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Court : Allahabad

Decided On : Aug-04-1998

Reported in : 1999(1)AWC542

Judge : I.P. Vasishth, J.

Acts : Uttar Pradesh II Services (Imposition of Minor Punishment) Rules, 1973 - Rule 4

Appeal No. : Writ Petition No. 3695 of 1980

Appellant : Munirul Haque Siddiqui

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Amar Nath Verma and ;Qamrul Hasan, Adv.

Judgement :

I.P. Vasishth, J.

1. The petitioner prays for a writ of certiorari quashing the notices contained in Annexures-2 and 4 besides the order contained in Annexure-6 passed by respondent No. 3, the Regional Food Controller. Faizabad Region, Faizabad.

2. The gist of the matter is that in the year 1975, the petitioner was posted as In-charge of F. C. 1. Godown at Barabanki and that since the Godown was in a dilapidated condition, therefore, he reported the matter to respondent No. 3 recommending the shifting of the food-grain stock to a safer place, and even though the respondent No. 3 did not move into action, there was heavy rainfall, with the result that some of the stocks were damaged on being exposed to poor weather. The petitioner with the help of the then Senior Marketing Inspector Sri Ram Pal Singh on his own removed the stocks temporarily to a safer place as a make-shift arrangement and impressed upon respondent No. 3 to find out a permanent place for its storage, but no action was taken, with the result that the stock perished.

3. It was further averred that vide Annexure-2 dated 18/23.10.1978, he was rather insinuated for having neglected the maintenance of 6,000 bags and asked to explain as to why he be not made to make up the loss. The petitioner promptly replied to that letter vide Annexure-3 and sought a month's time to verify the facts for submitting a detailed reply. But then he also received notice contained in Annexure-4 dated 30.3.1979 as if because of his negligence 3,372 empty bags were totally destroyed in the aforesaid incident. This notice was actually addressed to three persons including two others, viz., two Senior Marketing Inspectors including S/Sri Ram Pal Singh and G. C. Sharma. The petitioner's reply contained in Annexure-5 to the aforesaid notice failed to satisfy the respondents and thus he was fastened with the liability of 75% loss caused in the process. The remaining 25% was to be recovered from the Senior Marketing Inspectors, in this way, the department proceeded to recover an amount of Rs. 9,544.63 p. from his salary.

4. The petitioner's grievance was that he had absolutely no contribution in the entire episode that the gunny bags perished primarily on account of the department's own negligence and failure to shift them to a safer place despite his insistence and that the department was never sure about the exact extent of loss which too, was not properly apportioned amongst the so-called delinquent officials and that the impugned order of recovery was void ab initio because no charge-sheet was ever served on him in this context.

5. Resisting the proceedings, the respondents filed their counter-affidavit through Deputy Regional Marketing Inspector, Ganga Prasad Gupta. The burden of his averments was that the petitioner did not take the requisite Interest in the maintenance of the stocks entrusted to him, that he never reported the so-called deficiencies or dilapidated conditions of the godown to the higher authorities, that as a matter of fact at the time of heavy rains, he abandoned the godown resulting in heavy loss to the stocks so much so that some of it got completely damaged and became unfit for consumption. Proper show-cause notice was issued to the petitioner and since his reply was not found satisfactory, therefore, he was called upon to make up the loss in proportion to his negligence. It was denied that there was any ambiguity in the various notices issued to him. Petitioner's explanation was found unsatisfactory on verification and as such he was called upon to reimburse the department only for the damage caused to the limited number of gunny bags rather than 6.000 bags as apprehended at the initial stage.

6. Drawing the Court's attention towards the case of Virendra Nath Rai v. State of U. P., (1997) 1 UPLBEC 67, the learned counsel for the petitioner submitted that since it is common ground that no charge-sheet whatsoever was issued to the petitioner, therefore. It should be assumed that there was no proper enquiry and that in the absence of an inquiry, imposition of punishment by way of recovery towards the damage was legally unsustainable. In the same sequence, the learned counsel submitted that from the letter Annexure-1 recorded by the Regional Marketing Inspector Sri Ram Pal Singh, it is clear that the department was fully aware of the hazards in keeping the stocks in a dilapidated building and still no action was taken by the department to safe-guard the stocks.

7. Despite seeming attraction, the submission of the learned counsel failed to carry conviction because a bare perusal of Rule 4 (c) (iii) of Uttar Pradesh Class II Services (Imposition of Minor Punishment) Rules, 1973 would leave no manner of doubt that recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of duty falls within the purview of a minor punishment. In the case of Kulwant Singh Gill v. State of Punjab, 1991 (Suppl) (1) SCC 504, their Lordships were pleased to hold that in the case of a minor punishment, no full-dressed departmental inquiry is required and that it is sufficient

if a proper opportunity by way of show cause notice is afforded to the employee, that his reply is received and duly considered. In this case on petitioner's own showing, the notices contained in Annexure-2 and 4 were issued to him in October, 1978 and March, 1979 to show cause and explain his side of the story. He did avail of the opportunity by sending his replies contained in Annexure-3 and Annexure-5. A scrutiny of both these documents would show that his reply, all throughout was evasive leading to the only inference of his culpability.

8. In the case of Virendra Nath Rai, the attention of the learned Judge was neither drawn towards the aforesaid service rules nor to the dictum in the case of Kulwant Singh. It is besides the point that in the matter before the learned Judge, a formal charge-sheet had already been Issued to the employee and full-dress inquiry was going on when in the midst of the proceedings, all of a sudden the recovery order was passed against the employee. So it was in the peculiarity of the situation that the action of the employer failed to stand the judicial scrutiny in the eyes of the learned Judge. As mentioned here-in-before, in our case the petitioner had throughout been associated with the inquiry leading to the loss of the stocks and afforded full opportunity to project his view point before being subjected to a minor punishment by way of a recovery.

9. Hence for want of merit, the petition fails and is accordingly dismissed.