

Riyazuddin Vs. Commissioner, Milk Dairy Development and ors.

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Court : Allahabad

Decided On : Jan-07-2003

Reported in : 2003(1)AWC521b

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Co-operative Societies Act, 1965 - Sections 103; Uttar Pradesh Co-operative Societies Employees' Service Regulations, 1975 - Regulations 84(1) and 85(1)

Appeal No. : C.M.W.P. No. 12730 of 2001

Appellant : Riyazuddin

Respondent : Commissioner, Milk Dairy Development and ors.

Advocate for Def. : Prakash Padia, S.C.

Advocate for Pet/Ap. : A.K. Roy and ;Deepak Verma, Advs.

Disposition : Writ petition allowed

Judgement :

S.N. Srivastava, J.

1. By way of present petition, the petitioner has canvassed the validity of order dated 17th March, 2001 passed by respondent No. 3 thereby dismissing the

petitioner from the post of Mechanic.

2. Necessary facts as are relevant for just adjudication of the controversy involved in this petition may be set out. The petitioner entered the service of the respondents in the year 1966, having been appointed on the post of Mechanic. In the year 1996, he was called upon to produce documents furnishing details of date of birth and educational qualifications by means of letter dated 2.11.1996 and in compliance, the petitioner submitted certificate issued by Chief Medical Officer, Bareilly, dated 18.11.1996 as also the transfer certificate containing details of his having passed 5th standard and indicating his date of birth as being 15.10.1946. In the certificate issued by Chief Medical Officer, Bareilly, he was opined to be 50 years of age on 18.11.1996. From a cumulative reading of both the certificates, it transpires that on 18.11.1996, the age of the petitioner was about 50 years. It is also evident from the record that an enquiry was set afoot and enquiry officer was appointed vide letter/order dated 22nd January, 2001, to delve into the issue pertaining to the petitioner's date of birth. It would also appear from the record that the very next day, the enquiry officer submitted his report, the quintessence of which is that the actual date of birth of the petitioner was 20th January, 1942 and the transfer certificate was forged one. As a consequence of enquiry report, a notice dated 23.1.2001 was served to the petitioner to submit his explanation within 3 days prescribing therein the consequences that if he failed to submit his explanation, proceedings would follow as the conduct of the petitioner was one punishable under Section 103 (1) and (2) of the U. P. Co-operative Societies Act and Regulation 84 (f) of the U. P. Co-operative Societies Employees' Service Regulations, 1975 (hereinafter referred to as Service Regulations). It would further transpire from the record that explanation as demanded was not submitted within time and as a sequel thereto, the transfer certificate submitted by the petitioner was presumed to be forged one resulting in dismissal of the services of the petitioner.

3. Learned counsel for the petitioner canvassed that from the perusal of the order, it is explicit that taking in aid the provisions contained in Regulation 84 (f) of the U. P. Cooperative Societies Employees' Service Regulations, 1975, the respondents had passed order of dismissal. He further submitted that no enquiry was made and

entire exercise was conducted ex parte and behind the back of the petitioner in antagonism of the principles of natural justice. The learned counsel further pointed out that it was essential for the authorities to serve charge-sheet as required under Regulation 85 of the Service Regulations followed by regular departmental proceeding before passing order of dismissal. The submission further proceeds that the petitioner had no knowledge about the enquiry and further that enquiry report was also not supplied to him which ex facie formed the basis of the order of dismissal and as such the entire exercise and consequent impugned order are vitiated in law. The learned counsel further canvassed that as the dismissal order had the indicia of a punishment order under Regulation 84 (f), the authorities should have followed the procedure prescribed for disciplinary proceeding as contemplated under Regulation 85 of the Service Regulations.

4. Sri R.G. Padia, learned counsel representing the respondents, in opposition, contended that though it is indicated in the order that the order has been passed under Regulation 84 (f) of the Service Regulations but in effect, the dispute pertained to change of date of birth for which notice was given to the petitioner and it was the only requirement and the explanation having not been submitted within the time required, impugned order was passed after due consideration of the materials on record. He further contended that no regular disciplinary proceeding as mandated by Regulation 85 of the Service Regulations, was warranted in the facts and circumstances of the case. Reliance has been placed on decisions of the Apex Court in *State of Orissa v. Miss Binapant Dei*, 1967 SC 1269 and *Sarjoo Prasad v. General Manager*, 1981 SC 1481, to enforce his contention that only notice was necessary which was served to the petitioner.

5. Having considered the argument in all its ramifications, I think it necessary to have acquaintance with the provisions of Regulation 84 (i) of the Service Regulations which are excerpted below :

'84. Penalties.--(i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under Section 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any

one of the following penalties :

- (a) Censure ;
- (b) Withholding of increments ;
- (c) Fine on an employee of category IV (peon, chaukidar, etc.) ;
- (d) Recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the cooperative society by the employee's conduct ;
- (e) Reduction in rank or grade held substantively by the employee ;
- (f) Removal from service ; or (g) Dismissal from service

Clause (iv) (a) of Regulation 84 being relevant may also be abstracted below :

'(iv) (a) The charge-sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence :Provided that no penalty under Sub-clauses (e), (f) or (g) of Clause (t) shall be imposed without recourse to disciplinary proceedings.'

It would thus crystallise from perusal of the provisions contained in Regulation 84 (i) (f) and (g) and the proviso to Regulation 84 (iv) (a) that no punishment could be imposed without recourse to the regular disciplinary proceedings. Regulation 85 deals with the disciplinary proceeding and lays down procedure. Regulation 85 (i) and (iv) being relevant are quoted below :

'85 (i) The disciplinary proceedings against an employee shall be conducted by the inquiring officer referred to in Clause (iv) below with due observance of the principles of natural justice for which it shall be necessary that :

- (a) The employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days ;

(b) Such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires ;

(c) If no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary.

(iv) The inquiring officer shall be appointed by the appointing authority or by an officer of the society authorised for the purpose by the appointing authority ; Provided that the officer at whose instance disciplinary action was started shall not be appointed as an inquiring officer nor shall the inquiring officer be the appellate authority.'

6. The argument of the learned counsel for the opposite parties that in fact the matter pertained to change of date of birth which did not involve or entail full fledged departmental proceeding, does not commend to me for acceptance. Yet another reason which pricks hole into the argument of Dr. Padia is the fact that enquiry officer was appointed by letter dated 22.1.2001 who conducted the enquiry and submitted his report the very next day. Besides, I have searched the entire record and there is nothing on the record suggestive of the fact that petitioner was never intimated about appointment of the enquiry officer. The fact that enquiry report was not supplied to the petitioner has not been repudiated in the counter-affidavit. In fact, enquiry report furnished foundation for passing the impugned order of dismissal and non-supply of the enquiry report leaves a gaping hole in the fairness of the enquiry and observance of procedure prescribed for such enquiry. It would further appear that disciplinary authority has observed in the order that the certificate furnished by the petitioner was forged one and this observation had its basis in the enquiry report itself. In the above perspective, the argument of Dr. Padia that it was an enquiry pertaining to change of date of birth, has no cutting edge and falls to the ground. Rather, in fact, it was an enquiry to find out whether document filed by the petitioner was forged one. Submitting a forged document no doubt constitutes misconduct. It is noticeable that the background of the Impugned order is the ex parte enquiry conducted by the enquiry officer which according to

the order constituted misconduct and warranted consequent dismissal of the petitioner from service.

7. Concededly, neither any intimation was given to the petitioner in relation to appointment of enquiry officer nor copy of the enquiry report was supplied to the petitioner. It would also appear that the petitioner was also not supplied copy of the another certificate collected by the enquiry officer from the same institution. It also brooks no dispute that any charge-sheet was served to the petitioner or any disciplinary proceeding as contemplated under the rules was ever initiated against him. All this leaves an unbridgeable hiatus and constitutes flagrant violation of the provisions of the Regulation 84 (i) (f) and (iv) (a) as well as 85 of the Service Regulations, 1975. This also points to clear violation of principles of natural justice while conducting proceedings and passing the impugned order of dismissal on ground of alleged misconduct. In the course of submission, learned counsel for the petitioner also submitted that the petitioner had submitted reply to the notice which the authorities declined to acknowledge as a result of which, he took recourse to submitting the reply by registered post which was received by the authorities on 19th November 2001. In the enquiry, the petitioner had demanded opportunity of hearing and the impugned order preceded the reply and it was passed without considering the explanation submitted by the petitioner. In this regard. Section 103 (i) and (ii) may be referred to. This section deals with the nature of offences and penalties therefor. The impugned order too calls in aid the provisions of Section 103 and, therefore, by this reckoning, Regulation 84 of the Service Regulation will come into play and will on all fours apply to the facts of the present case. Once Regulation 84 comes into play, it becomes imperative for the authorities to have embarked upon regular departmental proceedings consistent with the provisions of Regulation 84 of the Service Regulation, 1975 and this having not been done, the entire edifice constructed by the authorities falls to the ground.

8. The case framed against the petitioner bristles with many infirmities and one of the noticeable infirmities coming to the fore is that entire exercise resulting in the dismissal of the petitioner was conducted behind the back of the petitioner and without furnishing relevant documents or materials forming basis of the imputation of alleged misconduct resulting from submitting forged transfer certificate by the

petitioner and this arbitrary exercise leaves irremovable taint permeating the impugned order and thus, the impugned order is vitiated in law on the unvarnished and simple ground of violation of natural Justice alone, It is anybody's guess that had the petitioner been supplied with the T.C. collected by the enquiry officer, he, in the facts and circumstances of the case, could have endeavoured to shed sufficient light to indicate about the certificate collected by the enquiry officer. To sum up, all these rights including the right of reasonable opportunity to defend himself as envisaged in the statute have been denied to the petitioner and by this reckoning, the impugned order cannot be sustained in law. The petitioner has also claimed opportunity to defend herself in reply.

9. As a result of foregoing discussion, the petition succeeds and is allowed. As a necessary consequence, the impugned order is hereby quashed attended with the observation that the disciplinary authority will embark upon departmental proceedings de novo as contemplated under Rule 84 (1) (f) and (iv) (a) as well as 85 of the Service Regulations, 1975 and take the same to some conclusion after affording due opportunity of hearing in accordance with Rules within a period of three months which period will commence to run from the date of production of a certified copy of this order. The consequential benefits shall abide by the final outcome of the enquiry.

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