

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:9056-DB

Reserved

Court No. - 1

Case :- WRIT - A No. - 2000147 of 2011

Petitioner :- U.P.State Sugar And Cane Devp. Corp. Ltd. Through Its M.D.

Respondent :- Surendra Prasad Mishra And Another

Counsel for Petitioner :- P.K.Sinha

Counsel for Respondent :- C.S.C., V.S.Trivedi

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(Per Om Prakash Shukla, J.)

- (1) This writ petition under Article 226 of the Constitution of India has been instituted by the petitioners, assailing the correctness of the judgment/order dated 11.11.2010 passed by the State Public Services Tribunal, Lucknow (hereinafter referred to as the '*Tribunal*'), whereby (i) Claim Petition No. 810 of 2008 filed by the claimant/respondent no.1 (Surendra Prasad Misra) has been allowed; (ii) the order of punishment dated 23.05.2007 and consequential order dated 02.01.2008 passed on appeal preferred by the respondent no.1-claimant have been quashed; and (iii) the respondents/petitioners herein have been directed to pay full retiral dues and full salary for suspension period except what has already been paid, as per rules.
- (2) Apparently, by means of the punishment order dated 23.05.2007, an amount of Rs.1,05,42.50 was ordered to be recovered from the retiral dues of the respondent no.1-claimant

and his pay for suspension period, except subsistence allowance was also ordered to be withheld.

- (3) The facts, in nutshell, are that in the year 1972, the claimant/respondent no.1, Surendra Prasad Mishra, was appointed on the post of Storekeeper in U.P. State Sugar Corporation Ltd and while continuing on the said post, the Managing Director, U.P. State Sugar Corporation Ltd., vide order dated 24.06.2002, had transferred the claimant/respondent no.1 in Sale Department as Incharge Godown and since 25.06.2002, claimant/respondent was deputed for the said work in the Godown at Budhwai Unit.
- (4) On 05.10.2003, when the claimant/respondent was posted in the Godown at Budhwai Unit, physical verification of the Godowns was made, wherein it was found that although all the locks of Godowns were in tact and even there were no breaches in the walls of Godowns at any other place, but even then 160 bags were found short. In this backdrop, the claimant/respondent was placed under suspension vide order dated 18.11.2003 and an inquiry was instituted against the claimant/respondent. However, since the inquiry took some time to finalize, the claimant/respondent was reinstated in service vide order dated 03.11.2004, pending finalization of the inquiry.

- (5) The record of the instant writ petition reveals that initially, Shri Y.K. Agarwal, Deputy Chief Engineer was appointed as Inquiry Officer to conduct the inquiry and on his transfer, one Shri R.C. Saxena, Assistant Engineer was appointed as Inquiry Officer. Subsequently, it was found that Shri R.C. Saxena, without serving the charge-sheet on the claimant/respondent and even without conducting the inquiry as per law, submitted its report and apparently gave a report that no case is made out against the claimant/respondent and others. As no action was taken on the aforesaid report by the petitioners/department, hence the claimant/respondent filed Writ Petition No. 8065 (S/S) of 2005 before this Court, wherein a direction was issued by this Court to take decision on the aforesaid report of the Inquiry Officer. In compliance of the aforesaid direction of this Court, the department/petitioners proceeded to consider the said inquiry report and after due consideration, it was found that the inquiry conducted by the Inquiry Officer Shri R.C. Saxena was not in accordance with the provisions of law and as such, the said inquiry report was not accepted and another inquiry officer Shri P.K. Saxena was appointed to conduct the inquiry. The Inquiry Officer, after his appointment as aforesaid, served a charge-sheet on the claimant/respondent vide letter dated 11.03.2006, to which the claimant/respondent submitted his reply vide letter dated 24.03.2006. However, records reveal that before Shri P.K. Saxena, the Inquiry Officer, could submit his report, he was

transferred to some other unit and as such, Shri L.P. Singh, Accountant and thereafter Shri R.K. Jain were appointed as Inquiry Officer, but they too did not conclude the inquiry. Lastly Shri Sanjay Sinha, Assistant Engineer (Civil) was appointed as Inquiry Officer, who after concluding the inquiry, submitted his report dated 04.11.2006, holding the claimant/respondent guilty for the charges so levelled against him. Thereafter, a show cause notice along with a copy of the inquiry report was served on the claimant/respondent vide letter dated 07.02.2007 by registered post, but it returned undelivered with the remarks that the recipient is not available at home. Thereafter, another letter dated 04.04.2007 was sent to the claimant/respondent by registered post directing him to put up his case before the punishing authority and also allowing him personal hearing on 11.04.2007, however, this letter too was returned undelivered with the remark that the claimant/respondent refused to accept it. Thereafter, the disciplinary authority, after taking into consideration of all the relevant material, passed the punishment order dated 23.05.2007 against the claimant/ respondent, whereby an amount of Rs.1,05,42.50 was ordered to be recovered from the retiral dues of the respondent no.1-claimant and his pay for suspension period, except subsistence allowance was also ordered to be withheld.

- (6) Feeling aggrieved by the aforesaid order of punishment dated 23.05.2007, the claimant/respondent preferred an appeal on 10.08.2007, which was rejected vide order dated 02.01.2008 by the Appellate Authority. Thereafter, the claimant/respondent challenged the order of punishment dated 23.04.2007 and appellate order dated 02.01.2008 by instituting Claim Petition No. 810 of 2008 before the learned Tribunal. The learned Tribunal, after hearing the parties and going through the record, allowed the claim petition with the direction as stated in paragraph-1 hereinabove vide judgment/order dated 11.11.2010. It is this judgment/order dated 11.11.2010, which has been assailed in the instant writ petition.
- (7) Heard Shri P.K. Sinha, learned Counsel representing the petitioners and respondent no.3 and Shri V.S. Trivedi, learned Counsel representing the respondent no.1.
- (8) Submission of the learned Counsel representing the petitioners and respondent no.3 is that the learned Tribunal has not correctly appreciated the facts and circumstances of the case and has, in fact, recorded a vague finding that the charge-sheet has not been approved by the competent authority i.e. General Manager and show case notice was not served upon the respondent no.1-claimant and as such the enquiry conducted against the respondent no.1-claimant was flawed. According to the learned Counsel, the General Manager is the appointing

authority of the respondent no.1/claimant and charge-sheet was approved by the General Manager, however, after filing the instant writ petition, it transpired that in the impugned judgment/order dated 11.11.2010, words 'Managing Director' have inadvertently been mentioned in paras-7 and 9 of the impugned judgment/order in place of words 'General Manager' and as such, the petitioners preferred an application for correction in the impugned judgment/order to the aforesaid extent, bearing Misc. Application No. 109 of 2017. The learned Tribunal, vide judgment/order dated 16.08.2017, after hearing the parties and going through the record, allowed the aforesaid correction application and corrected the words 'Managing Director' mentioned in paras-7 and 9 of the impugned judgment/order as 'General Manager'. The said order dated 16.08.2017 (supra) has been brought on records by the petitioners by means of an affidavit dated 04.09.2017 and the respondent no.1/claimant has not controverted the aforesaid finding by filing any affidavit. Learned Counsel, thus, submitted that since the charge-sheet has been approved by the competent authority i.e. General Manager, hence the finding recorded by the learned Tribunal in this regard is patently illegal and not sustainable.

- (9) Learned counsel representing the respondent no.1-claimant, on the other hand, has argued that in the facts and circumstances of

the case, the impugned judgment passed by the learned Tribunal does not warrant any interference by this Court in this case for the reason that a clear finding has been recorded by the learned Tribunal to the effect that issuance of charge-sheet, show cause notice and passing of the punishment order are exclusive jurisdiction of the appointing authority and since there is no evidence brought on record to draw the inference that the charge-sheet was approved by the competent authority i.e. appointing authority, the impugned order of punishment based on such charge-sheet dated 11.03.2006 is vitiated in the eyes of law. He has further argued strenuously that after the impugned judgment/order, the petitioners had made manipulation in the record of inquiry and with the *mala fide* intention, the word 'approved' has been mentioned in the charge-sheet and on that basis, the petitioners are now trying to set-up a case before this Court, as if the charge-sheet has been approved by the competent authority, so that it can be argued by them that the learned Tribunal has recorded erroneous finding that the charge-sheet has not been approved by the competent authority. According to the learned Counsel, if for the sake of argument, if manipulation has not been done after the impugned judgment/order, there is no reason to record a finding by the learned Tribunal in its order to the effect that there is no evidence brought on to draw the inference that the charge-sheet was approved by the competent authority i.e. appointing

authority. According to the learned Counsel, the charge-sheet against the respondent no.1-claimant were not proved by the competent authority and the inquiry officer has submitted his report only on the basis of the charge-sheet and reply submitted by the respondent no.1-claimant. In this view, submission on behalf of the respondent no.1-claimant is that at this juncture no interference in the judgment and order passed by the learned Tribunal is warranted.

- (10) We have given our thoughtful consideration to the rival submissions made by the learned counsel appearing for the respective parties and have also perused the records available before us on this writ petition.
- (11) Apparently, it is an admitted fact that while the petitioner was working on the post of Incharge Godown in Budhwal Unit of the U.P. State Sugar Corporation Limited, a physical verification was made on 05.10.2003, wherein irregularities in stock were found, upon which the claimant/respondent was placed under suspension vide order dated 18.11.2003 and an inquiry was instituted. During pendency of the inquiry, the claimant/respondent was reinstated vide order dated 03.11.2004, however, inquiry was ordered to be continued against the claimant/respondent. Initially, Shri Y.K. Agarwal, Deputy Chief Engineer was appointed as inquiry officer to conduct the inquiry, however, on his transfer, one Shri R.C.

Saxena, Assistant Engineer was appointed as Inquiry Officer, who, without serving charge-sheet to the claimant/respondent and without conducting the inquiry in accordance with law, gave a report, stating that no case is made out against the claimant/respondent and others. This inquiry report was not accepted by the Disciplinary Authority/General Manager and another inquiry officer Shri P.K. Saxena, Incharge Chief Engineer, was appointed to conduct the inquiry.

- (12) Thereafter, a charge-sheet was issued to the respondent no.1-claimant on 11.03.2005, which contained two charges. The first charge stated against the respondent no.1-claimant was related to having not performed his duties as assigned by the Sugar Corporation Board on the post of Sugar Godown Keeper as on physical verification, 160 bags were found short and he had not informed to the competent authority regarding deficiency in the same. The second charge against the claimant/respondent relates to non-verification of stock with the record nor any mention has made in F.D.O. report dated 15.10.2003 and 31.10.2003 and knowingly causing loss to the Corporation.
- (13) The respondent no.1-claimant submitted reply to the said charge-sheet on 24.03.2006, denying the allegations made against him in the charge-sheet. However, before submitting his inquiry report, Shri P.K. Saxena was transferred to some other unit and as such, Shri L.P. Singh, Accountant and thereafter,

Shri R.K. Jain were appointed as inquiry officer, but they too could not conclude the inquiry. Lastly Shri Sanjay Sinha, Assistant Engineer (Civil) was appointed as Inquiry Officer, who, after due inquiry, submitted its report dated 04.11.2006, holding both the charges levelled against the claimant/respondent to have been proved. The Disciplinary Authority/General Manager, after considering the said inquiry report, issued a show cause notice to the claimant/respondent vide letter dated 07.02.2007 by registered post, but it returned undelivered with the remark that recipient is not available at home. Thereafter, another letter dated 04.04.2007 was sent to the claimant/respondent by registered post, however, this letter dated 04.04.2007 was also returned undelivered with the remark that the claimant/respondent refused to accept it. Thereafter, the Disciplinary Authority/General Manager, after taking into consideration all the relevant material, passed the punishment order dated 23.05.2007, which was challenged by the claimant/respondent by instituting an appeal before the Managing Director/Appellate Authority, who, vide order dated 02.01.2008, rejected the appeal.

- (14) Feeling aggrieved, the claimant/respondent had instituted Claim Petition No. 810 of 2008 before the learned Tribunal, who, vide judgment/order dated 11.11.2010 allowed the claim petition mainly on two grounds viz. (I) charge-sheet has not been

approved by the competent authority; and (II) show cause notice was not served upon the claimant/respondent.

- (15) So far as first ground of allowing the claim petition i.e. charge-sheet has not been proved by the disciplinary authority is concerned, the record reveals that the disciplinary authority in the case of the claimant/respondent is the General Manager of the Corporation. From perusal of the impugned judgment/order dated 11.11.2010, what we find is that the learned Tribunal, in para-9 of the impugned judgment, has inadvertently mentioned that the Managing Director is the competent authority, however, this inadvertent error was corrected by the learned Tribunal itself vide order dated 16.08.2017 on an application moved by the petitioners and it was directed that the words 'General Manager' be substituted in place of words 'Managing Director' in paras-7 and 9 of the impugned judgment. The record available before this Court also reveals that the charge-sheet has been approved by the General Manager of the Corporation. In this regard, the petitioners had also arrayed Sri S.K. Verma, Retired General Manager, who, vide affidavit dated 04.09.2017, stating on oath that there is no manipulation in the approval of the charge-sheet as alleged by the claimant/respondent. Thus, the plea of the claimant/respondent regarding the manipulation in the charge-sheet, in this regard, has no substance as the learned Counsel for the claimant/respondent has not submitted

any documentary proof to show that there is manipulation in the record and on the other hand, learned Counsel for the petitioners have filed an affidavit of Incharge General Manager to prove the authenticity of the approved charge-sheet.

- (16) So far as the second ground for allowing the claim petition by the learned Tribunal i.e. show cause notice was not served upon the claimant/ respondent, it is an admitted fact that first show cause notice was returned back to the department with the endorsement that recipient is not available at home. Thereafter, second letter containing show cause notice was issued to the claimant/respondent, however, the record reveals that the second letter containing show cause notice was returned back to the department with the endorsement that claimant/respondent has refused to take the letter. Thus, the finding recorded by the learned Tribunal in this regard that show cause notice was not served upon the claimant/respondent, is contrary to the record and the law propounded by this court as well as the Hon'ble Apex Court that refusal of the show cause notice is deemed service and has to be construed as acceptance of the show cause notice. In a slightly different context, while considering the effect of Section 27 of the General Clauses Act, 1897, a Bench of three Judges of the Hon'ble Apex Court in **C.C. Alavi Haji vs. Palapetty Muhammed and Anr, AIR 2007 SC (Supp) 1705** made following observations: -

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh AIR 1992 SC 1604 : State of M.P. vs. Hiralal & Ors. (1996) 7 SCC 523 and V. Raja Kumari vs. P. Subbarama Naidu & Anr. (2004) 8 SCC 774]”

- (17) From the aforesaid, it is apparent that the reasoning given by the learned Tribunal while allowing the claim petition is contrary to record as the charge-sheet has already been approved by the competent authority i.e. General Manager and after returning the first show cause notice unserved upon the claimant/respondent, second show cause notice was issued to the claimant/respondent, however, the postal endorsement on the second show cause notice reveals that the claimant/respondent himself has refused to accept the said second show cause notice. In this backdrop, the competent authority i.e. General Manager had proceeded with the matter and after considering the gravity of charges as well as the inquiry report, has passed the impugned order. The learned

Tribunal has lost sight of not considering the aforesaid fact while allowing the claim petition.

(18) In view of the aforesaid, we find that there is no illegality in conducting the departmental inquiry against the claimant/respondent and the punishment awarded against the claimant/respondent is commensurate to the charges proved against him, which was after following the due procedure of law. Learned Counsel for the claimant/respondent has failed to point out any illegality or irregularity in conducting the departmental inquiry against him. Thus, the impugned judgment/order passed by the learned Tribunal is liable to be set-aside.

(19) Accordingly, the instant writ petition is **allowed**. The impugned judgment/order dated 11.11.2010 passed by the learned Tribunal is hereby set-aside with the consequential effect that the order of punishment/recovery passed by the disciplinary authority is restored.

(20) There will be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date : 30th January, 2024

Ajit/-

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