

Dhirendra Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-04-2001

Reported in : 2001(2)AWC1250; [2001(90)FLR559]; (2001)2UPLBEC1111

Judge : D.S. Sinha and ;Lakshmi Bihari, JJ.

Acts : Court of Rules, 1952 - Rule 5

Appeal No. : Special Appeal No. 378 of 2001

Appellant : Dhirendra Kumar

Respondent : State of U.P. and Others

Advocate for Def. : Sandeep Mookerji,; S.C.

Advocate for Pet/Ap. : Ram Autar Verma, Adv.

Judgement :

D.S. Sinha, J.

1. Heard Sri Ram Autar Verma, the learned counsel appearing for the petitioner-appellant and Sri Sandeep Mookerji, the learned standing counsel of the State of U. P.. representing the respondent Nos. 1. 2 and 4, at length and in great detail.

2. The appellant is a member of Uttar Pradesh Police. A disciplinary proceedings against his conduct is in contemplation and in the meantime he has been placed

under suspension by the order dated 4th March. 2001.

3. Feeling aggrieved by the order of suspension and initiation of disciplinary enquiry, the appellant filed in this Court the Civil Misc. Writ Petition No. 10317 of 2001, Dhirendra Kumar v. State of U. P. and others.

4. The writ petition has been finally disposed of by a learned single Judge of the Court, vide his order dated 22nd March. 2001. The learned single Judge opined that considering the nature of the charge against him, the disciplinary enquiry could go on without placing the appellant under suspension. Therefore, while disposing of the petition finally, the learned single Judge has directed that the disciplinary enquiry may be taken to its logical end in accordance with law and the order of suspension of the appellant be kept in abeyance. Consequential reinstatement of the appellant has also been directed by the learned single Judge.

5. The appellant is not satisfied with the magnanimity and mercy shown to him by the learned single Judge by keeping the order of suspension in abeyance during the pendency of the disciplinary enquiry. The appellant demands more. To be precise, he urges that disciplinary enquiry against him should be knocked off. Hence, this intra-court appeal.

6. In its decision rendered in U. P. Rajya Krishi Utpadan Mandi Parishad and others v. Sanjiv Rajan, JT 1993 (2) SC 550, the Hon'ble Supreme Court has clearly and categorically ruled that '.....whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.'

7. In the instant case, there is no material on record to come to the conclusion that the impugned order of suspension was passed mala fide. So far as the requirement of prima facie evidence on record connecting the appellant with the misconduct is concerned, the appellant has admitted the charge of being absent from duty without leave which is subject matter of disciplinary enquiry against him. Thus,

there being no dispute that he remained absent from duty without leave, it cannot be concluded that it is a case of lack of prima facie evidence on record connecting the appellant with the alleged misconduct.

8. In these circumstances, there was no occasion for interference with the assessment of the relevant authority in the matter of placing the appellant under suspension during the period of inquiry against him. It would have been appropriate to allow the order of suspension of the appellant to operate during the pendency of the disciplinary enquiry against him.

9. However, the magnanimity and mercy extended to the petitioner by the learned single Judge in exercise of the special and extraordinary jurisdiction under Article 226 of the Constitution of India need not be disturbed for the reason that the direction of the learned single Judge for keeping the suspension of the appellant in abeyance has not been challenged by the State and appears to have been acquiesced by it.

10. So far as the attack on the impugned order regarding direction to continue the enquiry and bring the same to its logical end in accordance with law is concerned, the Court is of the opinion that the direction of the learned single Judge in the impugned order and judgment is perfect, specially in view of the fact that factum of absence from duty without leave is admitted by the appellant. It suffers from no infirmity, much less legal, warranting interference in this intra-court appeal under Chapter VIII. Rule 5 of the Rules of Court, 1952. Indeed, the appeal is frivolous, vexatious and amounts to gross abuse of the process of law.

11. Thus, the appeal is dismissed with costs, which is quantified at Rs. 1,500. The costs shall be deposited by the appellant with the Superintendent of Police, Auraiya, within a month, failing which the costs may be realised from the petitioner from his salary.