



2025:AHC:169376

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Reserved – 12/09/2025

Delivered – 23/09/2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 47710 of 2010

Bhagwat Singh

.....Petitioner(s)

Versus

Chairman, U.P. Power
Corporation Ltd. and others

.....Respondent(s)

Counsel for Petitioner(s) : Shashi Nandan, Udayan Nandan

Counsel for Respondent(s) : Abhijeet Singh,
Abhishek Srivastava,
Ayank Mishra,
H.R.Mishra,
Pankaj Shukla,
S.C., Sandeep Kumar Srivastava

Court No. - 5

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. This writ petition is pending since 2010. During pendency of this writ petition, petitioner died and an application for substitution was allowed vide order dated 07.12.2016 though due to default of learned counsel for petitioner, cause title could not be amended, therefore, Court has granted permission to amend the cause title on the date when this case was reserved for judgment.

2. Petitioner got retired on 31.07.2005 as Sub Divisional Officer from State Electricity Distribution Division, Varanasi after completing about 35 years of service. After his retirement, a disciplinary proceedings was commenced against him and by a charge sheet dated 28.06.2006, 8 charges were levelled against him which were mainly related that during his tenure from 27.07.2004 to 31.07.2005, he was failed to adjust arrears of number of electricity bills, failed to disconnect electricity connections despite arrears of payment of bills, granted consent to a circus company to use electricity without proper procedure, failed to monitor a counter established for cash revenue recovery, failed to provide bills readings in time, adjusted outstanding bill by issuing hand receipts being contrary to due process, has property beyond source of income, failed to follow directions of higher officers and failed to have control over his subordinate staff.

3. Petitioner had sought time to file a reply to a charge sheet by a communication dated 28.08.2006 and further sought opportunity to peruse records by another communication dated 11.09.2006, and, in such circumstances, he admittedly has not submitted any reply to charge sheet and since Inquiry Officer found that petitioner failed to submit his reply despite opportunity, he submitted Inquiry Report dated 19.09.2006, that petitioner has failed to cooperate during inquiry, therefore, matter be decided on merit. Relevant part of said Inquiry Report is mentioned below :-

“इस सम्बन्ध श्री भागवत सिंह उप खण्ड अधिकारी (सेवा निवृत्त) को पत्रांक संख्या-134/प्र०नि०/पु०वि०वि०नि०ति०(वा०) दिनांक 28-6-2006 द्वारा कारपोरेशन द्वारा अनुमोदित आरोप पत्र तामील किया गया जिसकी प्राप्ति की फोटो प्रतिलिपि सलग्न को जा रही है। आरोप पत्र में अभिकथन प्रस्तुत करने हेतु दिनांक 27-7-2006 तक समय दिया

गया था, परन्तु श्री भागवत सिंह ने अभिकथन न प्रस्तुत कर पत्र संख्या-शून्य दिनांक 25-7-2006 को यह अनुरोध किया कि उन्हें अभिकथन प्रस्तुत करने हेतु 25 दिन का अतिरिक्त समय दिया जाय। (फोटो प्रति संलग्न) उनके द्वारा अनुरोध किये जाने पर उन्हें दिनांक 17-8-2006 तक का समय पत्रांक संख्या 884/पु० वि०वि०नि०लि०(वा०)/ जांच दिनांक 25-7-2006 द्वारा दिया गया (फोटो प्रति संलग्न) और यह भी सूचित किया गया कि भविष्य में कोई अतिरिक्त समय नही दिया जायेगा। पुनः दिनांक 17-8-2006 को अवधि समाप्त होने के दिन श्री भागवत सिंह ने पत्र संख्या शून्य दिनांक 17-8-2006 को 15 दिन का अतिरिक्त समय पुनः मांगा उनके अनुरोध को स्वीकार करते हुए दिनांक 30-8-2006 तक समय दिया गया। श्री भागवत सिंह ने पत्रांक-शून्य दिनांक 30-8-2006 को पुनः दिनांक 30-9-2006 तक अतिरिक्त समय मांगा, जिसे अस्वीकार करते हुए पत्रांक संख्या-1161/पु०वि०वि०नि०लि०/जांच दिनांक 2-9-2006 द्वारा दिनांक 11-9-2006 तक प्रत्येक अवस्था में अपना अभिकथन प्रस्तुत करने को कहा गया (प्रतिलिपि संलग्न) अन्यथा कि स्थिति में यह मान लिया जायेगा कि आपको अपने बचाव पक्ष में कोई भी तथ्य/लिखित अभिकथन प्रस्तुत नहीं करना है, उपरोक्त पत्र इन्हें व्यक्तिगत रूप से दिनांक 2-9-2006 को प्राप्त करा दिया गया था जबकि श्री भागवत सिंह झूठ का सहारा लेते हुए इसे दिनांक 8-9-2006 को प्राप्ति दिखा रहे हैं। (फोटो प्रति संलग्न) श्री भागवत सिंह ने दिनांक 11-9-2006 को पुनः अभिकथन न प्रस्तुत कर अपने पत्र में यह इंगित किया है कि आरोपों के समर्थन में मूल अभिलेखों के परीक्षण हेतु अवसर प्रदान करें जबकि प्राप्त अनुमोदित आरोप पत्र में सभी साक्ष्य संलग्न किये हैं इन्हीं के द्वारा लिखे गये उपरोक्त पत्रों में कभी भी यह इंगित नहीं किया गया है कि इन्हें मूल अभिलेखों के सम्बन्ध में कोई परेशानी है। दिनांक 28-8-2006 को अचानक इन्होंने मूल अभिलेखों को देखने की आवश्यकता है और इसके लिए इन्हें एक महीने का और समय चाहिए परन्तु पत्र में यह इंगित नहीं किया कि कौन से मूल अभिलेख इन्हें चाहिए।

उपरोक्त सभी तथ्यों को ध्यान में रखते हुए आरोपी श्री भागवत सिंह उपखण्ड अधिकारी को आरोप पत्र में इंगित आरोपों के सम्बन्ध में अपने बचाव में कोई भी तथ्य/लिखित अभिकथन प्रस्तुत नहीं करना है यह भी स्पष्ट है कि श्री भागवत सिंह का इस जांच में असहयोग पूर्ण रवैया रहा है और वह जान बुझकर अपना उत्तर प्रस्तुत नहीं कर रहे हैं और न ही इनको अपने बचाव में कुछ कहना है तदुसार इनके मामले में गुणावगुण के आधार पर निर्णय लेना उचित होगा।”

4. The Inquiry Officer admittedly has not returned any finding in the Inquiry Report, whether 8 charges levelled in charge sheet were proved or not, rather he has not proceeded even to consider the charges on basis of material available, even in absence of reply of petitioner and referred the proceedings to Disciplinary Authority to decide on merits.

5. In aforesaid circumstances, the Disciplinary Authority proceeded to consider charge sheet on its own and as such a show cause notice was issued on 22.11.2007 and without considering that inquiry report has not returned any finding whether charges were proved or not, he referred in the Show Cause Notice that charges were of serious nature and misconduct of petitioner has caused loss to respondents to the tune of Rs. 4,00,000 and proposed as to why not petitioner's pension be withheld and why not an order of recovery be passed. The show cause notice was issued without any finding that charges were proved.

6. The petitioner thereafter has submitted a detail reply to proposed punishment on 01.01.2008, that not only an ex-parte report was submitted by the inquiry officer but charges were also not proved and further that proposed punishment was passed without adhering to principles of natural justice. It was a post decision order.

7. The Disciplinary Authority without taking note of legal impediment that inquiry officer has not returned any finding and since proposed punishment was a major punishment, therefore, in such circumstances, correct legal procedure was to remit the matter to the Inquiry Officer to conduct inquiry afresh but erroneously proceeded disciplinary proceedings as a Disciplinary Authority to conduct Inquiry himself as an Inquiry Officer and returned a finding that all charges were proved and passed a major punishment on 22.04.2008, withholding entire pension and an order of recovery was also passed. For reference, relevant part of order dated 22.04.2008 is quoted below :-

“ जांच अधिकारी से प्राप्त जांच आख्या के कारपोरेशन स्तर पर सावधानी पूर्वक परीक्षणोपरान्त पाया गया कि श्री सिंह ने जांच में असहयोग किया एवं जांच अधिकारी द्वारा पूर्ण एवं पर्याप्त अवसर उपलब्ध कराये जाने के उपरान्त भी आरोप पत्र का कोई उत्तर प्रस्तुत नहीं किया।

अतएव श्री सिंह का जांच के असहयोग पूर्ण रखा है, तथा उन्होंने जानबूझ कर आरोप पत्र का उत्तर प्रस्तुत नहीं किया है। श्री सिंह पर लगाये गये आरोप गम्भीर प्रकृति के हैं, तथा आरोप संख्या-2 एवं 5 से यह स्पष्ट है कि श्री सिंह द्वारा विभाग को रुपया-77130-00 तथा रुपया 344211-00 कुल रुपया-421341-00 को प्रत्यक्ष रूप से आर्थिक क्षति पहुंचायी गयी है।

अतः श्री सिंह पर सिद्ध पायी गयी उपर्युक्त अनियमितताओं हेतु जांच अधिकारी से प्राप्त जांच आख्या की प्रति संलग्न करते हुए कारपोरेशन के पत्र संख्या-3435-शिजा-05 द/पाकालि/2007-7(58)05 द/2005 दिनांक 22-11-2007 द्वारा श्री सिंह को कारण बताओ नोटिस निर्गत किया गया कि क्यों न उनकी सम्पूर्ण पेंशन जब्त कर ली जाये तथा कारपोरेशन को हुई रुपया 421341-00 को वित्तीय हानि की वसूली भी कर ली जाये। श्री सिंह ने पत्र दिनांक 1-1-2008 द्वारा प्रस्तावित दण्ड के सम्बन्ध में अपना अभ्यावेदन कारपोरेशन के विचारार्थ प्रस्तुत किया।

श्री सिंह ने अपने अभ्यावेदन में मुख्य आधार यह लिया है कि आरोपित बिन्दुओं के सम्बन्ध में समुचित उत्तर साक्ष्यों सहित प्रस्तुत करने हेतु जांच अधिकारी ने आवश्यक अभिलेखों की प्रमाणित प्रतियां उपलब्ध नहीं करायी, और न ही सम्बन्धित खण्ड/उपखण्ड के अभिलेखों के अवलोकन कराने एवं उनकी प्रमाणित प्रतियां उपलब्ध कराये जाने के सम्बन्ध में कोई निर्देश दिये तथा लगाये गये आरोप अत्यन्त सामान्य प्रकृति के हैं।

श्री सिंह ने प्रत्येक आरोप के सम्बन्ध में आरोप वार कथन किया है श्री सिंह से प्राप्त अभ्यावेदन के कारपोरेशन स्तर पर संगत अभिलेखों के आलोक में परीक्षणोपरान्त पाया गया कि श्री सिंह को 10 हार्स पावर की अस्थायी संयोजन 32 दिवसों हेतु दिये जाने का अधिकार नहीं था। इस प्रकार उन पर अनाधिकार चेष्टा का आरोप सिद्ध है। इसके अतिरिक्त उपभोक्ता श्री सन्तु संगत संयोजन संख्या-559940 के संयोजन पर रुपया 359638-00 बकाया होने पर भी श्री सोहन लाल यादव पुत्र स्व० सन्तु राम यादव के नाम से नया संयोजन देने का भी आरोप सिद्ध है। अभ्यावेदन में प्रस्तुत बिन्दुओं में जांच में सहयोग नहीं किये जाने हेतु सक्षम/स्वीकार योग्य उत्तर का अभाव पाया गया अतः इसी एक बिन्दु के कारण अभ्यावेदन निरस्त किये जाने योग्य था तथापि नैसर्गिक न्याय को बल प्रदान करने हेतु प्रत्येक बिन्दु पर प्रस्तुत अभ्यावेदन के परीक्षण में पाया गया कि आरोप पत्र के आरोप संख्या-1, 2, 3, 4, 5, 7 एवं 8 सिद्ध हैं। अतएव श्री सिंह का अभ्यावेदन निरस्त किये जाने योग्य पाया गया।

अतः श्री भागवत सिंह (2002189) तत्कालीन उपखण्ड अधिकारी सम्प्रति सेवा निवृत्त को सम्पूर्ण पेंशन जब्त किये जाने एवं कारपोरेशन को पहुंचायी गयी वित्तीय क्षति रुपया-421341-00 (चार लाख इक्कीस हजार तीन सौ इकतालिस) को प्रत्याप्ति किये जाने का दण्ड दिया जाता है।”

8. From bare perusal of above order, Disciplinary Authority has committed two legal errors and as rightly pointed out by Sri Udayan Nandan, learned counsel for petitioner that on one hand, Disciplinary Authority proceeded with Inquiry despite Inquiry Officer has not concluded the Inquiry and on other hand, on its own, held that charges were proved being de-hors of the procedure prescribed for imposing a major penalty.

9. Aforesaid legal error could have cured by the Appellate Authority, however, the appeal filed by the petitioner was rejected vide order dated 23.12.2008, without taking note of grounds mentioned in memo of appeal.

10. Initially, this Court has proceeded with the present case to consider an issue whether in absence of a permission under Article 351-A of Civil Service Regulations since proceedings was initiated after retirement of the petitioner, a punishment of forfeiting entire pension could be passed or not, therefore, various orders were passed by this Court and relevant orders being 23.07.2018 and 20.08.2018 are quoted below :-

"23.07.2018 :-

On 19th January, 2017, following order was passed :

"1. It is submitted that the question whether after retirement of petitioner from the post of Sub Divisional Officer, State Electricity Distribution Division - VI, Pandeypur, Varanasi any recovery proceeding could have been issued against petitioner or any action can be undertaken for forfeiting entire pension and whether Article 351-A of Civil Services Regulations is applicable to employees of U.P. Power Corporation has been referred for consideration before larger Bench vide order dated 1.8.2016 passed in Service Bench No. 17234 of 2016 U.P. Power Corporation

Limited through Chairman-cum-M.D. & Another
Vs. Kanti Prasad Varshney.

2. List this matter after the judgment of
larger Bench."

Learned counsel for the petitioner states that
he has not been able to get information as to
whether the matter which was referred to the
larger Bench has been decided as yet or not.

List this matter after three weeks. In the
meantime, learned counsel for the petitioner
may seek necessary instruction.

When the matter is listed next, name of Sri
Abhijit Singh shall be shown from the
respondents' side.

20.08.2018 :-

Sri Abhishek Srivastava has appeared on behalf
of respondents no. 1 to 4. He states that he
has filed the power on behalf of the
respondents on 2nd August, 2018.

The office shall trace the power and place the
same on record.

On the last occasion, the learned counsel for
the petitioner was required to inform the
Court as to whether the provisions of the
Civil Service Regulations were applicable to
employees of U.P. Power Corporation as the
matter was under consideration of Full Bench
of the Lucknow Bench of this Court.

Sri Udayan Nandan has informed the Court that
the Full Bench was decided on 8.3.2018 and it
was held that the service regulations of the
Board/ Corporation do not provide for non-
applicability of the provisions of Civil
Service Regulations and therefore, they shall
continue to apply and hence the inquiry that
has been held after retirement was not legally
permissible without sanction of the Governor.

Sri Abhishek Srivastava prays for and is
allowed two weeks' time to file counter
affidavit.

Counter affidavit shall specifically deal
whether under the service rules/ regulations

applicable to the petitioner, any inquiry after retirement could have been held or not because it is the case of the petitioner that he had retired on 31.7.2005 whereas the charge-sheet was submitted on 28.6.2006 which was not legally permissible.

List this matter of 10th September, 2018 by which date the learned counsel for the Corporation shall file a detailed counter affidavit dealing with all the aforesaid aspects."

11. At this stage, it would be relevant to mention that a Full Bench of this Court has decided a reference in a bunch of writ petitions filed before Lucknow Bench of this Court in Service Bench No. 17234/2016 on 08.03.2018 whereby it was held that Regulation 351-A of Civil Service Regulations of 1995 passed by the State Government are applicable to the employees of the U.P. Power Corporation and the reference was answered in following terms :-

"25. It was specifically put to the learned counsels for respondent that if the Civil Services Regulations are not adopted and made applicable on the employees of the Board/Corporation, then, under which provision they would be entitled to pensionary benefits. Counsels for the respondent could not place before this Court any other scheme under which employees of the Board/Corporation would be entitled to pensionary benefits. He could not dispute that the pensionary benefits are being given to the employees under the Civil Services Regulations only. The stand of the respondents, therefore, becomes self contradictory. On one hand they are admitting the applicability of the Civil Services Regulations while on the other hand, they are disputing its adoption by the Board. Hence, there is no force in the stand taken by the respondents. The question is, thus, answered as follows:-

"Regulation 351-A of Civil Services Regulations framed by the State Government are applicable to the

employees of the U.P. Power Corporation.""

12. Per contra, learned advocates for respondents has not denied that Inquiry Officer has not returned any finding so far as whether charges were proved or not.

13. Learned advocates have referred a decision taken by Board of Directors of UPPCL on 28.02.2016 whereby a permission was granted to initiate disciplinary proceedings against the petitioner after his retirement and that such permission was never challenged. The permission/sanction was within jurisdiction of Director of UPPCL but whether it was based on appreciation of circumstances of the matter or it appears application of mind could still be looked into by this Court (*see judgment dated 23.10.2021 passed in Special Appeal (D) No. 646/2021 UP Power Corporation Ltd. and others vs. Anil Kumar Sharma and others*).

14. At the relevant time, provisions of U.P. Government Servant (Discipline and Appeal) Regulations, 1999 was applicable to disciplinary proceedings of employees of UPPCL, therefore, once in terms of Regulations of 1999, the Disciplinary Authority has appointed an Inquiry Officer, thereafter, said Officer has to conduct an Inquiry in terms of Clauses (iii) to (xii) of Regulation 7 of 'Regulations, 1999' and to submit a report under Regulation 8 of said 'Regulations, 1999' which shall contain a sufficient record of facts, the evidence and statement of the findings on each charge and the reasons thereof, however, the Inquiry Report submitted in present case does not contain any of such details.

15. On basis of Inquiry Report, the Disciplinary Authority has to proceed in terms of Regulation 9 of Regulations, 1999 i.e. 'Action on Inquiry Report', however, since there was no finding in the

Inquiry Report on charges and since there was no procedure to commence the inquiry by Disciplinary Authority on its own in said Regulations, therefore, in terms of Clause (1) of Regulation 9 of 'Regulations, 1999', the Disciplinary Authority should have remitted the case for re-inquiry to the Inquiry Officer, but admittedly it was not done, therefore, entire inquiry got vitiated being de-hors of prescribed in 'Regulations, 1999'.

16. In view of above discussion as well as in given set of circumstances, permission granted is also not accompanied with any reason, therefore, also impugned order could not survive. Accordingly, Order passed by the Disciplinary Authority and Order passed by the Appellate Authority are, therefore, set aside.

17. Now issue before this Court is as to what relief could be granted. Undisputedly, petitioner died during pendency of this writ petition, therefore, in the interest of justice with following directions, writ petition is disposed of :-

(a) Legal heirs of petitioner (since deceased) i.e. his wife viz. Nirmala Singh will get legally admissible family pension from the date of death of her husband i.e. 03.05.2012. Arrears shall be paid within 6 months preferably in 3 installments;

(b) Other entitlement i.e. due pension of petitioner (since deceased) since date of his retirement i.e. 31.07.2005 till date of his death i.e. 03.05.2012 shall be quantified and that his legal heir i.e. his wife shall get 1/4th of it and for that respondents will undertake necessary steps;

(c) Aforesaid exercise shall be completed within six months.

[SAURABH SHYAM SHAMSHERY, J.]

Dt./- September 23, 2025

N. Sinha