SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Surendra Kumar Srivastava Vs. State of U.P.

Surendra Kumar Srivastava Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/495092

Court : Allahabad

Decided On : Dec-12-2007

Reported in : [2008(116)FLR799]

Judge : Pradeep Kant and ;Rajiv Sharma, JJ.

Appellant : Surendra Kumar Srivastava

Respondent : State of U.P.

Advocate for Pet/Ap. : Mr. Shireesh Kumar

Judgement :

Pradeep Kant and Rajiv Sharma, JJ.

1. Heard Mr. Shireesh Kumar, learned Counsel for the petitioner and Mr. Ashok Shukla, learned Standing Counsel.

With the consent of learned Counsel for the parties, the writ petition is being disposed of at the admission, stage itself.

2. The petitioner has approached the Court for the second time against the order of suspension dated 1.9.2006. His first approach was at Allahabad, where the Division Bench did not intervene in the order of suspension and observed that the enquiry be concluded, preferably, within a period of one month from the date of giving a reply to the charge-sheet and now he has approached this Court at

Lucknow again challenging the order of suspension on the ground that the time period fixed for the enquiry has expired, but the enquiry has yet not been completed and the State Government did not pass final orders, despite the enquiry report being submitted on 16.6.2007, to which the petitioner submitted his reply long back.

3. The anxiety on the part of the petitioner cannot be said to be wholly unreasonable. It is settled principle of law that no Government servant can be allowed to remain under suspension for an indefinite period and the delay in holding the enquiry also causes prejudice to the Government servant in his service career. Various Government Orders have been issued and directives also have been issued by the Court in various judgments that the enquiry should be completed expeditiously without any delay, but instances are no less in number that despite the directives issued by the Court and the Government Orders issued, the State Government and its authorities remain unperturbed and take their own time in completing the enquiry. In cases, where consultation with the U.P. Public Service Commission (hereinafter referred to as 'Commission' for the sake of brevity) is required, the Commission also takes its own time, little caring and bothering that it is the Constitutional duty to act speedily and submit its recommendations without unreasonable delay. The enquiry starts from the time when the charge-sheet is issued and ends when final orders are passed. Any authority or body, who is supposed to be a part of that enquiry may be as an Enquiry Officer or the Disciplinary Authority or Appointing Authority or a consultative body, like, U.P, Public Services Commission - all owe one and the same responsibility that the disciplinary proceedings should be concluded at the earliest. There cannot be any reasonable explanation for not concluding the enquiry for the reason that the matter is pending consideration before the Commission or any other consultative body whose advice may be required.

4. In the instant case, on the basis of the instructions received by the learned Standing Counsel, it has been stated that the proposed final order for punishment has already been passed by the State Government but the matter is pending before the Commission for its advice/consultation. It is not known to the learned Standing Counsel as to when the order was forwarded to the Commission but the

fact remains that the enquiry proceedings are held up, because the matter is pending before the Commission at present. This situation cannot be appreciated.

5. The delay on the part of the State Government in not concluding the enquiry within the time provided by the High Court some times makes out a case for staying the operation of suspension order or for quashing the same, though there may be charges against Government Servant, which require inflicting of punishment upon him. Simply because of the delay on the part of the State Government, the orders are passed in favour of delinquent officers, who otherwise, would have, been awarded punishment. This also encourages indiscipline in service.

6. We, therefore, dispose of the writ petition with a direction to the U.P. Public Services Commission to do the needful, within a maximum period of three weeks from the date of receipt of a certified copy of this order and thereafter, appropriate final orders be passed by the State Government within the next three weeks.

Sri I.P. Singh, learned Standing Counsel for the Commission has been requested to communicate this order to the Commission for its compliance. The State Government shall also communicate this order to the Commission.

7. Before parting, we would like to reiterate that the State Government must instruct all the Appointing Authorities the Disciplinary Authorities that the time provided by the Court for concluding the enquiry, if it is found not sufficient or the enquiry could not be concluded for any reason whatsoever, they should move the Court for extension of time, but shall not be at liberty to sit tight over the matter and take their own time, without asking for extension. Such an action may not be only contemptuous disregard to the Court's order but also an indiscipline on the part of the authorities concerned, for which they can be held liable and responsible both by the Court as well as in the departmental proceedings, rendering themselves open for any punishment for misconduct according to service rules.

8. The Commission will also note that in case where a direction is given by the Court to complete the enquiry within a specified time, it cannot ignore such direction by saying that it was not a party to the writ petition or there is no direction

separately for the Commission to tender its advice within a lime provided, where its advice is needed. The Commission and the authorities, who are supposed to conclude the enquiry, are bound by the directives issued by this Court and to follow the Court's Order, irrespective of the fact whether they are actually impleaded in the writ petition or not.

Accordingly, the writ petition is disposed of finally.

Let a copy of this order be sent to the Chief Secretary, the Legal Remembrancer and the Chairman, U.P. Public Services Commission for necessary compliance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com