

* **THE HIGH COURT OF DELHI AT NEW DELHI**

% *Pronounced on: November 27, 2015*

+ LPA 825/2011 and CM No.18632/2011 (*stay*)

DELHI SOCIETY FOR PREVENTION Appellant
OF CRUELTY TO ANIMALS

Through: Mr. Rajeev Awasthi, Advocate

Versus

NAND KISHORE SHARMA Respondent

Through: Mr. Rajesh Tyagi, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. This appeal is preferred against the order of the learned Single Judge dated 21.09.2011 in W.P.(C) No. 6971/2005. The respondent No.4 in the writ petition is the appellant before us. The writ petitioner is arrayed as the sole respondent and the other respondents in the writ petition are not made parties to the appeal. For the sake of convenience, the appellant and the respondent herein shall hereinafter be referred to as they were arrayed in the writ petition, i.e. the respondent No.4/Delhi Society for Prevention of Cruelty to Animals (for short 'DSPCA') and the writ petitioner respectively.

2. The writ petition was filed with a prayer to quash the order dated 24.12.2004 passed by the respondent No.4/appellant herein imposing the penalty of compulsory retirement from service with immediate effect against the writ petitioner. The learned Single Judge allowed the writ petition with costs and set aside the impugned order dated 24.12.2004. Consequently, reinstatement of the writ petitioner in service with all consequential benefits was ordered. Hence, this appeal.

3. The respondent No.4/DSPCA is a society registered under the Societies Registration Act, 1860. The writ petitioner was working with the DSPCA as Deputy Inspector in the Enforcement Wing. He was placed under suspension on the ground that he was arrested by the Anti Corruption Branch, GNCTD on 20.05.1988 while accepting bribe. Later, the suspension was revoked with effect from 25.11.1994 pending the final outcome of the trial in FIR No.7 of 1988. After regular trial, the writ petitioner was convicted by a Special Judge, Delhi by order dated 26.08.1988 under Section 5(2) of the Prevention of Corruption Act, 1987 and Section 161 IPC and he was sentenced to rigorous imprisonment for 3½ years. In pursuance thereof, the DSPCA by order dated 23.10.1998 terminated the service of the writ petitioner. However, the appeal preferred by the writ petitioner against his conviction by the Special Court was allowed by this court and he was acquitted by judgment dated 05.12.2002. Following the same, the writ petitioner was reinstated in service with effect from 02.01.2003.

4. Thereafter, fresh charges were framed against the writ petitioner by Memorandum dated 13.04.2004 alleging that (i) while working as Deputy Inspector, he came to the premises of DSPCA on the night of 16.06.2003

and snatched the telephone Duty Register and Gate Duty Register from the person on duty and forcibly made entries therein to make it appear that he had checked the staff on duty on that day, i.e. 16.06.2003, and (ii) on 09.08.2003, the writ petitioner had taken the attendance register forcibly from the Head Constable on duty and had marked his attendance for 09.08.2003, 10.08.2003 and 11.08.2003 in advance. The writ petitioner was placed under suspension pending inquiry with effect from 23.01.2004. The Assistant Director, Animal Husbandry (AH), GNCTD by name Dr.K.A. Goyal was appointed as the Inquiring Authority into the charges framed against the writ petitioner and he had also recorded statements of some of the employees. Though the writ petitioner appeared before the Investigating Authority, he declined to participate in the inquiry insisting on being provided copies of certain documents mentioned in the charge-sheet. It was alleged that though he made a specific request to the Chairman, DSPCA the said documents were not furnished. Ultimately, the Inquiry Officer submitted his report stating that the inquiry could not be proceeded since the charged official did not cooperate.

5. Thereafter, by order dated 24.12.2004 the Chairman, DSPCA/ Disciplinary Authority, imposed the penalty of compulsory retirement from service with immediate effect observing that in the totality of facts and circumstances of the case, he was of the considered view that the charges had been established beyond any doubt. The said penalty of compulsory retirement awarded by the Disciplinary Authority was also confirmed by the DSPCA Board in its meeting dated 31.01.2005. Aggrieved by the said action, the writ petitioner filed W.P.(C) No.

6971/2005 and the same was allowed by the learned Single Judge by the order under appeal.

6. The order dated 24.12.2004 imposing the penalty of compulsory retirement was assailed before the learned Single Judge on the ground that the inquiry proceedings were illegal as the documents sought by the writ petitioner were not supplied to him and thus, he was denied an effective opportunity of participating in the inquiry proceedings. It was also contended that the inquiry proceedings were incomplete and no finding as such was recorded by the investigating officer that the charges against the petitioner were established. The further contention was that the entire disciplinary proceedings were without authority of law since the DSPCA Board had no legal status.

7. The writ petition was contested by the respondent No.4/DSPCA relying upon F.R. 56(1) which gives a discretion to the appointing authority to compulsorily retire a Class III employee after completion of 30 years of service by giving him a notice of not less than three months' in writing or three months' pay and allowance in lieu of such notice. Since the petitioner had completed 30 years of service and he had also received the cheque amount of Rs.26,981/- in lieu of the three months' notice, it was submitted on behalf of DSPCA that the impugned order of compulsory retirement cannot be held to be illegal particularly when the DSPCA wanted to bring to an end the relationship of an employer and employee on the basis of the past service record of the petitioner. The learned Single Judge did not agree with the contentions of the DSPCA and allowed the writ petition. The reasons assigned by the learned Single Judge while allowing the writ petition may be summed up as under:

- (i) Though the inquiry proceedings remained incomplete and no finding was recorded by the inquiry officer as to the correctness of the charges framed against the petitioner, it was concluded by the disciplinary authority that the charges have been established against the charged official beyond any doubt and that the petitioner had committed gross misconduct by acting in total disregard to the propriety and procedure with *mala fide* interest.
- (ii) While arriving at the said conclusion, there was no analysis of any evidence by the Disciplinary Authority and merely on the basis of the facts recorded by the Inquiry Officer in his report, it was concluded that the charges had been established beyond any doubt.
- (iii) Before imposing the major penalty of compulsory retirement, it was incumbent on the disciplinary authority to have furnished the petitioner a copy of the inquiry report and give him an opportunity of defending himself. No such procedure was followed by the disciplinary authority.
- (iv) The impugned order was not an order of termination simplicitor which did not cast any stigma on the petitioner and, therefore, it is incumbent to make a proper inquiry following due process of law and the penalty, if any, can be passed only on the basis of the findings recorded on appreciation of the evidence.
- (v) The confirmation of the penalty by the DSPCA Board on 31.01.2005 was vitiated on the ground of non-application of mind to the legal requirements and to the factual position.
- (vi) The impugned order of compulsory retirement cannot be treated as an order passed in public interest under F.R. 56(1) since neither the order dated 24.12.2004 states that it was passed in public interest

nor was there any reference to F.R. 56(1) by the DSPCA Board while confirming the penalty in its meeting dated 31.01.2005.

- (vii) The respondents were unable to show the legal basis for the constitution of the DSPCA Board with reference to any provision under the Prevention of Cruelty to Animals Act, 1960 or the Rules made thereunder. The DSPCA Board was constituted only for a period of one year from 10.06.2002 to 09.06.2003 by Notification dated 07.06.2002 and the extension of the term till further orders vide order passed by Chief Minister dated 16.06.2003 was without reference to any statutory provision. Consequently, the action taken by DSPCA Board to ratify the imposition of compulsory retirement was without authority of law.

8. Having heard the learned counsel for both the parties and having perused the material available on record, we do not find any justifiable reason to take a different view than that of the learned Single Judge with regard to the validity of the impugned order of compulsory retirement. Since the said order was not preceded by a valid inquiry and there was no finding by the inquiry officer that the charges framed were established, the learned Single Judge was justified in concluding that the disciplinary authority committed a grave error in imposing a major penalty without even appreciating the evidence available on record.

9. Evidently, this is a case where the disciplinary authority appointed an inquiry officer to inquire into the charges framed against the writ petitioner. In the report submitted by the said enquiry officer, no findings were recorded and it was merely stated that “the charged official did not

cooperate further insisting that copies of the documents, asked by him, be provided to him. Hence, the inquiry could not be proceeded with further. List of documents enclosed is placed at Annexure-I”. In such circumstances, as rightly held by the learned Single Judge, the disciplinary authority ought to have conducted a fresh inquiry or atleast analyzed the evidence already available on record before arriving at the conclusion that “the petitioner had committed gross misconduct by acting in total disregard to the propriety and procedure, with malafide interest”. Admittedly, the disciplinary authority failed to follow such procedure. It is not disputed before us that even the report submitted by the inquiry officer was not furnished to the writ petitioner giving him an opportunity to make his representation, if any. Therefore, the only conclusion that can be arrived at in the facts and circumstances noticed above is that the procedure adopted by the disciplinary authority was in total violation of principles of natural justice and the finding recorded by him that the charges have been established against charged official beyond any doubt is illegal, without any basis and unsustainable.

10. Hence the order under appeal to the extent of setting aside the impugned order of penalty is unexceptionable.

11. However, we find force in the submission of the learned counsel for the appellant/DSPCA that the finding recorded by the learned Single Judge that the DSPCA Board has no legal status is unwarranted. The learned counsel for the appellant/DSPCA submits that the DSPCA Board is a validly constituted Board and the same is empowered to perform its obligation under the Prevention of Cruelty to Animals Act and the Rules made thereunder and that it is clear from the notifications issued from

time to time that the DSPCA Board is receiving the grant from the Government and its functioning is being controlled by the State Government. It is also brought to the notice of this court that the Chairman and Members of the Board have been appointed by the Government by issuing notifications from time to time and that the officials are empowered with the police power and they have also power to prosecute the offenders. It is also submitted that the salary of the employees is being paid by the Government and their pay structure, terms and conditions of service are controlled and governed by the Government Rules.

12. As we could see, the counter affidavit in the writ petition did not furnish any information with regard to the status of DSPCA Board. The learned counsel for the appellant states that the said issue was not even argued before the learned Single Judge. Therefore, it appears to us that the relevant material was not available before the learned Single Judge to record the finding that the Board has no legal status. It also appears to us that the adverse finding recorded with regard to the legal status of the Board will have serious repercussions. Therefore, we deem it appropriate to leave the said question open to be decided in an appropriate proceeding.

13. Accordingly, the order under appeal to the extent of the finding recorded that the DSPCA Board has no legal status is hereby set aside. The rest of the findings in the order under appeal as well as the direction to reinstate the writ petitioner into service with all consequential benefits, are hereby confirmed.

14. The appeal is accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

NOVEMBER 27, 2015

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