

Vinod Kumar Singh Vs. District Magistrate, Mau and Others

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Court : Allahabad

Decided On : Aug-02-1999

Reported in : 1999(4)AWC3508

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 29043 of 1996

Appellant : Vinod Kumar Singh

Respondent : District Magistrate, Mau and Others

Advocate for Def. : R.K. Saxena, S.C

Advocate for Pet/Ap. : Shashi Nandan and ;Alik Kumar Yadav, Advs.

Judgement :

D.K. Seth, J.

1. Pursuant to an order dated 10.4.1996 in Writ PetitionNo. 949 of 1995, the case of the petitioner was considered by the respondent No. 1, viz., the District Magistrate, Mau by order dated 8.8.1996 contained in Annexure-5 to the writ petition. This order has since been challenged in this writ petition.

2. Shri Alik Kumar Yadav, learned counsel for the petitioner contends that the petitioner's case has been refused on two grounds, viz., that the recovery by the petitioner as collection Amin was less and that his conduct was unbecoming of a Government servant. According to him, this order has reflected a stigma and as such the said order could not have been passed without holding an enquiry. He next contends that the persons having lesser recovery than the petitioner have been retained and regularised. Therefore, there has been a violation of Article 14 of the Constitution in comparison with the petitioner and those retained in service having lesser recovery in their credit. According to him, this order is liable to be quashed.

3. Shri R. K. Saxena, learned standing counsel, on the other hand, contends that this was not an order of termination but a decision on the representation which has been considered in terms of the order of the Hon'ble High Court. The observation made in the order dated 8.8.1995 is based on record which is also admitted by the petitioner in paragraph Nos. 3, 4, 5 and 6 of the supplementary affidavit. Therefore it cannot be said that it has put any stigma. He also contends that recovery of the petitioner is far less than 70% and, therefore, he could not be considered according to the rules for filling up of 35% quota of vacancies. According to him, the ground taken by the learned counsel for the petitioner that the persons having lesser recovery in their credit have been retained and that the petitioner has been singled out cannot be sustained in the absence of specific pleadings made out in the writ petition. The observations recorded in the order dated 8.8.1996 are all findings of fact which are not disputed viz., neither the percentage of recovery is being disputed nor the lodging of the F.I.R. is being disputed by the petitioner. Therefore, in such circumstances, this Court cannot interfere in the matter.

4. Learned counsel for the petitioner in reply draws my attention to paragraphs 5, 9, 15 and 16 of the writ petition in order to contend that there are sufficient pleadings to show that the persons who ought not have been retained have been retained while the petitioner has been eased out. In such circumstances Article 14 of the Constitution has since been violated.

5. I have heard the learned counsel for the parties at length.

6. It appears that in paragraph 5 of the writ petition, it has been pointed out that some persons whose names have been disclosed were suspended but subsequently reinstated whereas the petitioner has not been reinstated. In the said paragraph, it has not been pointed out that persons having lesser recovery than the petitioner have been retained. Suspension and reinstatement depends on each individual case. That there was any identity or similarity with that of the petitioner and the other persons have not been spelt out in paragraph 5. In paragraph 9 also, no such ground has been made out. The statement made therein relates to the reinstatement of an incumbent who has been sought to be adjusted against the post held by the petitioner. However, that question had been subject of challenge in Writ Petition No. 33552 of 1995 which had since been disposed of. Therefore, that question can no more be relevant for the purpose of the present controversy. In paragraph 15. it has been pointed out that the petitioner's case has been ignored while others' were not. It is also contended that the petitioner had been discharging his duties satisfactorily and that his conduct was good. However, in the said paragraph, he has not mentioned the names of any one else who had been retained though had in their credit lesser quantum of recovery. No such case has been made out in the said paragraph. In paragraph 16, the petitioner has contended that his seniority was ignored and that though he was superior in collection yet he has not been allowed to continue. Nothing has been said in the said paragraph about the persons who have been retained despite having lesser recovery. It is also pointed out who are the Juniors who have since been retained. The statements are absolutely vague and insufficient. On the basis of such statement, no case of Article 14 about discrimination can be made out.

7. So far as the question of recovery is concerned, it is admitted that the petitioner had in his credit the quantum of recovery as mentioned in the said order. The petitioner has not disputed the percentage of recovery mentioned therein. Admittedly in the 1974 Rules 35% quota of vacancies would be filled up for among the seasonal collection Amin provided he had in his credit 70% of recovery. The percentage of recovery mentioned in the impugned order shows that the petitioner had recovered 27.6% in 1994. 29.3% In 1995. 18.5% In another season of 1995 and 14.8% in respect of the season in 1995. Thus, his recovery was less than 70%. Therefore, it cannot be said that the petitioner has been qualified for being

regularised in terms of rule as mentioned in the Impugned order. In the absence of any material to show that a person having lesser recovery in his credit have been retained, it is not possible to accept the contention of the learned counsel for the petitioner in that regard.

8. So far as the question of conduct unbecoming of Government servant is concerned, it is apparent that an F.I.R. was lodged against the petitioner on 9.4.1995 which is Annexure-1 to the supplementary affidavit alleging that the petitioner had absconded along with Government records, viz.. the receipt books, the numbers whereof were mentioned in the said F.I.R. After having been appointed for 45 days, he did not deposit those documents despite repeated request and that he was not available at his address. In paragraph 3 of the supplementary affidavit, this has been admitted by the petitioner. In paragraph 4 he has stated that the petitioner had returned those documents on 30.12.1995. viz., after 8 months from the date of lodging of the F.I.R. On the basis of such return of documents, the Tehsildar by his letter dated 24.1.96 informed the police authority that the records have since been returned by the petitioner. On the basis whereof it appears from paragraph 5 of the supplementary affidavit the police had submitted a final report on 31.1.1996 which are Annexures-2 and 3 respectively to the supplementary affidavit. Thus, it appears that the petitioner had admitted the fact of lodging of F.I.R. and return of documents.

If there is a statement of fact, the same cannot be said to be refraction or stigma particularly when the fact is admitted by the petitioner himself. If the petitioner admits that there was a F.I.R. and that he had retained the records which he returned after 8 months, in that event, the petitioner cannot complain that by reason of the observation made in the impugned order to that effect, a stigma is cast upon him. A Government servant is not authorised to retain the documents with him. Admittedly, the petitioner had retained the documents for almost 8 months. He has to return those documents to the office as soon the season is over. Thus, if it is held that the petitioner's conduct was unbecoming of a Government servant, the same cannot be said to be a wrong observation. Since the petitioner has admitted the facts, giving of opportunity could not Improve the situation for the petitioner.

9. Thus, it appears that the order dated 8.8.1996 does not suffer from any infirmity. In such circumstances, the writ petition falls and is accordingly dismissed.

10. However, there Will be no order as to cost.

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