Rakesh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-21-2003

Reported in : 2004(1)AWC431

Judge : Anjani Kumar, J.

Acts : Arms Act, 1959 - Sections 17(2)

Appeal No. : C.M.W.P. No. 51737 of 2003

Appellant : Rakesh

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ajay Kumar, Adv.

Judgement :
ORDER

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 31.1.1996 Annexure-14 to the writ petition by which the petitioner after an enquiry has been reverted from the post of Assistant Inspector General (Registration) to the post of Registrar.

2. Heard learned counsel for the parties.

3. The petitioner is a Class II officer in the employment of the State Government. He joined the service as Sub-Registrar from 13.2.1970 on probation and he was confirmed on 13.2.1972. He as promoted as Assistant Inspector General (Registration) on 3.8.1991 and was posted at Bulandshahr. It is alleged in paragraph 2 of the writ petition that the respondents 3 and 4 had some grudge against the petitioner and hence a preliminary enquiry was conducted in connection with the letter dated 16.3.1994 written by the Inspector General (Registration) to the petitioner vide Annexure-1 to the writ petition. By this letter the petitioner was asked to explain why the record of the order dated 18.10.1992 was not sent to the A.D.M. (Finance) and the details about the document No. 1608/93. Thereafter by letter dated 4.6.1994 Annexure-2 to the writ petition the petitioner was informed that an enquiry was being instituted against the petitioner on various charges and the petitioner was placed under suspension vide order dated 24.5.1994 Annexure-3 to the writ petition. The petitioner was also served a charge-sheet vide Annexure-5 to the writ petition.

4. A perusal of the said charge-sheet shows that the allegations against the petitioner are that the petitioner has grossly undervalued certain property at Rs. 5,42,633 although the A.D.M. (Finance) reported that the value of the property was about Rs. 15 lacs. The allegation was that the petitioner had not considered the evidence of the witnesses under Rules 347, 348 and 349 of the Stamp Rules and merely relied on the ex parte version of the witnesses and thus there was huge loss to the revenue. It was alleged that this was done deliberately by the petitioner for gaining some benefit.

5. Similarly charge No. 2 was regarding some other orders passed by the petitioner in which he has grossly undervalued the valuable property. The petitioner had valued the properties for a total of Rs. 4.23.000 while their value would be over Rs. 39 lacs. The other allegations are also similar and relate to gross undervaluation.

6. The petitioner submitted an explanation vide Annexure-6 to the writ petition and also filed a supplementary reply vide Annexure-7 to the writ petition. Thereafter an

enquiry was held.

7. It is alleged in paragraph 6 of the writ petition that the enquiry was not conducted in a fair and proper manner and the petitioner was not given opportunity to produce his witnesses. The petitioner also applied for change of the enquiry officer. However, the petitioner was informed that the enquiry has been completed on 24.2.1995 and a report has been sent to the State Government. With this order dated 27.6.1995 vide Annexure-9 to the writ petition copy of the enquiry report was also annexed. The report also mentions the proposed punishment vide Annexure-10 to the writ petition. True copy of the enquiry report is Annexure-11 to the writ petition. Finally the impugned order dated 31.1.1996 was passed reverting the petitioner and withholding his integrity certificate of 1993-94 vide Annexure-14 to the writ petition. Aggrieved this writ petition has been filed in this Court.

8. A counter-affidavit has been filed and we have perused the same. In paragraph 5 it is denied that the petitioner was not supplied copies of the material papers mentioned in the charge-sheet. In paragraph 6 it is denied that the enquiry was not conducted in a proper and fair manner. It is also denied that the petitioner was not given opportunity to produce his witness or to cross-examine Babu Lal A.D.M. (Finance). In fact the enquiry report which is Annexure-11 to the writ petition makes it clear that the petitioner had cross-examined Babu Lal on 22.1.1994. The petitioner was also heard personally in the enquiry. In paragraph 7 it is stated that after giving reasonable opportunity of hearing to the petitioner the enquiry was completed on 24.2.1995. Hence his letter dated 26.2.1995 praying for change of the enquiry officer had no meaning. It is also stated that the petitioner should have approached the U. P. Public Service Tribunal as an alternative remedy.

9. As regards the allegation against the respondents 3 and 4, they have been denied as stated in paragraph 15 to 18 of the counter-affidavit and the comments of these officers are Annexures-C.A. 1 and C.A. 2 to the counter-affidavit.

10. In paragraph 19 it is stated that even a judicial officer has to act honestly and conscientiously. He cannot be pardoned if he conducted proceedings with ulterior motive causing huge loss to the State. A perusal of the enquiry report Annexure-11 to the writ petition shows that the petitioner decided cases in clear violation of

Section 27 of the Indian Stamp Act and Rules 347, 348 and 349 of the Stamp Manual. These rules give guidelines regarding the way in which the proceedings of stamp cases should be conducted. The object of these rules is to ensure that all efforts are made for determining the real market value of the property. Under Rule 349 it is the duty of the officer concerned to thoroughly examine and analyse all the relevant evidence so as to reach a genuine and valid conclusion of the correct value of the property. A perusal of the enquiry report shows that the findings are that the petitioner did not conduct the proceedings in this manner. In paragraph 20 it is stated that an officer is expected to be honest and sincere.

11. Various other averments have been made but it is not necessary for us to go into the same.

12. The findings of the enquiry officer are findings of fact and we cannot go into the same in writ jurisdiction as it is not a Court of first appeal.

13. Learned counsel for the petitioner submitted that the petitioner was only acting in his judicial capacity and if he has passed a wrong order then that was subject to appeal/revision under Section 5 of the Stamp Act. Learned counsel has relied on the decision of the Supreme Court in P. C. Joshi v. State of U. P., 2000 (1) AWC 504: 2001 (91) FLR 105, in which the Supreme Court observed:

'If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently of fearlessly.'

14. The petitioner has also relied on a Division Bench decision of this Court in Vijendra Pal Singh v. State of U. P., 2001 (91) FLR 409. where the above decision of the Supreme Court has been followed. The petitioner has also relied on the decision of the Supreme Court in Union of India v. J. Ahmed, AIR 1979 SC 1022, where the Supreme Court observed that lack of efficiency and failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct.

15. In our opinion the aforesaid decisions of the Supreme Court are wholly distinguishable. If it were a case of bona fide error, then of course it would not be a misconduct on the part of a judicial officer to pass such an order. Judges, like other human beings, can also make mistakes. As Lord Denning has said. 'The Judge has not been born who has never made a mistake'. However, there is difference between a bona fide mistake and a deliberate mistake for extraneous considerations. A copy of the enquiry report, Annexure-11 to the writ petition, shows that it was not a bona fide mistake committed by the petitioner but a deliberate one. As regards charge No. 1 the finding of the enquiry officer is that the petitioner did not make the enquiries as contemplated ,by Rule 379 of the Stamp Manual and instead he relied on the ex parte evidence of a party due to which there was a heavy loss to the revenue. The petitioner never made spot inspection in respect of this property as he made in the case of other properties. The petitioner did not issue any notice to the registering officer and hence the officer could not know that the case has been transferred to the petitioner. The petitioner did not also take into consideration the report of the A.D.M. (Finance) which was based on the spot inspection and he did not himself make any spot inspection. The petitioner relied on the valuation of a house which was 60 years old, whereas the house in question was 28 years old, and hence the exemplar was not relevant.

16. Similarly as regards charge No. 2 it has been found that the petitioner grossly violated Rules 347, 348 and 349 of the Stamp Rules in making his valuation and thus grossly undervalued the property in question. The enquiry officer has considered this charge which deals with four cases in great detail and has found that the petitioner caused a loss of Rs. 5,07,630 to the revenue. The petitioner did not give opportunity of hearing to the registration officer. It was observed by the enquiry officer that when the petitioner did not find the papers showing the correct market value. it was his duty under Section 47(3) to hold an enquiry for the correct valuation under that provision. He should have issued notice to the relevant parties under Rule 37 and should have held proceedings only 30 days thereafter, but he held proceeding on 9.6.1993 itself and same day held spot inspection which should have been held after 30 days after giving notice. Thus, Section 47(3) and Rule 43 were clearly violated. Rule 38 was also violated and no opportunity of hearing was given to the registering officer. Only one day after receiving certain

papers in an ex parte manner the petitioner passed the order dated 10.6.1993. He also violated Rule 49. The report of the A.D.M. (Finance) shows that in the Khasra and Khatauni it was shown that the property in question was recorded in the name of Agarwal Cold Storage and Ram Klshan Das and Shanti Lal, registered firm. According to the Khasra the cold storage is recorded as abadi and old parti and no crops have been sown there. It was never mentioned that agriculture was done on the said plot. Thus, there was clear violation of Sections 27, 47(3) and Rule 347, 348 and 349 of the Rules causing heavy loss to the revenue.

17. Charge No. 3 against the petitioner was that by hts order dated 12.2.1993 he has shown the market value of certain properties at Rs. one lac per bigha, whereas it was really between Rs. 3.50 lacs to Rs. 4 lacs per blghas. Thus, the petitioner has caused a loss of Rs. 97,937.50 to the revenue. Similarly on charge No. 4 also the petitioner has been found guilty by the enquiry officer. This charge was that by his order dated 18.10.1992 the petitioner has undervalued the property and caused loss of Rs. 46,400 to the revenue.

18. Learned counsel for the petitioner submitted that the orders passed by the petitioner were quasi-judicial orders and hence if any one is aggrieved against the same he could file a revision under Section 50 of the Stamp Act but no disciplinary proceeding can be taken against the petitioner for passing such quasi- judicial order. We do not agree. It is well established by a catena of decisions of the Supreme Court that disciplinary proceedings can be initiated even for passing a judicial or quasi-judicial order vide Union of India v. K. K. Dhawan, 1993 (3) AWC 1738 (SC) : AIR 1993 SC 1478 ; S. Gouinda Menon v. Union of India. AIR 1967 SC 1274 ; Union of India v. Upendra Singh, 1994 (2) AWC 919 (SC) : (1994) 3 SCC 357 ; Union of India, v. A. N. Saxena. AIR 1992 SC 1233 ; Government of Tamil Nadu v. K. N. Ramamurthy. -AIR 1997 SC 3571 and Hart Singh v. Governor. U.P., 2003 (2) UPLBEC 1456 etc.

19. In State Bank of India v. T. J. Paul. AIR 1999 SC 1994, the Supreme Court held that even when mala fide and corrupt practice is not alleged against the employee, he may be held guilty of misconduct if he acts in a manner which jeopardises the interest of the employer. In that case the allegation was that the

respondent granted a bank loan negligently and the bank suffered a serious loss. The Supreme Court held that even if this was not a case of insubordination or disobedience of orders of the superior officer it was an act prejudicial to the bank and there was gross negligence which involved serious loss to the bank, and hence it is a case of misconduct.

20. In the present case even though there may not be any specific allegation of corruption against the petitioner, in our opinion, he certainly acted in a manner causing serious loss to the Government exchequer by the manner he disposed of the stamp cases. As found by the enquiry officer the petitioner disposed of the stamp cases in utter violation of the provisions of the Stamp Act and Stamp Manual. From this a reasonable inference can be drawn that he passed such orders for extraneous considerations.

21. The findings recorded by the enquiry officer are findings of fact and we cannot interfere with them in writ jurisdiction.

22. The petition is dismissed.