

Neutral Citation No. - 2025:AHC:136028

AFR

Reserved

Court No. - 76

Case :- WRIT - A No. - 14109 of 2021

Petitioner :- Hari Shankar Yadav

Respondent :- State Of U P Through Secretary And 5 Others

Counsel for Petitioner :- Gulrez Khan,Javed Husain Khan,Sr.
Advocate

Counsel for Respondent :- C.S.C.,Rohit Pandey

Hon'ble Vikram D. Chauhan,J.

1. Heard Sri Gulrez Khan, learned counsel for the petitioner, learned Standing Counsel for the State-respondent and Sri Rohit Pandey, learned counsel for the respondent-University.

2. The present writ petition has been preferred challenging the order dated 6.6.2019 passed by respondent no. 3 and order dated 10.11.2020 passed by the Disciplinary Committee as well as resolution dated 10.11.2020. Further, prayer has been made in writ petition for directing respondents to treat the petitioner in service till the date of retirement i.e. 31.10.2019 and pay arrears of salary for the period 6.6.2019 to 31.10.2019 and further all consequential benefits.

3. The petitioner was initially appointed as routine clerk/typist by order dated 1.4.1982. Petitioner was granted promotion from time to time and finally petitioner was promoted to the post of Office Superintendent by order dated 22.12.2015 and thereafter petitioner was promoted on Adhoc basis on the post of Assistant Registrar by order dated 6.7.2018. Petitioner received chargesheet dated 26.4.2019 alleging

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negligence in duty in respect of three charges mentioned in the above-mentioned chargesheet. The petitioner submitted detailed reply to the chargesheet denying allegations against the petitioner by means of reply dated 2.5.2019. After enquiry proceedings, enquiry report was submitted on 17.5.2019 holding the petitioner guilty of negligence/indifferent on the basis of fact that petitioner was responsible for the alleged act. The petitioner thereafter was issued a show cause notice dated 30.5.2019 against the enquiry report dated 17.5.2019. Petitioner submitted a detailed explanation dated 1.6.2019 in respect of show cause notice dated 30.5.2019. Thereafter, by means of the impugned order dated 6.6.2019, petitioner was inflicted punishment of compulsory retirement. The petitioner thereafter preferred an appeal against the order dated 6.6.2019 before the Disciplinary Committee under the University Statutes. The Disciplinary Committee dismissed the appeal of petitioner by order dated 10.11.2020 and said dismissal of appeal was approved by Executive Council in its meeting dated 10.11.2020.

4. Learned counsel for petitioner submits that order dated 6.6.2019 directs compulsory retirement of petitioner with deduction of 50% gratuity, in pursuance to disciplinary proceedings. The chargesheet dated 26.4.2019 alleged three charges against the petitioner. The first charge pertains to the fact that after evaluation of answer sheets it was found that the answer sheet has been written subsequently and as such the petitioner was alleged to be negligent and indifferent to his work. The second charge against the petitioner pertains that keys of evaluation centre being handed over to Daily Assistant – Satya Prakash without permission of higher authorities. The third charge against the petitioner pertains to failure of petitioner to supervise progress when the copy of answer sheet

was given to the students. Learned counsel for the petitioner further submits that charges against the petitioner were denied by the petitioner.

5. The petitioner who was working on the post of Office Superintendent in the respondent-University by order dated 6.6.2019 has been inflicted with the punishment of compulsory retirement along with deduction of 50% of gratuity. The facts and circumstances which led to initiation of disciplinary proceedings against petitioner are to the effect that for the Academic Session 2017-18, in respect of annual examination, 13 students applied under the Right to Information Act for copy of the answer booklet. The said students further alleged that there is a mistake in the evaluation of answer booklet or some of answers have not been awarded marks. The aforesaid grievance was made to Grievance Committee. The member of Grievance Committee, Prof. Archana Verma on founding doubt on the handwriting in the answer booklet reported the same to the Registrar of University. The Registrar of University thereafter got conducted forensic examination of 13 answer booklets and the aforesaid forensic examination confirmed that answer booklets in which the answer have not been awarded marks were in fact written later on.

6. In view of aforesaid facts, the Registrar of the University constituted a preliminary examination committee consisting of Prof. V.K. Sehgal, Prof. S.K. Kabia and Dr. M.M. Rajput. The aforesaid examination committee in its report dated 30.1.2019 found that petitioner, one Rajendra Ram (Retired Senior Assistant) and Shri Satya Prakash, Daily Assistant were prima facie found to be involved in the above-mentioned incident. The aforesaid report was placed before the examination committee

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in its meeting dated 30.1.2019 and thereafter examination committee cancelled the examination of 13 students and further recommended for disciplinary proceedings being initiated against the employees found involved in the alleged incident.

7. In furtherance of above mentioned examination committee report and recommendation of examination committee, the Registrar of University constituted a Final Enquiry Committee of Prof. S.K. Katiyar (Chairman), Prof M.M. Singh (Member) and Dr D.P. Gupta (Member). The final enquiry committee thereafter gave opportunity to 13 students to represent their case before the aforesaid committee. As per the meeting dated 25.4.2019, seven students did not appear before the aforesaid committee. The said committee further granted time to the petitioner, Sri Satya Prakash, Daily Assistant who were issued chargesheet dated 26.4.2019. Sri Rajendra Ram and other workers who were attached with the evaluation section of the University were also given opportunity to represent their case before the committee.

8. A perusal of the chargesheet dated 26.4.2019 issued to the petitioner would show that three charges were levelled against the petitioner in the disciplinary proceedings. The aforesaid three charges are as under :-

- a) The first charge against the petitioner pertains to writing of answer booklets after evaluation, which is indicative of negligence and indifference towards his work by the petitioner.
- b) The second charge against the petitioner pertains that the keys of evaluation centre were handed over to Daily

Assistant - Sri Satya Prakash without the permission of higher authorities.

- c) The third charge against petitioner pertains to failure of petitioner to supervise the process when the copy of answer booklet was given to students.

9. The petitioner thereafter submitted his reply dated 2.5.2019 in response to chargesheet dated 26.4.2019. In the reply dated 2.5.2019, petitioner denied the charges levelled in the chargesheet against the petitioner. The petitioner further replied that answer booklet storage office work was being executed by Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and for the assistance of the aforesaid two employees, five daily wage workers were appointed under the order of the Registrar of University. The aforesaid workers were working under the guidance of Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and used to execute the work of taking out the answer booklets on their instructions. Out of five daily wage workers, three workers were assigned duty of taking out the answer booklet on the instructions of Sri Satya Prakash-Daily Assistant and Sri Rajendra Ram and the other two workers were assigned duty of making copy of the answer booklets. The petitioner further replied that the petitioner was stationed at evaluation building of the University and used to visit answer booklet storage facility for taking information about the work in progress and the petitioner thereafter used to report the same to the higher authorities. The petitioner further in his reply stated that he was stationed at administrative building and used to discharge his duty pertaining to examination from the aforesaid office.

10. The petitioner in its reply further stated that he was suffering from heart disease and was also admitted in the hospital at Gurugram, New Delhi and also undergone open heart surgery from 1.10.2018 to 21.11.2018 and petitioner remained on medical leave. The petitioner in its reply dated 2.5.2019 also submitted reply to each of three charges against petitioner, which are as under :-

- (a) In respect of charge no. 1, petitioner replied that in answer booklet storage centre for the past 8 to 10 years, Sri Rajendra Ram was working. In respect of examination of year 2018, large number of applications were received under the Right to Information Act and as such Sri Satya Prakash-Daily Assistant was directed orally by earlier Examination Controller Sri P.N. Prasad to work at the answer booklet storage centre, for the Right to Information applications and maintenance of answer booklets pertaining to scrutiny and for preparing copy of aforesaid booklet being send to concerned department. For the assistance of the aforesaid two employees, five daily wage workers were also assigned and said daily wage workers, work under the supervision of Sri Rajendra Ram and Sri Satya Prakash. The said Sri Rajendra Ram and Sri Satya Prakash were responsible that the answer booklets are taken out and copy prepared by the workers in their presence and sent to concerned department. It was also stated by petitioner that in September 2018, petitioner suffered serious ailment of heart disease which was informed to senior officials and as such, the petitioner claimed that there was no negligence or indifference attitude to work, by the petitioner.

- (b) In respect of charge no. 2, petitioner in its reply stated that Sri Rajendra Ram for last 8 to 10 years was working at answer booklet storage centre and after his retirement storage centre keys and other documents were handed over to Sri Satya Prakash on the oral direction of Deputy Registrar (Examination). The petitioner in its reply stated that in pursuance to above-mentioned oral direction, keys of answer booklet storage centre was handed over to Sri Satya Prakash by petitioner. Thereafter, Deputy Registrar (Examination) called for re-employment of Sri Rajendra Ram after his retirement. Sri Rajendra Ram was thereafter appointed by Registrar of respondent-University on 10.5.2018 on daily wages in the answer booklet storage centre for six months. The aforesaid two employees used to open answer booklet storage centre at 10:00 a.m. and close the same at 5:00 p.m. The keys of the centre at the time when Sri Satya Prakash was on leave were kept with Sri Rajendra Ram.
- (c) In respect of charge no. 3, petitioner in its reply stated that copy of original answer booklet was prepared by daily wage worker on instructions of Sri Rajendra Ram and Sri Satya Prakash and thereafter entry was made in the register; subsequently the aforesaid was sent to the Right to Information Department and the aforesaid department used to hand over copy of answer booklet to the student concerned. The students were not provided with the copy of answer booklet directly from the answer booklet storage facility. The transfer of answer booklet to the Right to Information Department was made under the supervision of petitioner. Whenever challenged, answer booklets were required by the challenge department then

Sri Satya Prakash used to send the same under the signature of petitioner. The petitioner also used to make certain inspection of examination building. From 1.10.2018 to 21.11.2018 petitioner was on medical leave and no other person was made in-charge of evaluation centre during the period when petitioner was on medical leave. The petitioner denied any negligence in his work.

11. The petitioner thereafter received letter dated 9.5.2019 enclosing copy of complaint dated 3.3.2019 submitted by above-mentioned Sri Satya Prakash. The above mentioned complaint dated 3.3.2019 alleged that the petitioner had called for answer booklet of one student Madhur Kumar Sahu (through one pawan who was working on daily wage) and the same was returned after three days. Before return of the answer booklet, the student obtain 14 marks and was failed in the aforesaid subject, however, on return of the answer booklet, he had obtained 15 marks and was passed. The complainant made request that the forensic examination be made of the said booklet. It was further alleged in the said complaint that five persons who are working as daily wagger at the evaluation centre were brought by petitioner and the aforesaid person also used to do work at the home of petitioner. It was also alleged that keys of the evaluation centre were kept with the petitioner for the period from 4.10.2018 to 21.11.2018 and one key was with Sri Satya Prakash.

12. The petitioner thereafter submitted its reply on 15.5.2019 in respect of complaint dated 3.3.2019. The petitioner denied the allegations made in complaint. In respect of the student Madhur Kumar Sahu it is stated in reply that the answer booklets were never called for by petitioner nor same was

returned. The daily wagers were appointed by administrative order of University. It was also denied that the aforesaid daily wagers were related to petitioner or they were working at the household of petitioner. It was also alleged in reply that in respect of work of scrutiny and public information or answer booklets, the daily wagers proposal was presented by Sri Satya Prakash. Sri Satya Prakash under his supervision used to take work from the daily wagers. The keys were kept by Sri Satya Prakash.

13. Thereafter, enquiry report dated 17.5.2019 was submitted by the enquiry committee. The aforesaid enquiry committee entered into enquiry in respect of three points, one being whether the petitioner was negligent and indifferent towards the work, has handed over the keys of evaluation centre to Sri Satya Prakash without permission of higher officials; and was negligent in the photo copy of the answer booklets. The second issue examined by the enquiry committee pertains to negligence on the part of choice of Sri Satya Prakash and third point pertaining to examination of the working of retired employee Sri Rajendra Ram and daily wagers.

14. The issue no. 1 in the enquiry report pertaining to the petitioner whether the petitioner was negligent and indifferent towards the work, has handed over the keys of evaluation centre to Sri Satya Prakash without permission of higher official; and was negligent in photo copy of the answer booklets. The enquiry report came to the conclusion that petitioner was posted in the admin block and used to do sudden inspection of the evaluation centre as a result of the same no permanent supervision of evaluation centre could be made and the centre were in the custody of Sri Satya Prakash and all the work was

being done under the supervision of Sri Satya Prakash and Sri Rajendra Ram. The aforesaid enquiry report in respect of issue no. 1 did not record any finding of negligence or misconduct against the petitioner. Insofar as issue nos. 2 and 3 are concerned, the same did not pertain to the petitioner.

15. The said enquiry report further concludes that all the employees were collectively responsible for the writing of the answers subsequently. The aforesaid report further recorded a finding that the evaluation work was specifically being done by Sri Satya Prakash and Sri Rajendra Ram. The aforesaid report further recorded that the keys of centre were kept with Sri Satya Prakash. The enquiry report further concludes that the aforesaid lapses is a institutional failure.

16. The aforesaid enquiry report dated 17.5.2019 was accepted by Vice Chancellor. The petitioner was issued a notice dated 28.5.2019 annexing copy of enquiry report and the same was replied by petitioner's reply dated 1.6.2019. Thereafter, by impugned order dated 6.6.2019, the petitioner has been directed for compulsory retirement with deduction of 50% gratuity. The petitioner preferred an appeal and the same was rejected by respondent authority by order dated 10.11.2020.

17. Learned counsel for the petitioner further submits that enquiry report does not show the petitioner to be guilty of any misconduct connected with the allegations in the chargesheet. It is further submitted that petitioner has been punished on the basis of presumption as being in-charge of the evaluation centre. The petitioner was assigned duty to assist the coordinator and in this respect, petitioner has retired by the office order dated 6.3.2018. It is submitted that the finding recorded by enquiry report, the alleged misdeeds has been

conducted and the joint responsibility is vested with all the employees. The primary responsibility as per the enquiry report was vested with Sri Satya Prakash. It is further submitted that deduction of 50% of the gratuity in the impugned order is totally illegal as no financial loss was suffered by the respondent-University. Learned counsel for petitioner further submits that no specific finding has been recorded against the petitioner with regard to any misconduct in the enquiry report although all the employees have been found to be jointly responsible. No finding has been recorded as to whether the petitioner was having charge of the work of answer booklet storage centre.

18. Learned counsel for the respondent-University has opposed the prayer in the writ petition and submits that the answer booklets were written subsequently after evaluation on the pretext of filing of Right to Information applications. Learned counsel for the respondent-University further submits that joint liability on all the employees have been fixed by the University, however, he could not dispute the fact that no specific liability with regard to misconduct has been recorded in the enquiry report against the petitioner. Learned counsel for the respondent-University submits that petitioner was in the supervisory capacity and the main delinquent employee is Sri Satya Prakash.

19. On a query being made to learned counsel for the respondent-University with regard to any specific finding, learned counsel for the respondent-University submits that complaint dated 3.3.2019 of Sri Satya Prakash, copy of student Madhur Kumar Sahu was taken out on the instructions of the petitioner which was subsequently found to have been written

after evaluation and the petitioner was also involved in the alleged incident.

20. It is further to be seen that in the enquiry report dated 17.5.2019 in respect of charge no. 1, following finding has been recorded :-

"श्री हरीशंकर यादव प्रशासनिक भवन में बैठकर व मूल्यांकन केन्द्र का औचक निरीक्षण कर अपने दायित्वों का निर्वहन करते थे जिससे मूल्यांकन कार्य की स्थायी निगरानी नहीं हो पाती थी तथा चाबियाँ भी श्री सत्यप्रकाश की अभिरक्षा में रहती थीं। समस्त कार्य सत्यप्रकाश व राजेन्द्रराम की देखरेख में होता था।"

21. A perusal of aforesaid finding in the enquiry report would go to show that no specific finding with regard to any misconduct has been recorded against the petitioner and the finding was only indicative of the lapses on the part of University administration. A specific finding has also been recorded in the enquiry report that daily wagers used to take out the answer booklets on the instruction of Sri Satya Prakash-Daily Assistant. The enquiry also records its finding that the complaint of Sri Satya Prakash dated 3.3.2019 have been found to be incorrect. The relevant portion of the enquiry report is quoted hereinbelow :-

"6. समिति की षष्ठम बैठक दिनांक 15/05/2019 को बुलायी गयी जिसमें दोनों आरोपी श्री हरीशंकर यादव एवं सत्यप्रकाश उपस्थित होकर जांच समिति द्वारा निर्मित प्रश्नों के लिखित उत्तर दिए तथा कुछ मौखिक जवाब दिए। श्री राजेन्द्रराम सेवानिवृत्त कर्मचारी ने उपस्थित होकर लिखित में अपना पक्ष प्रस्तुत किया। परीक्षार्थी अशोक यादव की उत्तर पुस्तिका का फॉरेन्सिक रिपोर्ट का अवलोकन किया तथा सत्यप्रकाश की शिकायत

दिनांक 03/03/2019 के आधार पर उत्तर पुस्तिका मंगाकर अवलोकन किया गया तो शिकायत असत्य पायी गयी।"

22. The enquiry report records finding that eight answer booklets were taken out from the storage centre at the time when the petitioner was in-charge of the aforesaid department and five answer booklets were taken out when the petitioner was on medical leave. The case of petitioner is that the petitioner was having his duty at the evaluation department and not at the storage centre may be indicative of fact that the petitioner was not having proper control over the storage centre and the aforesaid finding could only be recorded in the event findings recorded by the Enquiry Officer that the petitioner was responsible for supervision of the storage centre. As per the office order dated 6.3.2018, the petitioner was assigned duty to assist the Coordinator. The office order dated 6.3.2018 has not been denied in the counter affidavit. The only stand taken in the counter affidavit was to the effect that the petitioner was in-charge of the evaluation centre and no office order has been filed along with the counter affidavit with regard to the aforesaid duties of the petitioner. Even otherwise, if there was a laxity on the part of the petitioner then specific finding ought to have been recorded by referring to the duty chart of the petitioner, more particularly, when finding as recorded in the enquiry report that the answer booklets were taken out on the instruction of Sri Satya Prakash-Daily Assistant.

23. Even otherwise deduction of 50% gratuity, more particularly, when no financial loss has been suffered by the University also does not stand legal sanctity as no provision is shown by learned counsel for the University which empowers respondents to deduct gratuity without financial loss. Insofar as

the stand of the respondent-University that complaint dated 3.3.2019 with regard to student Madhur Kant Sahu is concerned, specific finding has been recorded to the effect that the complaint dated 3.3.2019 was found to be incorrect. Even otherwise a person having overall supervision of a concerned department cannot be punished with compulsory retirement unless finding recorded to the effect that petitioner has committed any misconduct or has been negligent in his duties. Once such finding has not been recorded in the impugned order and only on the basis of general fixation of liability on all the employees involved in department concerned, the impugned order of compulsory retirement and 50% deduction of gratuity is not sustainable in the eyes of law and as such is liable to be set aside.

24. Accordingly, the impugned order dated 6.6.2019 passed by Registrar, Bundelkhand University, Jhansi – respondent no. 3 and order dated 10.11.2020 passed by the Disciplinary Committee as well as resolution dated 10.11.2020 is set aside. The writ petition is **allowed** with consequential relief.

Order Date :- 12.08.2025
VMA

(Vikram D. Chauhan, J.)