

Ram Kumar Verma Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-13-2001

Reported in : 2001(2)AWC1309; [2001(89)FLR921]; (2001)2UPLBEC1130

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Government Servants (Dicipline and Appeal0 Rules, 1999 - Rules 4(1) and 17(1), (2); Civil Services (C.C.A.) Rules, 1930; Punishment and Appeal Rules for Subordinate Services, U.P., 1932 - Rule 1A(1); Uttar Pradesh General Clauses Act, 1904 - Sections 24; Uttar Pradesh Act

Appeal No. : C.M.W.P. Nos. 8571, 8570 and 11339 of 2001

Appellant : Ram Kumar Verma

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Umesh Narain Sharma, Adv.

Judgement :

S. R. Singh, J.

1. Impugned herein is the order dated 24.2.2001 whereby the petitioner has been placed under suspension in contemplation of disciplinary enquiry against him on

charge of having committed grave irregularities and connived with the millers/intermediaries in paddy procurement. Identically worded orders of even date are sought to be quashed on common grounds and hence, it would be convenient to dispose of these three writ petitions by a common order.

2. It has been submitted by Sri U. N. Sharma, learned counsel appearing for the petitioner that the order placing petitioner under suspension has been passed without any rhyme or reason and without application of mind to materials and reports available with the Regional Food Controller who passed the impugned order of suspension. It has also been submitted by Sri Sharma that Regional Food Controller was not competent to place the petitioner under suspension for the Regional Food Controller is not the appointing authority and the power of suspension has not been delegated to the Regional Food Controller by the 'appointing authority', namely, the Commissioner Food and Civil Supplies in accordance with the provisions of the U. P. Government Servant (Discipline and Appeal) Rules, 1999 (in short the Rules). Learned standing counsel, on the other hand submitted that there was enough material before the Regional Food Controller to make out a prima facie case of suspension in contemplation of disciplinary enquiry against the petitioner. Learned standing counsel submitted that the charge as mentioned in the impugned order of suspension was grave enough to warrant recourse to suspension. The first proviso to Rule 4 (1) of the U. P. Government Servants (Discipline and Appeal) Rules, 1999, which provides that recourse to suspension should not be taken unless if the charge is grave enough to warrant imposition of major penalty. In the event of the same being established at the enquiry, has not been violated. As regards the power of suspension, learned standing counsel has submitted that the power of suspension had been delegated to the Regional Food Controllers vide notification dated July 10, 1997. The delegation is referable for its source to the provisions of the Civil Services (Classification, Control and Appeal) Rules, 1930 and Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932. Such delegation, proceeds the submission, will remain valid unless cancelled or rescinded as visualized by Rule 17(1) (a) of the U. P. Government Servants (Discipline and Appeal) Rules, 1999.

3. Having heard the counsel. I veer around the view that if it is found that Regional Food Controller is not competent to suspend a Marketing Inspector, it will not be necessary to go into other questions raised by Sri Sharma. Therefore, the first question which needs to be determined is whether the Regional Food Controller was competent to suspend the petitioner. Rule 4 (1) of the Rules reads as under :

'4. Suspension.--(1) A Government servant against whose conduct an enquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the Inquiry in the discretion of the Appointing Authority :

Provided that suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty :

Provided further that concerned Head of the Department empowered by the Government by an order in this behalf may place a Government servant or class of Government servants belonging to Group 'A' and 'B' posts under suspension under this rule :

Provided also that in the case of any Government servant or class of Government servants belonging to Group 'C' and 'D' posts, the Appointing Authority may delegate power under this rule to the next lower authority.'

4. The power to suspend a Government servant under the Rules is vested in the 'Appointing Authority'. The word 'Appointing Authority' means the authority empowered to make appointments to the posts under the relevant service rules. The third proviso to Rule 4 (1) of the Rules, however, provides that the appointing authority, in the case of any Government servant or class of Government servants belonging to Group 'C' and 'D' posts, may 'delegate its power under this rule to the next lower authority'. 'Appointing Authority' in relation the posts of Marketing Inspector is the Commissioner, Food and Civil Supplies, Government of U. P., Lucknow. The said authority has not delegated its power under the Rules to the next lower authority. The notification dated July 10, 1997, reliance on which has been placed by the learned standing counsel, was issued by the State Government. The delegation is traceable for its source of power to the provisions

of Rule (1A) of the Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932. The sub-rule (1) of Rule 1A is quoted below :

'1A (1) A Government servant against whose conduct an inquiry is contemplated, or is proceeding, may be placed under suspension pending the conclusion of the inquiry in the discretion of the appointing authority :

Provided that in the case of any Government servant, or class of Government servants, not belonging to a State service, the appointing authority may delegate its power under this sub-rule to the next lower authority :

Provided further that any other authority empowered by the Government by general or special order in this behalf, may place a Government servant under suspension under this sub-rule.'

5. The 2nd proviso to sub-rule (1) of Rule 1A extracted above permitted suspension of a Government servant by any authority empowered by the Government in this behalf by general or special order. The said Rules have been rescinded vide Rule 17 (1) of the U. P. Government Servants (Discipline and Appeal) Rules, 1999. Sub-rule (2) of Rule 17 which saves delegation of power of suspension, etc. under the rescinded Rules, in so far as it is relevant, is quoted below :

'17. Rescission and sailings-

(1) xx xx

(2) Notwithstanding such rescission.-

(a) Delegation of power mentioned in Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932 and any order issued under the Civil Service (Classification, Control and Appeal) Rules, 1930 or Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932, delegating the power of imposition of any of the penalties mentioned in Rule 3 or power of suspension to any authority, shall be deemed to have been issued under these rules and shall remain valid unless cancelled or rescinded ;'

6. Under the provisions of Civil Services (Classification, Control and Appeal) Rules, 1930 and Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932, the State Government had the power to delegate the power of suspension vested in the 'appointing authority' to 'any authority' and the notification relied on by the learned standing counsel must be deemed to have been issued by the State Government in exercise of such power. Question is whether the notification is saved by clause (a) of sub-rule (2) of Rule 17 of the U. P. Government Servants (Discipline and Appeal) Rules, 1999? As noticed hereinabove the third proviso to sub-rule (1) of Rule 4 empowers the 'Appointing Authority' to delegate its power of suspension under the Rules to the 'next lower authority' whereas under the rescinded Rules, the State Government has the power to delegate the power of suspension vested in the appointing authority to 'any authority'. It has been contended, and in my opinion rightly, by Sri U. N. Sharma that the notification under the rescinded Rules being inconsistent with the third proviso to Rule 4 (1) cannot survive notwithstanding the saving clause (a) of sub-rule (2) of Rule 17.

7. There is no manner of doubt that as a consequence of Rule 17 (1) of the Rules, Civil Services (Classification, Control and Appeal) Rules, 1930 and Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932, are completely effaced as if these rules had never been promulgated. Clause (a) of sub-rule (2) of Rule 17, however, saves the delegation of power made under the rescinded Rules. The argument is that delegation of power under the U. P. Government Servants (Discipline and Appeal) Rules, 1999, is permissible only by the 'Appointing Authority', and, therefore, continuance of the delegation made earlier by the State Government would be 'inconsistent' with the third proviso to Rule 4 (1) of the Rules. The argument in my opinion, is not without substance. Section 24 of the U. P. General Clauses Act, 1904, deals with situations in which notifications, etc. issued under an enactment which is repealed and re-enacted. If the principle laid down therein is extended to rescission and re-enactment of statutory rules, it cannot be gainsaid that continuance of the delegation of power of suspension made under the rescinded Rules would be subject to the qualification that it is not inconsistent with the provisions of the re-enacted Rules. Section 24 of the U. P. General Clauses Act, 1904, clearly provides that where any enactment is repealed

and re-enacted by any Uttar Pradesh Act with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or byelaw, made or issued under the repealed enactment shall, 'so far as it is not inconsistent with the provisions re-enacted' continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any notification, issued under the provisions so re-enacted. The principle laid down in Section 24 of the U. P. General Clauses Act, 1904, will equally apply to a case of rescission and re-enactment of statutory rules. In my opinion, therefore, the notification relied on by the learned standing counsel cannot save the impugned order of suspension which has not been passed by the 'Appointing Authority' or its delegate. The view I am taking finds support from the decision dated 3.12.1999 rendered in Civil Misc. Writ Petition No. 5915 of 1999 (S/S) (Giri Raj Singh v. State of U. P. and others) by the Lucknow Bench of this Court.

8. Since the impugned order is liable to be quashed on the ground that it has been passed by an authority lacking in jurisdiction, it is not necessary to go into the other questions raised by Sri U. N. Sharma.

9. In the result, therefore, the petitions succeed and are allowed. The impugned order is quashed without prejudice to the right of the disciplinary authority to pass such order as it may deem fit and proper under the provisions of Rule 4 of the U. P. Government Servants (Discipline and Appeal) Rules, 1999.