

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 648 of 2024

Appellant :- State Of U.P. Thru. Addl. Chief Secy. Deptt. of Elections Lko. and 3 Others Lko.

Respondent :- Wasi Ahmad

Counsel for Appellant :- Kuldeep Pati Tripathi (AAG), Parul Bajpai (ACSC)

Counsel for Respondent :- Brijesh Kumar, Krishna Mohan Ojha

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. This appeal is directed against order dated 17.10.2024 passed in Writ-A No. 3827 of 2023 by the learned Single Judge, whereby the learned Single Judge has quashed the entire disciplinary proceedings, left it open for the appellants to conduct a fresh inquiry in accordance with law and awarded cost of Rs.25,000/-.

2. The appeal is barred by 25 days. An application under Section 5 of the Limitation Act has been filed seeking condonation of delay.

The application is not opposed. For the reasons indicated in the application supported by an affidavit, the same is allowed. The delay in filing the appeal is condoned.

3. The writ petition was filed by the respondent aggrieved of orders dated 24.06.2022, 21.09.2022 passed by the disciplinary authority and order dated 14.12.2022 passed by the appellate authority, whereby the respondent was visited with the penalty of reduction in rank to the lowest pay of his original post of Junior Assistant and was held liable for recovery of Rs.6,59,487/- from his salary as penalty. Further, the difference of salary and subsistence allowance were also ordered to be forfeited for the period of suspension.

4. Several pleas were raised by the respondent, including violation of provisions of U.P. Government Servants (Discipline & Appeal) Rules, 1999 and the main contention raised was that the disciplinary authority and the appellate authority were the same person, i.e. one Mr. Ajay

Kumar Shukla, Chief Election Officer, Election Department, Government of U.P. and, as such, the entire disciplinary proceedings were vitiated and are liable to quashed.

5. The learned Single Judge by the order impugned came to the conclusion that the charge sheet dated 05.01.2021, the punishment order dated 24.06.2022 and appellate order dated 14.12.2022 were passed by the same authority, i.e. Mr. Ajay Kumar Shukla and as such, the said action by the same authority was in violation of principles of natural justice and consequently, quashed the disciplinary proceedings and left it open for the appellants to conduct a fresh inquiry in accordance with law.

6. Learned counsel for the appellants submitted that the order impugned passed by the learned Single Judge is ex facie contrary to the record inasmuch as it has been wrongly noticed that the charge sheet was issued by Mr. Ajay Kumar Shukla. It was submitted with reference to charge sheet Annexure-5 (page 89 of the special appeal) that charge sheet was issued by the Deputy District Collector, Gauri Ganj, District Amethi/Inquiry Officer and was approved by Mr. L. Venkateswarlu, Chief Election Officer and not by Mr. Ajay Kumar Shukla as indicated. However, it is not disputed that the orders as the disciplinary authority and appellate authority were both passed by Mr. Ajay Kumar Shukla. Qua the said aspect, submissions were made that on account of the said fact that the orders passed by the disciplinary authority and the appellate authority were passed by the same person, at best the order passed in the capacity as appellate authority may get vitiated and on that count, the quashing of the disciplinary proceedings by the learned Single Judge was not justified and, therefore, to that extent, the order impugned deserves to be set aside/modified.

7. Counsel for the respondent submitted that though it is factually correct that Mr. Ajay Kumar Shukla has not issued the charge sheet and had passed the orders only in the capacity as disciplinary authority and

appellate authority, however, besides the said ground, respondent has raised other grounds also vitiating the inquiry proceedings and, therefore, the order impugned passed by the learned Single Judge is justified.

8. Further submissions have been made that in compliance of the directions issued by the learned Single Judge, the appellants have passed order dated 27.11.2024 giving effect to the directions given by learned Single Judge, whereby the punishment order dated 24.06.2022 has been set aside, respondent has been reinstated back to the position wherein he was working prior to implementation of punishment with consequential monetary relief, recovery has been quashed and a fresh inquiry officer has been appointed and, therefore also, the order impugned does not call for any interference.

9. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

10. The order impugned has been passed by the learned Single Judge quashing the disciplinary proceedings and remanding back the matter for holding of fresh inquiry on the sole ground of the charge sheet having been issued by Mr. Ajay Kumar Shukla and thereafter acting as disciplinary and appellate authority. Admittedly, the fact of charge sheet having been issued by him is factually incorrect. The effect of the above factual inaccuracy is that on account of authority issuing the charge sheet and the disciplinary authority being different, the order passed by the disciplinary authority/disciplinary proceedings on that count would not get vitiated. However, as it is an admitted position that the disciplinary authority and the appellate authority are the same person, the order passed by the appellate authority gets vitiated.

11. So far as the plea raised that the orders impugned before the learned Single Judge were bad on other count also, the said aspect has not been examined by the learned Single Judge and, therefore, the said aspect continue to remain open for the appellants.

12. In view of above fact situation, we are firmly of the opinion that quashing of disciplinary proceedings by the learned Single Judge on the ground indicated is not justified, however, the order dated 14.12.2022 passed by the appellate authority, who himself had passed the order as the disciplinary authority, cannot be sustained.

13. Consequently, the appeal is **partly allowed**.

14. The order passed by the learned Single Judge is set aside to the extent that instead of quashing of the disciplinary proceedings, only order dated 14.12.2022 passed by the appellate authority would stand quashed and set aside and the matter shall stand remanded back to the appellate authority to rehear and decide the appeal filed by the respondent afresh, after affording opportunity of hearing, in accordance with law. It goes without saying that the appeal shall be heard by the authority different from the disciplinary authority.

15. Insofar as the order dated 27.11.2024 passed by the appellants implementing the order passed by the learned Single Judge is concerned, the same would follow the outcome of the order passed by the appellate authority to the extent of setting aside the order dated 24.06.2022, payment of consequential benefits and quashing of the recovery. However, initiation of fresh disciplinary proceedings would not be required to be implemented.

16. The respondent would be free to raise all the issues, as raised in the writ petition, before the appellate authority. It is expected of the appellate authority to hear and decide the appeal filed by the respondent with utmost expedition.

Order Date :- 18.12.2024

RK

(Jaspreet Singh, J) (Arun Bhansali, CJ)