

Court No. - 4

Case :- WRIT - A No. - 8798 of 2024

Petitioner :- Pradeep Kumar Srivastava

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Appointment And Personnel And Another

Counsel for Petitioner :- Santosh Kumar Tripathi, Gaurav Mehrotra, Radhey Shyam, Ramendra Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Gaurav Mehrotra, learned counsel appearing for the petitioner as well as Sri Ashwini Kumar Singh Rathaur, learned Standing Counsel for the State and perused the record.

2. By means of this petition, the petitioner has prayed for the following main reliefs:

"I. To issue a writ, order or direction in the nature of Certiorari quashing the impugned office memorandum dated 18.07.2024 issued by the Respondent No.2, copy whereof is annexed as Annexure-1 to this Writ Petition.

II. To issue a writ, order or direction in the nature of Certiorari quashing the impugned charge-sheet dated 18.07.2024, served upon the Petitioner on 16.08.2024 vide letter dated 08.08.2024 by the Inquiry Officer, copy whereof is annexed as Annexure-2 to this Writ Petition.

III. To issue a writ, order or direction in the nature of Mandamus commanding the Respondent Authorities not to give effect to the impugned office memorandum dated 18.07.2024 as well as impugned charge-sheet dated 18.07.2024 against the petitioner."

3. Learned counsel for the petitioner has stated that in the impugned order/office memorandum dated 18.07.2024 (Annexure-1 to the petition) the disobedience of the orders being passed by this Court in case of the petitioner is clearly visible. This is a case where the first impugned order was passed against the petitioner on 11.10.2013, which was set aside by the Court vide judgment and order dated 05.08.2016, reference thereof has been indicated in para-2 of the impugned order. Thereafter, another punishment order dated 13.09.2022 has been passed in utter disregard of the direction being issued by this Court and also in violation of the relevant Rules. The aforesaid punishment order was assailed before this Court and this court set aside/quashed that punishment order dated

13.09.2022, reference thereof has been indicated in para-5 of the impugned order. The High Court while quashing the impugned punishment order dated 13.09.2022 vide judgment and order dated 07.02.2023 categorically directed that 'if the departmental inquiry is required in the case of the petitioner, same may be completed positively within a period of **six months** from today and in case of failing to complete the same within 6 months, same shall stand lapsed', therefore, if the fresh departmental inquiry was required, same must have been concluded within the stipulated period of six months, i.e., on or before 07.08.2023. The aforesaid order dated 07.02.2023 was assailed before a Division Bench, but the Division Bench did not interfere on the merits of the order dated 07.02.2023, however, it stayed the direction of the Single Judge for initiating the disciplinary proceeding against the erring officer, reference thereof has been given in para-6 of the impugned order, therefore, Sri Gaurav Mehrotra has stated that when all the orders of the Court have been indicated/reproduced in the order/office memorandum dated 18.07.2024, then it may be presumed that the competent authority is well versed about the directions being passed by the Court and those directions shall be abided.

4. Undisputedly, the departmental proceedings had not been conducted or concluded within the time, so stipulated by the judgment and order dated 07.02.2023, therefore, such departmental proceedings had stood lapsed after 07.08.2023.

5. By means of the impugned order, taking recourse of Regulation 351-A, Civil Services Regulation (hereinafter referred to as 'Regulation 351-A'), permission for conducting fresh inquiry has been given vide impugned order/office memorandum dated 18.07.2024, which is not permissible under the law.

6. Sri Gaurav Mehrotra submits that the issue in question is of 2001-02 for which the petitioner was awarded the first punishment on 11.10.2013, which was quashed by this Court.

7. The petitioner retired on 31.12.2016, therefore, after about eight years from his retirement, passing the impugned order/office memorandum dated 18.07.2024, taking recourse of

Section 351-A, is patently illegal, arbitrary and unwarranted, in as much as such departmental inquiry may not be initiated as per Regulation 351-A and such departmental inquiry may not be initiated for the reason, also, that the alleged event is more than four years old.

8. Sri Gaurav Mehrotra has rightly said that in para-8 of the impugned order impugned order/office memorandum it has been indicated that the impugned order is being passed in compliance of the order of this Hon'ble court dated 07.02.2023, whereas the impugned order *prima facie* has been passed in disregard of the direction being issued by this court in the order dated 07.02.2023, as considered above.

9. Sri Gaurav Mehrotra has placed reliance on the dictum of the this court in re: **Om Prakash Srivastava v. Hon'ble High Court of Judicature at Allahabad & ors.**, reported in **2016 SCC OnLine All 1960**, in support of his arguments, referring para 14 and 15 of the aforesaid judgment, whereby this court has held that '**no fresh inquiry may be conducted against the retired employee, taking recourse fo Regulation 351-A, if the incident is more than 4 years old.**

10. He has also placed reliance on the dictum of Hon'ble the Apex Court in re: **Balwant Singh & ors. v. Anand Kumar Sharma & ors.**, (2003) 3 SCC 433, referring para-7 by submitting that if the constitutional court has passed any order indicating the consequences thereof, no oder can be passed by the authority concerned in disregard to the consequences, so directed by the court concerned. In the present case, since this court vide order dated 07.02.2023 had directed that after lapse of six months period, the departmental inquiry shall be lapsed, then the order of fresh inquiry may not be issued by the Authority.

11. *Per contra*, Sri Ashwini Kumar Singh Rathaur, learned Standing Counsel, has, however, tried to justify the impugned order/office memorandum and charge-sheet dated 18.07.2024 which have been served upon the petitioner, but could not defend the aforesaid order and charge-sheet for the reason that the impugned order is itself indicating all the orders of the High Court, passed by the Single Judge or by the Division Bench and by means of an order dated 07.02.2023 (*supra*) this court has

categorically directed that if the fresh departmental inquiry is not concluded within a period of **six months from today (i.e. from 7.2.2023)**, then the same shall stand lapsed and admittedly that direction has not been stayed by the Division Bench, then a direction for fresh departmental inquiry, pursuant to the impugned order, could have not been passed.

12. Sri Rathaur could also not defend the specific bar being imposed under Regulation 351-A to the effect that '**after lapse of 4 years**' period from the incident, fresh departmental inquiry may not be initiated against the retired employee, therefore, Sri Rathaur has stated that if this Hon'ble Court may deem fit, liberty may be given to the authority concerned to pass a fresh order, strictly in accordance with law, and also in complinace of the order being passed by this Court.

13. Having considered the arguments of the learned counsel for the parties and having passed the material available on record and also considering the fact that each facts and circumstances have been indicated in the impugned order/office memorandum itself, including the orders being passed by this court, I do not find any good reason to keep this petition pending any longer. Accordingly, this petition is being disposed of at the admission stage.

14. In view of the observations made hereinabove, this writ petition is **allowed**. The office memorandum dated 18.07.2024 issued by the opp. party No. 2, which has been enclosed as Annexure No. 1, as well as the chagesheet dated 18.7.2024, served on the petitioner on 16.08.2024 vide letter dated 08.08.2024 by the Inquiry Officer, which has been enclosed as Annexure No. 2, are hereby **set aside/quashed**.

15. Consequences to follow.

16. No order as to costs.

(Rajesh Singh Chauhan, J.)

Order Date :- 30.9.2024/A.Nigam