

R.K. Singh Vs. Director/Appointing Authority and Another

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Court : Allahabad

Decided On : May-01-2001

Reported in : [2001(89)FLR1121]; 2001LabIC3528; (2001)2UPLBEC1282

Judge : M. Katju and ;O. Bhatt, JJ.

Acts : [Constitution of India](#) - Articles 12 and 226

Appeal No. : C.M.W.P. No. 317 of 2000

Appellant : R.K. Singh

Respondent : Director/Appointing Authority and Another

Advocate for Def. : P. Padia, Adv.

Advocate for Pet/Ap. : Yogesh Agarwal and ;Bajrang Bahadur Singh, Adv.

Disposition : Writ Petition allowed

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 22.11.1999 [Annexure-1 to the petition) by which the petitioner has been removed from service.

2. We have heard learned counsel for the parties.

3. The petitioner was appointed as Research Assistant in Govind Ballabh Pant Social Science Institute, Jhansi, Allahabad (hereinafter called the institute) on 10.1.1990 in a permanent capacity. He was issued a charge-sheet dated 4.5.1999 vide Annexure-2 to the petition. It is alleged by the petitioner that the charge-sheet is wholly vague inasmuch as the periods of the dates on which the petitioner was allegedly absent without leave or had allegedly made signatures in the Attendance Register even after a cross was put in by the authority was absent.

4. It is further alleged in paragraph 4 of the petition that the allegation that the petitioner was in the habit of writing objectionable and undesirable letters to the authorities is also vague and so is the third allegation that the petitioner wilfully neglected his duty. The allegation that the petitioner terrorized the labourers and committed the crime of extorting money was also vague as no names or particulars of labourers were given.

5. In paragraph 7 of the petition, it is stated that the petitioner was never informed that one Prahlad Narain had been appointed as inquiry officer and the alleged inquiry officer never informed the petitioner of any date of the inquiry. It is alleged that an ex parte order dated 12.7.1999 was passed by the inquiry officer and thereafter ex parte oral evidence was recorded against him from 16.7.1999 onwards.

6. In paragraph 8 of the petition, it is alleged that an ex parte inquiry appears to have been held against the petitioner and an inquiry report dated 25.9.1999 was made, true copy of which is Annexure-3 to the petition.

7. In paragraphs 10, 11 and 12 of the petition, various allegations have been made regarding the findings of the Inquiry officer, but it is not necessary to go into the correctness or otherwise of the same, since we are of the opinion that the non-holding of an inquiry into the matter vitiates the entire proceedings. Hence it is not necessary to go into the other submissions made by the learned counsel for the petitioner. The allegation in paragraphs 7 and 8 of the petition that no inquiry was held against the petitioner has been replied in paragraphs 31 and 32 of the

counter-affidavit. All that has been said in paragraph 31 of the counter-affidavit is that the petitioner never replied to the charge-sheet.

8. In our opinion, even if the petitioner did not reply to the charge-sheet, an inquiry should have been held after intimating him the date, time and the place of the inquiry and the name of the inquiry officer and in this inquiry evidence should have been recorded in the presence of the petitioner and he should have been given an opportunity of adducing his evidence. This was evidently not done.

9. No doubt it has been stated in paragraph 31 of the counter-affidavit that the petitioner was having full knowledge of each and every date of the Inquiry proceedings, but we are not Inclined to accept this because the respondents have no where stated in the counter-affidavit that the petitioner was informed of the date, time and place of the inquiry. Since a major penalty was being Imposed on the petitioner. In our opinion, he should have been given an opportunity of hearing by holding an inquiry after intimating him the date, time and place of the same, but this was not done.

10. A Division Bench of this Court in Subhash Chandra Sharma v. Managing Director. U. P. Corporation Spinning Mills Federation Ltd., Kanpur and another, 1999 (4) AWC 3227, has held that where a dismissal order was passed without holding an inquiry, it is illegal. The Division Bench relied on several Supreme Court decisions in support of its view and we are in agreement with the same.11. Learned counsel for the respondents submitted that the institute is not State under Article 12 of the Constitution. We are not in agreement with this submission. The concept of State under Article 12 of the Constitution cannot be equated with that of Government, and it is a wider concept as is evident from several decisions of the Supreme Court e.g. P.K. Ramchandra Iyer v. Union of India, AIR 1984 SC 541 ; Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487 ; Mysore Paper Mills Ltd. v. Mysore Paper Mills OJicers Association. 2000 (1) EXC 597 ; A. L. Kalra v. Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361. etc.

12. On the other hand, learned counsel for the respondents relied on the decision of Ihe Supreme Court in Tekraj v. Union of India. AIR 1988 SC 469 : All India Statutory Corporation v. United Labour Union, 1997 (9) SCC 377 ; Chandra

Mohan Khanna v. N.C.E.R.T., AIR 1992 SC 76 and Dr. Shailjeet Singh v. Union of India, 1996 (3) UPLBEC 2165.

13. The petitioner has alleged in paragraph 22 of the petition that the institute is State within Article 12 of the Constitution. The institute was set up and maintained by the Union Government. State Government and the Indian Council of Social Sciences Research. True copies of the first two pages of the annual report of 1980-81 is annexed as Annexure-1 to the petition, which shows that the then Chief Minister made a proposal to the Union Minister of Education and on its acceptance by the Union Ministry and investigation by a high power Committee, the Institute was established with funds given only by the Union Ministry through the Indian Council of Social Science Research and Government of Uttar Pradesh. Thus, the society was created only by the State decision and not the initiative of private individuals, and a Government Officer was appointed on deputation to manage its affairs. Several Government authorities are in the Board of the Institution. The State and Central Government do the entire funding and the Government officials do management. The Constitution of the Board is given in clause (k) of paragraph 22 of the petition, which shows that most of members are Government officials or some authority or their representatives. The control of the State and the Central Government is deep and pervasive. Hence we are constrained to observe that the Institute is State under Article. 12 of the Constitution.

14. In the circumstances, the writ petition is allowed.

15. The impugned order dated 22.11.1999 is quashed. The petitioner shall be reinstated within a month from the date of production of a certified copy of this order before the respondent No. 1 and he shall be paid all back salary and other benefits with interest @ 12% within two months from the date of production of a certified copy of this order before respondent No. 1. No order as to costs.