

Dr. Rajendra Kumar Dwivedi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-19-2007

Reported in : [2008(116)FLR804]

Judge : Pradeep Kant and ;Rajiv Sharma, JJ.

Appellant : Dr. Rajendra Kumar Dwivedi

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Pradeep Kant and Rajiv Sharma, JJ.

1. Heard Sri Neeraj Chitravansi for the petitioner and Sri Prashant Chandra Senior Advocate assisted by S/Sri Shreesh Kumar and Sanjai Kumar.

2. The petitioner Dr. Rajendra Kumar Dwivedi, while working as Registrar, Board of Indian Medicine, U.P., was subjected to disciplinary proceedings in respect of several serious charges. A charge-sheet dated 20th June, 1998 was issued to him which was replied by him on 29th August, 1998. In all there were seven charges levelled against him with respect to alleged misconduct and irregularities committed by him in his tenure as Registrar. The Enquiry Officer submitted his report on 10.12.1998. Thereafter, the order of punishment, namely, dismissal from

service was passed on 11.11.1999 by the Director Ayurved/Controller, Board of Indian Medicine, U.P. Lucknow.

The Enquiry Officer has found all the charges proved and the Director while passing the order of dismissal from service has taken into consideration the Enquiry Officer's report and materials on record.

Apart from many other pleas raised by the Counsel for the petitioner challenging the order of punishment he has mainly argued that after submission of the reply to the charge-sheet the petitioner was not afforded the opportunity of cross-examining the witnesses or participate in the enquiry and in fact no enquiry was held. Further, the Enquiry Officer did not advert to the material on record to see whether the charges stand proved or not but on the basis of the reply of the petitioner he has found the charges proved.

3. The learned Counsel for the State after going through the enquiry record stated that after submission of the reply to the charge-sheet the Enquiry Officer did not afford any opportunity to the petitioner to participate in the enquiry; neither any witness was examined nor documents on which reliance was placed were also got proved by the Department.

Sri Prashant Chandra learned Counsel appearing for the Board while defending the order of dismissal urged that the conduct of the petitioner does not deserve any indulgence by the Court in its discretionary jurisdiction under Article 226 of the Constitution of India. He however did not deny the fact that during the course of enquiry the Enquiry Officer did not afford any opportunity to the petitioner and the plea raised in the counter affidavit that since the petitioner did not ask for cross-examination of witnesses or personal hearing, is not sufficient to divest the petitioner of his right of participating in the enquiry but his argument is that charges are very serious and that even after passing of dismissal order dated 11.11.1999, the petitioner did not vacate the office nor the premises which was given to him while he was in service and continued to function on the said post for four years. The allegation is that during this period of four years also he has committed irregularities both financial and procedural. Relying upon the letter dated 2.3.2000 written by the petitioner himself to the Director Ayurved and Unnai saying that

order of dismissal has not been passed or issued by the competent authority, therefore, it has no effect nor effect can be given to the said order and, therefore, he will continue to occupy the post, Sri Prashant Chandra says that he not only gave this information to the Director but in fact he continued to function on the post despite the dismissal order and without challenging it in the Court of law. It was only after filing of Public Interest Litigation i.e. W.P. No. 5958 of 2000 (MB) and the notice being issued, the petitioner vacated the Office and later on residential premises.

4. True that under Article 226 of the Constitution of India, the High Court can refuse to interfere with the order which may be without jurisdiction or may be suffering from any procedural irregularity if otherwise it is found to be a case where discretionary jurisdiction may not be exercised but the fact of the matter is that while holding disciplinary enquiry the delinquent has to be given reasonable opportunity and the charges levelled against him cannot be taken as sacrosanct or duly proved unless they are proved in the manner they are required to be proved and merely because the charges are serious the presumption of their correctness and liability upon the delinquent can neither be presumed nor can be fastened.

5. Without any exception it is a matter of serious concern that if the State Government was of the view that the charges are so serious which may result into inflicting the punishment of dismissal from service upon the charged employee, it was expected from the State Government to hold enquiry in accordance with the Rules. We have yet to find out a rule or procedure where in disciplinary proceeding conducted for award of major punishment, the enquiry report can be submitted only on the basis of the reply submitted to the charge-sheet upon the delinquent, or that no opportunity is required to be afforded to the delinquent to participate in the enquiry by fixing date, time and place for holding enquiry, namely, for adducing the evidence by the Department as well as by the delinquent. Equally important is that charges levelled against the delinquent have to be proved by the material on record. If oral evidence is required, naturally the witnesses are to be examined by the Department and opportunity to cross-examine the witnesses has to be given to the delinquent. In case charges are to be proved on the basis of the documentary evidence, even then the documents have to be proved by the Department and

further the delinquent has to be given opportunity to establish that the documents are not worth being relied upon, they being inadmissible or otherwise and the delinquent may also furnish evidence in rebuttal.

6. We reiterate that cases are no less where opportunity has not been afforded to the delinquent in the departmental proceeding and the Courts have pronounced various judgments that the Enquiry Officer who holds the enquiry against Rules and in violation of principles of natural justice are not being dealt with suitably by the State Government. Not only this, appointing authority who passes the punishment order in such cases always remains untouched. It would not be out of place to reiterate that where there is irregularity in procedure in holding the enquiry by the Enquiry Officer or he causes unnecessary delay in holding enquiry, it may render the Enquiry Officer liable, for being proceeded with, for misconduct. Likewise the appointing authority is under the legal obligation that when the notice is issued to the delinquent to show cause along with enquiry report and he submits his reply or even otherwise if reply is not submitted, to see that the enquiry has been conducted in fair and proper manner following the principles of natural justice and there is no procedural irregularity and after being satisfied with the procedure adopted, the obligation is to see that whether the charges stand proved from the material on record or not. Any slackness on the part of the Enquiry Officer either by ignorance or otherwise can result into acquittal or exoneration of the delinquent who otherwise may be liable for major punishment because of the gravity of the charges for which enquiry has been conducted. This is not the purpose of holding enquiry and awarding punishment. Such an action by the State Government not only will encourage those who are not only charged of serious allegations including financial irregularities but also would create indiscipline in service besides having a demoralising effect on the honest and efficient officers.

7. In the instant case the enquiry conducted is sham and wholly violative of principles of natural justice having been held without affording any opportunity to the petitioner. Consequently, we quash the order of punishment dated 11.11.1999 and direct the State to hold enquiry afresh from the stage of the submission of reply to the charge-sheet after affording opportunity to the parties concerned.

Sri Prashant Chandra Senior Advocate says that in view of Rule 4(6)(b) of U.P. Government Servant (Discipline and Appeal) Rules, 1999 the petitioner can be placed under suspension and that liberty be also given to the State Government to take work or not from the petitioner.

8. Consequence of quashing of the dismissal order the petitioner shall be reinstated in service and he shall be paid salary from the date of reinstatement but he shall not be paid any salary for the period interregnum till the date of present judgment, the payment of which amount shall abide the outcome of the enquiry.

In regard to the prayer made by the Counsel for the respondents that liberty be given for suspending the petitioner during enquiry and also to take work or not from him, suffice it would be to observe that no direction is required to be given by the Court where State Government has got power to act under the Rules and also has discretion to take work or not from a particular employee.

With the above observations, the writ petition is allowed.

Let a copy of this order be sent to the Chief Secretary, Government of U.P. and the Legal Remembrancer, State of U.P. for perusal and compliance.

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