

Subhash Chandra Gupta Vs. U.P. State Cadre Authority and ors.

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Court : Allahabad

Decided On : Mar-08-2007

Reported in : 2007(78)AWC2191

Judge : Rakesh Tiwari, J.

Appellant : Subhash Chandra Gupta

Respondent : U.P. State Cadre Authority and ors.

Advocate for Def. : Sri. K.N. Misra

Advocate for Pet/Ap. : Sri. Rajesh Kumar

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard Sri Rajesh Kumar, counsel for the petitioner, Sri K.N. Misra, counsel for the respondents and perused the record.

2. The petitioner has challenged the order of suspension dated 28.3.2006 passed by District Assistant Registrar, Co-operative Societies, U.P. Moradabad/Chairman District Committee, P.C.U. Moradabad-respondent No. 3 appended as Annexure-9 to the writ petition.

3. The petitioner prays for a writ of certiorari quashing the impugned suspension order dated 28.3.2006 passed by respondent No. 3 and for a writ of mandamus commanding the respondents to reinstate him in service and not to interfere in his peaceful working on the said post.

4. Briefly stated, the facts of the case are that the petitioner's society was allotted 258 quintals of wheat which was distributed amongst the concerned institutions in accordance with the circular dated 9.1.2006 issued by the authority. On the basis of news published in 'Amar Ujala', regarding irregularities in distribution of the wheat stock, Respondent No. 3 directed the Block Development Officer to submit his report which was submitted by him on 24.3.2006. Thereafter, show cause notice dated 13.2.2006 was served upon the petitioner which was replied by him on 20.2.2006.

5. It further appears that the respondent No. 3 vide letter dated 6.3.2006 directed the Block Development Officer to distribute stock available in the society at an early date. He again passed order dated 10.3.2006 directing the Block Development Officer to produce entire documents pertaining to distribution of stock. As records were not submitted consequently respondent No. 3 passed the impugned order of suspension.

6. Contention of counsel for the petitioner is that from a bare perusal of enquiry report submitted by the Enquiry Committee, it is apparent that the petitioner was innocent.

7. He has relied upon a decision rendered in Smt. Meera Tiwari v. Chief Medical Officer and Ors. 2001 (2) AWC 1506, wherein question whether the order of suspension can be passed when no enquiry is contemplated in view of Rule 4(1) of the U.P. Government Servants' (Discipline and Appeal) Rules, 1999 was considered. On the basis of the aforesaid decision, it is contended that before placing a person under suspension, there has to be sufficient material before the competent authority as such, petitioner cannot be suspended without affording him any opportunity of hearing.

8. He then contended that under Regulation 67(3) of the U.P. Cooperative Federal Authority (Business) Regulations, 1976, the District Committee has to make recommendation for action against a delinquent employee within four months and if such recommendation is not made within the prescribed period, the matter shall stand transferred to the Regional Committee which is to finally decide the matter within two months. It is stated that in case, the Regional Committee fails to decide the same, then it is open for the State Level Administrative Committee to get the file transferred and pass appropriate orders itself. He urged that in the instant case, since the time prescribed under Regulation 67(3) of the aforesaid Business Regulations, 1976 has elapsed, it is now for the State Level Administrative Committee to get the file transferred to itself for passing appropriate orders.

9. Counsel for the petitioner also relied upon paragraphs 3 and 5 of the enquiry report, which are as under:

3- ;kstuk ds [kk|kUu 250-36 dqUVy dk forj.k dk;Znk;h laLFkk Hkwfe laj{k.k foHkkx ds }kjk tkjh fd;s x;s dwiuksa ds vk/kkj ij fnukad 3-1-2006 dks IEcfU/kr 62 etnwijsa dks dj fn;k x;kA bl [kk|kUu forj.k dk IR;kiu lfefr ds lfpo Jh lqHkk'kpUnz xqlrk] Jh lqjsUnz flag] xzke fodkl vf/kdkjh ,oa Hkwfe laj{k.k foHkkx ds Jh jke flag dk;Z izHkkjh }kjk fd;k x;k gSaA lfefr ij yky dwiu Hkh miyC/k gSa ftudks xzke fodkl vf/kdkjh ,oa jke flag ds }kjk izekf.kr fd;k x;k g SA bl izdkj ls [kk|kUu forj.k esa LVkd dk IR;kiu ,oa forj.k dk IR;kiu ,oa dwiuksa dh miyC/krk rhuksa fcUnq iw.kZ ik;s x;sA tkWp ds nkSjku ;g Kkr gqv k gS fd Hkwfe laj{k.k foHkkx ds }kjk ftu etnwijsa dks dk;Z esa iz;qDr fd;k x;k gS os fodkl [k.M ew<+kik.Ms ds fuoklh ugha gSa ftlds dkj.k etnwijsa rd tkdj forj.k dk IR;kiu ugha gks ldk] fdUr q Hkwfe laj{k.k foHkkx }kjk 10 etnwijsa ds gyQuksa tks fd uksVjh ls izekf.kr gSa ,oa 11 etnwijsa ds fyf[kr c;ku esjs le{k izLrr fd;s x;s gSa ftUgksus Lohdkj fd;k gS fd mUgsa [kk|kUu dk iw.kZ forj.k lgdkjh lfefr tSriw fclkgV ew<+kik.Ms ls dj fn;k x;k gSA etnwijsa ds gyQuksa ,oa fyf[kr c;ku ewy #l esa tkWp vkf;k ds lkFk layXu gSA

4&&&&&&&&&&&&&&&&

5& bl izdkj ds lEcU/k esa lfefr tSriqj fclkgV ds rRdkyhu lfpo Jh lqHkk'kpUnz xqlrk dk Hkh c;ku fy;k x;k] ftUgksaus vius c;ku esa fy[kk gS fd muds }kjk vkSipkfjdrkvksaa dks iw.kZ djrs gq, [kk|kUu dk forj.k xzke fodkl vf/kdkjh dh vifLFkfr esa fd;k x;k gS

vkSj fnukad 30-1-2006 dks ftyk lgk;d fucu/kd] lgdkjh lfefr;k m0iz0 eqjknkckn tks fd lEcfUFkr lfefr ds fujh{k.k ds }kjk Hkh fjdk MZ dk voyksdu fd;k x;k gS vkSj dksbZ folaxfr ugha ik;h xb ZA ;fn dksbZ folaxfr feyrh rks og fuf'pr #lk ls ;g rF; [k.M fodkl vf/kdkjh ew<+kik.ms ds laKku esa vo'; ykrsA bl laca/k esa lfefr ds rRdkyhu Jh lqHkk'kpUnz xqlrk] lfpo ds c;ku dh Nk;k izfr Hkh lkFk esa layXu gSA

mijksDr leLr fcUnqvksa ds vk/kkj ij eSa bl fu'd'kZ ij igqaprkw gw fd [kk]kUu forj.k lEcfU/kr etnwjksa dks fd;s tkusa esa izFke n`V;k dksbZ /kka/kyh izrhr ugha gksrhA etnwjksa dks [kk]kUu forj.k fd;s tkus ds lEcfU/k esa l;kZlr izek.k gSa vkSj muds gyQukesa Hkh gSa fdUrq ;g js[kkafdr djuk vko';d gS fd bl izdj.k esa fofHkUu lrjksa ij fu/kkZfjr izfdz;kvksa ds ikyu esa lfpo Jh lqHkk'kpUnz xqlrk ,oa xzke fodkl vf/kdkjh Jh lqjsunz flag }kjk leqfpr ?;ku ugha fn;k x;k ftlds dkj.k ;g Hkzeiw.kZ fLFkfr mRiUu gqb ZA esjs Lrj ls xzke fodkl vf/kdkjh dks ,d izfrdwy izfof'V iznku dj nh xbZ g SA bl laca/k esa [kk]kUu ds gLrkUrj.k esa izf;k tks fd Hkwfe laj{k.k foHkkx ds }kjk dh xbZ dh lwpuk [k.M fodkl vf/kdkjh dks miyC/k ugha djkbZ ftlds dkj.k Hkh bl [kk]kUu dk laKku esa ugha vk;k vkSj Hkze dh fLFkfr cuh jghA vr% tkap vk[;k ifj;kstuk funs'kd egksn; dh lsok esa fuEu lq>koksa ds lkFk izsf'kr gS%&

1 [kk]kUu forj.k gsrq lfefr;ksa dk vkoaVu dk;Znk;h laLFkk ds }kjk lko/kkuh iwoZ fd;k tk;s rkfd [kk]kUu gLrkUrj.k fLFkfr mRiUu u gksA

2 etnwj tdk ds fuoklh gksa ogha ij fudVre nwjh ij fLFkfr lfefr dks [kk]kUu miyC/k dj;k;k tk;SA

3 [kk]kUu gLrkurj.k@vkoaVu ,oa dk;Znk;h laLFkk ds dk;ZizHkkjh ds izekf.kr gLrk{kj vkSj fuxZr fd;s x;s dwiuksa ds laca/k esa forj.k [k.M fodkl vf/kdkjh dks vo'; miyC/k dj;k;sa rkfd Hkfo'; esa bl izdkj dh dfBukbZ;ksa ls cpk tk ldsaA

and urged that the petitioner is innocent.

10. Sri K.N. Misra, counsel for the respondents, per contra, contended that the appointing authority of the petitioner is Regional Level Committee and its jurisdiction is not barred to decide the matter even after two months until and unless the matter is called upon by the State Level Administrative Committee. He further submits that the decision in Smt. Meera Tiwari (supra) does not apply to

the facts and circumstance of the instant case as in that case, Court was considering as to whether the order of suspension can be passed when no enquiry is contemplated in view of Rule 4(1) of the U.P. Government Servants (Discipline and Appeal) Rules, 1999. In the instant case, the petitioner is not a Government servant and the provisions of U.P. Government Servants' (Discipline and Appeal) Rules, 1999 would not apply.

11. Sri Mishra has submitted that reliance placed upon paragraphs 3 and 5 of the enquiry report is wholly misconceived as perusal of aforesaid paragraphs reveals that one of the officers has already been punished and that the petitioner claims to have distributed food grains to 62 labourers who did not belong to the village 'Murapande' where the society is situate. He then relied upon Annexure 1 to the writ petition which is copy of the stock register and urged that total weight of food grains was 258.57 quintals kept in 517 jute bags. Stock register has not been verified by the concerned officers and in any case, he could not have weighed 517 bags and distributed the food grains in one day.

12. In rebutal, counsel for the petitioner submits that as per statistics provided by the Food and Civil Supplies Department, the petitioner could weigh and distribute 700 bags on one day.

13. It is apparent from perusal of Annexure-1 to the writ petition that there is no proper endorsement in the stock register. The petitioner is responsible for distribution of grains and for maintenance of stock register and is not supposed to accept grains in unhealthy deteriorated condition which is meant for consumption of poor labour class. It is also apparent from the perusal of aforesaid Annexure that distribution of food grains has been verified by the petitioner and not by any other responsible officer.

14. It also appears that verification of the stock was made by the authority on 4.1.2006. The distributing officers of the society are supposed to jointly put their signatures on the stock register which is not there from which it is apparent that there is illegality in distribution of food grains by the petitioner.

15. It also appears from the perusal of the enquiry report that distribution made by the petitioner has been found to be doubtful. Hence, there was sufficient material for placing the petitioner under suspension.

16. Suspension is not punishment. The petitioner has come up in the writ petition and therefore, the authorities have restrained their hands as the matter is sub-judice.

17. On the facts of the case, the writ petition is dismissed. However, in the circumstances it is directed that the departmental proceedings may now be initiated and brought to its logical end by the Regional Level Committee within a period of four months as the State Level Committee has not called upon the file. No order as to costs.

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