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Court : Allahabad

Decided On : Sep-01-2003

Reported in : (2004)1UPLBEC124

Judge : B.S. Chauhan and ;R.C. Pandey, JJ.

Acts : Uttar Pradesh Officers of Subordinate Rank (Punishments and Appeal) Rules, 1991 - Rule 17(1)

Appeal No. : Special Appeal No. 769 of 2003

Appellant : Kripa Shanker Prasad and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B.N. Singh and ;N.L. Maurya, Advs.

Disposition : Appeal allowed

Judgement :

B.S. Chauhan, J.

1. This special appeal has been filed against the judgment and order dated 25.8.2003, by which the learned Single Judge has dismissed the writ petition challenging the impugned suspension order dated 20th August, 2003.

2. Facts and circumstances giving rise to this case are that petitioners have been put under suspension by the respondent No. 2 in exercise of the power under the provisions of Rule 17(1)(a) of the U.P. Police Officers of Subordinate Rank (Punishment of Appeal) Rules, 1991 (hereinafter called the Rules, 1991).

3. the suspension order has been passed on very serious allegations that petitioners had been extorting money from the Truck Drivers on 19th/20th August, 2003, while they had been on a Patrolling Duty. The order of suspension provides that the Circle Officer, Gyanpur, Bhadohi shall hold a preliminary enquiry and submit the report within a period of one week. Writ petition was filed challenging the said order on the ground that during the pendency of the preliminary enquiry suspension order cannot be passed. However, the learned Single Judge has dismissed the petition. Hence, this appeal.

4. Shri B.N. Singh, learned Counsel appearing for the petitioners has submitted that the Rule 17 of the said Rules, 1991, empowers the Competent Authority to pass a suspension order during the course of an enquiry or even when enquiry has been contemplated. In the instant case, as only the preliminary enquiry is being held, there could be no occasion for the respondent No. 2 to pass the impugned suspension order and thus, it is liable to be set-aside and the judgment and order of the learned Single Judge becomes liable to be reversed.

5. In identical case, i.e., Writ Petition No. 28380 of 2003, Sachiddanand Tripathi v. State of U.P., this Court vide order dated 14.7.2003 has stayed the impugned suspension order passed therein as the suspension order was itself vague and neither it provided that enquiry was being held or was contemplated. The suspension order had been passed while preliminary enquiry was being conducted. Vide order dated 14.7.2003, this Court had stayed the operation of the impugned suspension order therein. In order to maintain uniformity the learned Single Judge ought to have stayed the operation of the impugned suspension order and could dispose of the petition along with the said petition in Sachiddanand Tripathi's case. Hence, appeal deserves to be allowed on this count also.

6. On the contrary, learned Standing Counsel has submitted that allegations on the basis of which the suspension order has been passed while the preliminary enquiry is being conducted are of such a gravity that this Court should not grant any indulgence whatsoever and dismiss the appeal.

7. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

8. The facts remain undisputed that the impugned suspension order has been passed during the course of preliminary enquiry. Rule 17 of the said Rules enables the Competent Authority to pass a suspension order during the enquiry or contemplation thereof. Order impugned does not mention that enquiry is contemplated rather appoint an officer to hold a preliminary enquiry.

9. The Constitution Bench of Hon'ble Supreme Court in Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992, held that a preliminary enquiry held in respect of as particular instance is for the purpose of finding a particular fact and prima facie, to know as to who may be the person responsible for negligence/misconduct alleged. However, on the basis of findings of facts recorded in the preliminary enquiry, no order of punishment can be passed. Rather, if in view of result of the preliminary enquiry the Competent Authority is of the opinion that it require certain disciplinary proceedings against delinquent(s), a regular enquiry may be held under the rules applicable. Nonetheless, preliminary enquiry cannot be the basis for imposing any punishment upon delinquent(s) for misconduct.

10. In Champak Lal Chiman Lal Shah v. Union of India, AIR 1964 SC 1854, again a Constitution Bench of Hon'ble Supreme Court held as under :--

'.....a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out and it is very necessary that the two (preliminary enquiry and regular enquiry) should not be confused ..... Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken or action should be

taken under the contract or the rules in the case of a .....Government Servant..... In short, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government Servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex-parte, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But, at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government Servant gets the protection of Article 311 and all the rights that the protection implies as already indicated above. There must, therefore, no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government Servant one of the three major punishment indicated in Article 311 that the Government Servant is entitled to the protection of that Article, nor prior to that.

11. In Government of India, Ministry of Home Affairs and Ors. v. Tarak Nath Ghosh, AIR 1971 SC 823, Hon'ble Supreme Court observed :

'.....even before a formal departmental enquiry is launched, a preliminary enquiry is usually held to find out against a Government Servant. This preliminary enquiry is directed to the collection of facts in regard to the work and conduct of a Government Servant in which he may or may not be associated, so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry.....and such a preliminary enquiry may even be held ex-parte.'

12. In Narayan Datlatraya Ramteerathkhar v. State of Maharashtra and Ors., AIR 1997 SC 2148, Hon'ble Supreme Court has held that a preliminary enquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be

initiated against the delinquent. Once, regular enquiry is held under the Rules, the preliminary enquiry loses its importance and whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or not, remains of no consequence.

13. In view of the above, as the preliminary enquiry is only a means to find out as to whether the facts and circumstances, involved in a particular case warrant holding of a regular enquiry we are of the considered opinion that suspension order could not be passed during the pendency of preliminary enquiry. Our view stands fortified by the judgment of this Court in Hari Nath Sharma v. Stale of U.P. and Ors., (1997) 3 ESC 1833, wherein this Court rejected the contention that suspension order impliedly mean that enquiry stood initiated or contemplated. Appeal deserves to be allowed on this count alone. However, there is another aspect of the matter, which requires consideration.

14. In Sachiddanand Tripathi's case (supra), this Court has entertained the writ petition on similar grounds and passed the interim order staying the operation of the suspension order.

15. In Vinod Trading Company v. Union of India, (1982) 2 SCC 40 and Bir Bajrang Kumar v. State of Bihar, AIR 1987 SC 1345, the Hon'ble Apex Court has expressed the view that the interim orders should not be contradictory to each other if the facts and circumstances of the cases are identical. Similarly, in Vishnu Traders v. State of Haryana, 1995 Suppl (1) SCC 461, the Supreme Court has observed, as under :--

'In the matters of interlocutory orders, principle of binding precedent cannot be said to apply. However, the need for consistency approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievance of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is an assurance of consistency, uniformity, predictability and certainty of judicial approach.'

16. Similar view has been taken in Smt. Rampati Jaiswal v. State of U.P., AIR 1997 All 170.

17. Thus, in view of the above, the judicial propriety demand and judicial discipline requires that we should maintain the uniformity and pass similar interim orders in identical cases. Thus, it may not be appropriate for the Co-ordinate Bench to ignore the interim order passed in a identical case.

18. Thus, in view of the above, appeal succeeds and is allowed. Impugned order of suspension dated 20th August, 2003 is hereby quashed. However, it is clarified that after submission of the report-in the preliminary enquiry, if it so warrants regular enquiry, the respondents shall be at liberty to pass a fresh suspension order during the course of regular enquiry or in contemplation thereof.

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