

**Sheo Raj Prasad Vs. State of U.P. and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/449882](http://sooperkanoon.com/449882)

**Court :** Allahabad

**Decided On :** Sep-30-1999

**Reported in :** 2000(1)AWC76; (2000)2UPLBEC1176

**Judge :** A.K. Yog, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 4193 of 1990

**Appellant :** Sheo Raj Prasad

**Respondent :** State of U.P. and Another

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** R.S. Tiwari, Adv.

**Judgement :**

**A.K. Yog, J.**

1. Sheo Raj Prasad, petitioner, while working as Lekhpal in the District Fatehpur, was compulsorily retired vide order dated 12th January, 1990 (Annexure-4 to the writ petition) on the basis of assessment of his relevant past service record, by a duly constituted screening Committee constituted under relevant Government Order (vide Rule 56, fundamental rules contained in financial hand book-Part II

(extract thereof has been filed as C.A. 1 to the counter-affidavit).

2. In para 3 of the writ petition. It is admitted that a first information report was lodged by Tehsildar, Bindki regarding interpolation in revenue records in his custody and final report was submitted as the investigating Officer could not fix the responsibility with respect to person who had committed said interpolation. (Copy of First information Report has been filed as Annexure-2 to the writ petition). Vide order dated 17th November, 1982 S.D.M. Bindki, though revoked suspension but found petitioner responsible for interpolation in revenue records and directed adverse entry to be incorporated in character roll of the petitioner (Annexure-3 to the Writ Petition).

3. Petitioner filed an appeal before Collector against aforementioned order dated 17th November, 1982. The said appeal was dismissed on 21st August 1991. Petitioner filed Writ Petition No. 33244 of 1991 and, apart from award of adverse entry, challenged order of compulsory retirement dated 12th January, 1990 also which was meanwhile passed against him. Petitioner, however, concealed that he has already challenged order of compulsory retirement dated 12th January, 1990 by filing Civil Misc. Writ Petition No. 41932 of 1990.

4. This Petition No. 33244 of 1991 was dismissed by Hon'ble B. M. Lal J., vide judgment and order dated 7.5.1993. Against it Special Appeal No. 345 of 1993 was dismissed by a Division Bench of this Court vide Judgment and Order dated 19th October, 1994 (Annexure-C.A. 7 to the counter-affidavit). Relevant portion of Special appeal judgment is quoted below :

'The impugned order of the learned single Judge upholding the premature retirement of the appellant warrants no interference in special appeal.

A reference to the record shows that two increments of the appellant were stopped by an order passed on November, 17, 1982. The appeal against this order was dismissed by the Collector in August, 1991. but a year and a half earlier, however the impugned order of premature retirement was passed against the appellant under Rule 56 of Financial Handbook.

It is now well settled that an order of premature retirement is not order of punishment and such an order can be justified on the basis of consideration of the overall service record of the employee concerned. Seen with this yardstick, no infirmity can be imputed to the order passed against the appellant.

This Special Appeal accordingly hereby dismissed.

Sd./- S. S. Sodhi, C.J.

Sd./- Palok Basu.

Dated 19.10.1994.'

5. I called for record of Special Appeal No. 345 of 1993 and perused it.

6. Judgment and order dated 7th May, 1993 in Writ Petition No. 33244 of 1993 (Annexed with memo of special appeal) shows that petitioner did claim writ in the nature of certiorari to quash. Apart from other order, aforesaid order dated 12th July, 1990 (filed as Annexure-6 to the said writ petition).

7. Record of the special appeal shows that petitioner did not disclose pendency of the present Writ Petition No. 4193 of 1990 (which was filed earlier by him).

8. On the other hand, petitioner made false statement and concealed the fact of decision of the Writ Petition No. 33244 of 1991 in the rejoinder-affidavit (in present Writ Petition No. 41932 of 1990 sworn on 24th August, 1999).

9. The contesting respondents have given details of service record of the petitioner which indicate that performance of the petitioner cannot be said to be satisfactory so as to belie the action of compulsory retirement, (reference be made to para 8 of the counter-affidavit).

10. Paragraphs 8, 9, 10, 14 and 14-A of the counter-affidavit (sworn on record) are reproduced :

'8. That the petitioner was fined Rs. 10 by the then Sub-divisional Officer on 15.11.1958 and vide order dated 26.12.1960 was fined Rs. 42 from one months

salary he was ordered vide order dated 16.10.1976 to be suspended and reinstated without salary for committing forgery in the records of the village Rithwan. He was again reverted with stoppage of two vide order dated 4.12.1985 and was again reinstated with punishment of stoppage of increment for one year and then ultimately was compulsorily retired from service by order dated 12.1.1990. The history during the service tenure of the petitioner is not unblemished as alleged and after examining the entire service record of the petitioner he was retired from service by the impugned order.

9. That for committing forgery in the records pertaining to the village Bardara a F.I.R. was lodged against him vide letter dated. 23.12.1981 issued by the Sub-Divisional Magistrate, Bindki, District Fatehpur. However, the petitioner was discharged on 5.9.1983 from the Court of Chief Judicial Magistrate, Fatehpur.

10. That the petitioner has taken charge on 7.3.1980 from one Raj Kishore. Lekhpal. There was some forgery committed in the records and after lapse of six months when the petitioner realised that he would be involved directly in the matter, he reported the same to the authorities. By his conduct it is apparent that integrity of the petitioner is doubtful. The land record clerk had also recommended lodging of F.I.R. against the petitioner and it also reveals that the petitioner's integrity is doubtful.

14. That with regard to the contents of para No. 5 of the writ petition it is stated that the petitioner filed an appeal against the order dated 17.11.1982 before the Collector, Fatehpur and the appeal was decided on 21.8.1991. The petitioner against the order dated 21.8.1991 passed by the Collector, Fatehpur had filed a writ petition being Civil Misc. Writ Petition No. 33244 of 1991. It is necessary to mention here that the petitioner in that writ petition has also prayed for quashing of the order dated 12.1.1990. Thus, petitioner has filed another writ petition in the year, 1991 challenging the order dated 12.1.1990 which has been challenged by the petitioner in the present writ petition.

14A. That it is mentioned here that the Writ Petition No. 33244 of 1991 was dismissed, against which the petitioner preferred a special appeal being Special Appeal No. 345 of 1993. Thus, the petitioner has filed writ petition and special

appeal which has already been dismissed and thus, the present writ petition is also liable to be dismissed on this ground alone. The special appeal is also dismissed dated 19.10.1994, A true copy of the order is annexed as Annexure-No. C.A. 7.'

11. Petitioner vide para 18 of the rejoinder-affidavit denied above statement in paras 14 and 14-A of the counter-affidavit and stated that he did not challenge present impugned order dated 12.1.1990 in subsequent Writ Petition No. 33244 of 1991.

12. Paragraphs 11 and 18 of the rejoinder-affidavit (sworn on personal knowledge) read :

'11. That the contents of paragraph No. 8 of the counter-affidavit are thus not admitted and denied. The petitioner was never reverted during the tenure of his service. The petitioner filed appeal before Collector against the order of the S.D.O. dated 4.12.1985 and then after Collector's order of dismissing the appeal the petitioner filed writ petition before this Hon'ble Court before single Judge and single Judge of this Hon'ble Court dismissed the writ petition against the filing of the order of reducing two increments. Later on the petitioner filed special appeal before this Hon'ble Court which was dismissed and in cursory way. the Division Bench stated few lines of compulsory retirement which was not thought of subject in the Special Appeal No. 4193 of 90, this special appeal against the order of the learned single Judge.

18. That as far as the contents of paragraph No. 14 are concerned, it is denied. The petitioner filed a Writ Petition No. 33244 of 1991 against the order of the Collector, the dismissing appeal of the petitioner concerning order of S.D.O., Bindki, deducting two increments of the salary of the petitioner and writ petition was dismissed by this Court. It is wrong to say the writ petition was against the termination of the petitioner. This writ petition was against the order of the Collector, Fatehpur. dismissing the appeal against withdrawing the two increments of the petitioner.'

13. Para 18 of the rejoinder-affidavit is against record. Its contents are palpably false within the knowledge of the petitioner and his counsel, who also represented him in Writ Petition No. 33244 of 1991 and Special Appeal No. 345 of 1993. Misrepresentation of important and vital fact on the above point by incorporating misleading facts deliberately is calculated and a conscious attempt to play fraud upon Court. Petitioner is guilty of not approaching this Court with clean hands. He has, in a calculated manner. Indulged in sharp practice.

14. As noted above, validity of compulsory retirement has already been raised and adjudicated in Writ Petition No. 33244 of 1991 and the Special Appeal No. 345 of 1993 and its judgment in special appeal (Annexure-C.A. 7 to the counter-affidavit). It is now not open to the petitioner to challenge his order of compulsory retirement again in the present proceedings.

15. Sri R. S. Tewari Advocate, who represented the petitioner in this case as well as in another writ petition was under professional obligation to ensure that the party represented by him does not scandalise the process of Court by settling pleadings and filing affidavit/evidence in an unscrupulous manner.

16. The learned counsel. Sri R. S. Tiwari. Advocate, in his arguments insisted upon correctness of averments in para 18 of the rejoinder-affidavit but did not file or produce relevant record to controvert the statement in paragraphs 14 and 14A of the counter-affidavit. The manner and approach adopted by Shri R. S. Tiwari. Advocate, (counsel for the petitioner) in the case. Is not only unbecoming of an Advocate but also bound to bring the administration of Justice into disrepute besides making a mockery of the system. Aforesaid counsel has acted contrary to 'professional ethics' and needs deprecation in strongest terms.

17. Petitioner. therefore, disentitled himself from claiming extraordinary and discretionary remedy under Article 226, Constitution of India. In this context reference be made to the following decisions :

1. Asiatic Engineering Company v. Ashru Ram. AIR 1951 All 746 (para 51) (FB).
2. Smt. Shamina Rizvi v. S. Badshah Husaini Rizvi, 1975 ACJ 1210 (para 6).

### 3. 1996 (1) UPLBEC 580.

18. Learned counsel for the petitioner on merit of the case submitted that the petitioner was not found guilty of interpolation as per police investigation and 'Final Report' in the case registered on F.I.R. on the ground that it could not be found out who was responsible for interpolations in revenue record. Learned counsel submits that the petitioner has been compulsory retired only because respondents were prejudiced due to the fact that earlier he was charged for manipulation in record ignoring that he was not held responsible for the alleged act in the criminal proceedings.

19. He has referred to High Court of Punjab and Haryana through R. G. v. Ishwar Chand Jain and another. A/R 1999 SC 1677. In this case departmental enquiry was pending when employee was compulsory retired. The case is distinguishable on facts.

20. Reliance has been placed on the decision in Capt. M. Paul Anthony v. Bharat Gold Mines Limited and another, AIR 1990 SC 1416. In paras 34 to 36 Supreme Court has held that when on identical set of facts departmental proceedings and criminal case initiated simultaneously and subsequently an employee is dismissed on the basis of departmental proceedings but subsequently acquitted in Criminal case, in that case such order of dismissal, passed before decision of criminal case, is liable to be set aside. Ratio of this case is not at all attracted to the facts of the present case. Petitioner has been retired compulsory on the basis of past service record when no criminal case was pending.

21. Petitioner's counsel though made reference to (1) AIR 1999 SC 609 : (2) AIR 1999 SC 1561 ; (3) 1999 ALJ 739 and A/R 1999 SC 1514, but he chose not to cite these decisions for perusal of the Court ; and, therefore, ignored.

22. Petitioner has already crossed age of superannuation and in view of it he cannot be granted relief claimed in clause (f) of para 9 of the writ petition.

23. No relief can now be granted in the present petition though filed earlier.

24. Writ petition fails on merit as well as on ground of his conduct of not approaching the Court with clean hands and it is accordingly dismissed with costs quantified at Rs. 10,000 to be paid separately by Sheo Raj Prasad (the petitioner) and Rs. 10,000 to be paid by Shri R. S. Tewari, learned counsel for the petitioner. Cost to be deposited by the petitioner and Shri R. S. Tewari. Advocate with the Registrar. High Court, Allahabad within three months from the date of this judgment. Registrar shall pay Rs. 10,000 received as costs from the petitioner to respondent No. 1. In case of default by the petitioner to pay the costs, District Magistrate, Fatehpur shall recover it as land revenue and deposit with the Registrar, High Court. Allahabad, who shall remit it to respondent No. 1 as aforesaid. Rs. 10,000 as costs received from Shri R. S. Tewari, Advocate shall be remitted by the Registrar to the State Legal Aid Authority, Lucknow. In case of default, he shall be prosecuted for contempt--both for encouraging petitioner to file 'false affidavit' and for breach of direction in this judgment.

25. Registrar is further directed to file within two months a complaint before Bar Council. U. P.. Allahabad, against counsel for the petitioner Sri R. S- Tewari, Advocate (Resident of B-669. Kareli Colony, Allahabad, for committing aforesaid 'Professional Misconduct' namely :

(i) in Civil Misc. Writ Petition No. 33244 of 1991, Shri R. S. Tiwari as counsel concealed the fact of pendency of earlier Civil Misc. Writ Petition No. 4193 of 1990 ; and

(ii) Paragraphs 11 and 18 of the rejoinder-affidavit dated 24th August, 1999 sworn by Sheo Raj Prasad (petitioner), in Writ No. 4193 of 1990 contain false statement against record though it was drafted and settled by the said counsel who was also counsel for the said petitioner in the subsequent Civil Misc. WritPetition No. 33244 of 1991 and Special Appeal No. 345 of 1993 and he was, therefore, aware that facts stated in paragraphs 11 and 18 of the aforementioned rejoinder-affidavit are incorrect, false and misleading.

26. Registrar or an officer (non-judicial) appointed by him shall prosecute and appear before U, P. Bar Council in the cases whenever the Council takes cognizance of the complaint and notice is received by the complainant in future.

27. A copy of this judgment shall be placed before the Registrar within two months from today for necessary action.

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