Singh, learned Standing Counsel for the State-respondents.

2. This is really a peculiar case where the petitioner has been placed under suspension vide Office Order dated 27.12.2018 issued by the Special Secretary of the Department of Secretariat Administration, Anubhag-2 (Vigilance) and till date the petitioner is under suspension as about five years and seven months period have passed since the petitioner is under suspension whereas the law is trite that no employee can be placed under suspension for unlimited period. Further, if any employee is placed under suspension, the charge-sheet would be given promptly, if possible within a period of three months but this is a case where the charge-sheet has been given to the petitioner on 25.6.2019 (Annexure no. 6) i.e. after about six months. Notably, the impugned suspension order is based on one sting operation being conducted by one news channel in the name of 'ABP' and on the basis of aforesaid sting operation the petitioner was said to be involved in getting bribe for doing unlawful act. As soon as the petitioner received the copy of charge-sheet on 25.6.2019 he immediately preferred a representation dated 14.7.2019 (Annexure no. 7) to the authority concerned demanding the particular C.D. of that sting operation pursuant thereto he was placed under suspension and petitioner kept on demanding that relevant document till 4.1.2021 but to no avail as the copy of that C.D. has not been provided to him though the application of the petitioner demanding the aforesaid C.D. has been disposed of vide order dated 14.12.2021 (Annexure no. 8), the perusal thereof reveals that C.D. is still available with the news channel but same has not been provided to the petitioner.

3. At this stage Sri Alok Mishra has drawn attention of this Court towards the judgment and order dated 12.4.2019 passed in Civil Misc. Writ

Petition (S/S) No. 10276 of 2019 (Ram Ratan vs. State of U.P. & others) : MANU/UP1469/2019 relating to the same department and subject matter is also of suspension wherein vide para 14 thereof this Court issued specific direction to the Chief Secretary of the U.P., after allowing the aforesaid writ petition which reads as under:

"14. Before parting with, this Court wants that the concern of the Court, as expressed herein above by this order, be brought into the kind notice of the Chief Secretary State of U.P., Lucknow. Therefore, Senior Registrar of this Court shall send a copy of this order within three days to the Chief Secretary, State of U.P., Lucknow for information and necessary orders to be passed directing all the authorities of the State of U.P. to follow the necessary provisions of law when any suspension order is passed against any officer/official of the State."

4. On being confronted Sri Diwakar Singh about the aforesaid submissions of the learned counsel for the petitioner he could not dispute the aforesaid submission but has submitted that earlier the inquiry officer has concluded the inquiry on 7.9.2022 but the disciplinary authority was not agree with the findings of the inquiry officer, therefore, the matter was again remanded for re-inquiry by appointing another inquiry officer on 9.9.2022 but he has fairly submitted, on the basis of instructions, that the inquiry has yet not been concluded finally.

5. On that Sri Alok Mishra has submitted that in the absence of having relevant piece of evidence when the petitioner could not submit his defence reply to the charge-sheet, as to how inquiry was concluded as said by the learned Standing Counsel and as to how that inquiry is still continuing, therefore, Sri Mishra has submitted that if any departmental inquiry is continuing without taking the defence reply of the petitioner, that inquiry may be treated as nullity in the eyes of law.

6. The matter requires consideration.

7. Learned Standing Counsel is given ten days time and no more to seek complete written instructions in the matter and may file short counter affidavit by the next date of listing, failing which the direction for personal appearance of Special Secretary, Department of Secretariat Administration, Anubhag-2 (Vigilance) may be issued on the next date to assist the Court along with all relevant documents.

8. List on 15.7.2024 as fresh. This matter shall be taken up immediately after fresh.

9. It is needless to say that the competent authority may revisit on the issue strictly in accordance with law and may pass appropriate order by the next date of listing.

10. If any appropriate order is passed the copy thereof may be shown to the Court on the next date."

3. Shri Sharma has served a copy of the short counter affidavit upon the learned counsel for the petitioner.

4. List/put up this case on 18.07.2024 in the additional cause list as fresh.

5. This matter may be taken up immediately after fresh cases."

3. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of suspension dated 27.12.2018 as well as the impugned order dated 27.12.2018 passed by the opposite party No.2 instituting the departmental proceedings against the petitioner, so far as the same pertains to the present petitioner, contained as Annexure Nos.1 and 2 to this writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect to the aforesaid impugned order of suspension dated 27.12.2018 as well as the as well as the impugned order dated 27.12.2018 passed by the opposite party No.2 instituting the departmental proceedings against the petitioner to the extent it pertains to the petitioner, contained as Annexure Nos.1 and 2 to this writ petition.

(iii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to reinstate the petitioner and allow him to work on the post of Private Secretary (Level-2) in the office of the opposite parties as he was working prior to passing of the impugned order of suspension dated 27.12.2018 and to pay him his salary regularly whenever the same falls due to him with all consequential benefits."

4. This is a case where the petitioner has been placed under suspension on 27.12.2018. Undisputedly, the departmental inquiry concluded on 07.09.2022. Immediately after two days of conclusion of the departmental inquiry and receiving the inquiry report, the Disciplinary Authority directed for re-inquiry in the matter vide order dated 09.09.2022. Though, the short counter affidavit has been filed by the State-respondents but the copy of order dated 09.09.2024 has not been filed along with the short counter affidavit.

5. However, Sri Alok Mishra, learned counsel for the petitioner has shown a photocopy of order dated 09.09.2022 wherein no specific and cogent reason has been indicated to conduct a fresh departmental inquiry when the earlier departmental inquiry has been concluded on 07.09.2022 pursuant to the suspension order dated 27.12.2018. The Disciplinary Authority must have indicated the reason as to why instead of issuing a show cause notice on the point of disagreement on the findings of the Enquiry Officer a fresh inquiry has been directed. The photocopy of order dated 09.09.2024 is taken on record.

6. Rule 9 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (here-in-after referred to as the "Rules, 1999") category provides that the Disciplinary Authority may issue a show cause notice on the point of disagreement but such provision has not been followed by the Disciplinary Authority.

7. Sri Uttam Kumar Srivastava, learned Standing Counsel has stated that this is a issue where the full fledged departmental inquiry is required but he could not justify the order dated 09.09.2022 whereby no specific reason has been indicated to the aspect that the Disciplinary Authority is not

agreeable on the findings of the inquiry report and as to why a fresh inquiry would be required.

8. Be that as it may, this is a prerogative of the Disciplinary Authority to direct for full fledged departmental inquiry or may pass a fresh order of re-enquiry after recording the cogent reasons but on account of such exercise any employee may not be kept under suspension for about five years and seven months. Therefore, the impugned suspension order dated 27.12.2018 passed by the opposite party No.2 is hereby set aside/quashed. The petitioner shall be reinstated in service and shall be permitted to discharge his duties and shall be paid his salary.

9. However, it is always open for the Disciplinary Authority to appoint an Inquiry Officer to conduct the departmental inquiry against the employee and if the earlier departmental inquiry is faulty, he shall assign specific reason as to why such departmental inquiry, which has been concluded on 09.09.2022, was faulty. A show cause notice may also be given to the petitioner on the point of disagreement of the findings of Inquiry Officer in terms of Rule 9 of the Rules, 1999, but all the aforesaid exercise may be undertaken strictly in accordance with law by affording an opportunity of hearing to the petitioner.

10. The writ petition is allowed only on the aforesaid count.

11. No order as to cost."

7. The same question is involved in the present case inasmuch as the modified disagreement dated 09.09.2022 (Annexure No.1) is an order being passed by the Disciplinary Authority directing for re-inquiry in an issue referring the inquiry report dated 07.02.2022. In para-2 of the impugned order dated 09.09.2022 this much has been indicated that the inquiry against the present petitioner shall remain in operation pursuant to the approval being sought under Regulation 351-A of the Civil Service Regulations. In para-3 of the aforesaid order, it has been indicated that the Inquiry Officer has not appreciated all facts and circumstances and material while conducting inquiry, therefore, the said departmental inquiry is revived and fresh inquiry has been directed.

8. Notably, the earlier inquiry report was submitted before the Disciplinary Authority on 07.02.2022 and without giving any findings on the disagreement under Rule 9 (2) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (here-in-after referred to as the "Rules, 1999") the re-inquiry has been directed.

9. The law is trite on the point that it is solely upto the domain and discretion of the Disciplinary Authority to accept the inquiry report or not to accept the inquiry report but if the Disciplinary Authority is not accepting the inquiry report holding that the inquiry is faulty, he / she must assign specific

reason as to why the such departmental inquiry was faulty and with such findings any appropriate order may be passed. Therefore, the impugned order dated 09.09.2022 (Annexure No.1) is not sustainable in the eyes of law.

10. Accordingly, the impugned order dated 09.09.2022 (Annexure No.1) is hereby set aside/quashed.

11. Notably, the Disciplinary Authority has again disagreed on the findings of the inquiry report dated 03.09.2024 assigning the reason of disagreement but the re-inquiry could have not been conducted pursuant to the order dated 09.09.2022, therefore, the consequential departmental inquiry may not sustain in the eyes of law.

12. However, it is always open for the Disciplinary Authority to appoint an Inquiry Officer to conduct the departmental inquiry against the employee and if the earlier departmental inquiry is faulty, he shall assign specific reason as to why such departmental inquiry, which has been concluded on 09.09.2022, was faulty. A show cause notice may also be given to the petitioner on the point of disagreement of the findings of Inquiry Officer in terms of Rule 9 of the Rules, 1999, but all the aforesaid exercise may be undertaken strictly in accordance with law by affording an opportunity of hearing to the petitioner and keeping in a view that the petitioner has already retired on 31.03.2022.

13. Since the petitioner has already retired from service, therefore, the Competent Authority / Disciplinary Authority may also take decision for making payment of post retiral dues to the petitioner and he shall be paid those post retiral dues, which may not be withheld by the opposite parties. It is expected that the consequential orders would be passed with expedition.

14. Accordingly, the instant writ petition is ***allowed***.

15. No order as to the costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 25.9.2024
Suresh/