

K.L. Malhotra Vs. the State of U.P. and Others

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Court : Allahabad

Decided On : Sep-03-2011

Judge : Vineet Saran & Ran Vijai Singh

Appeal No. : Civil Misc. Writ Petition No. 61057 of 2009

Appellant : K.L. Malhotra

Respondent : The State of U.P. and Others

Judgement :

The petitioner, who happens to be retired Superintending Engineer, has filed the present writ petition with the following prayers.

(1) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 09.09.09 passed by the respondent no. 1 as communicated vide covering letter dated 22.09.09 of the respondent no. 2 (Annexure -1 to the accompanying writ petition).

(II) Issue a writ, order or direction in the nature of mandamus commanding the respondents to forthwith pay to the petitioner his entire post retiral benefits which remains unpaid since last 06 years of his retirement, along with suitable interest thereon.

(iii) Issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case;

(iv) Award the costs to the petitioner.

Vide order dated 9th September, 2009, the Principal Secretary Minor Irrigation Department, U.P. Government, Lucknow has observed as under:-

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Pursuant thereto, a communication letter dated 22nd September, 2009 was sent by Chief Engineer Minor Irrigation Department U.P. Lucknow to the petitioner.

The facts giving rise to this case are that the petitioner has retired from the post of Superintending Engineer. After three years of his retirement, a departmental inquiry was initiated against the petitioner, which was after obtaining sanction from the Hon'ble Governor under Regulation 351 (A) of Civil Services Regulation. Consequently, a charge-sheet was served on the petitioner on 22.3.2006. The reply to the aforesaid charge-sheet was given by the petitioner on 19.4.2006. It appears that after submission of inquiry report by the Inquiry Officer, on 18.5.2006, a show cause notice was issued to the petitioner to which the petitioner has submitted his reply. It appears no decision was taken by the disciplinary authority after considering the inquiry report. Hence the petitioner filed Writ Petition No. 1288 of 2007 (SB) at Lucknow Bench of this Court which was finally disposed of with the direction that final order shall be passed within a period of four weeks from the date of receipt of a certified copy of the said Order.

However, no final decision was taken by the disciplinary authority till March, 2008 and in the meantime a supplementary inquiry report was called for by the disciplinary authority without notice to the petitioner. Pursuant thereto another Inquiry Officer, in turn, submitted the supplementary inquiry report on 17.9.2008. It is stated that after one year of submission of supplementary inquiry report vide order dated 9.9.2009 the impugned order of recovery has been passed, which was communicated to the petitioner through order dated 22.9.2009.

We have heard learned counsel for the parties and have perused the record.

While assailing the impugned orders, learned counsel for the petitioner has submitted that the impugned order has been passed in gross violation of Rule 9

(1) of U.P. Government Servant (Discipline and Appeal) Rules, 1999. In his submission, the earlier Inquiry Officer retired in the year 2007 and subsequently a supplementary inquiry report was submitted in the year 2008 (to be more specific date 17.9.2008) by another Inquiry Officer, which is unsustainable in law.

Without going into further details of writ petition, counter affidavit and rejoinder affidavit we would like to concentrate ourselves only on the legal submissions made by learned counsel for the petitioner with regard to the change of Inquiry Officer without notice to the petitioner. For adjudicating the same we would like to narrate those paragraphs of the writ petition where this averment has been made, which reads as under.

11. That the petitioner is surprised that the Enquiry Officer was already retired on 31.8.2007, then how he submitted the supplementary enquiry report without giving any opportunity to the petitioner and without giving him any show cause notice.

12. That it is relevant to mention here that neither there was any change of enquiry officer nor in the supplementary enquiry report, any opportunity of hearing was given to the petitioner.

The reply of paragraphs 11 and 12 of the writ petition has been given in paragraph 15 of the counter affidavit which is also reproduced below.

That the contents of paragraphs 11 and 12 of the writ petition are not admitted in the manner stated and in reply it is submitted that from the perusal of office memorandum dated 20.3.2006, it is evident that in the matter in dispute Shri R.S.Jurail the then Chief Engineer was not appointed Enquiry Officer by name rather he was nominated as Enquiry Officer by designation as chief Engineer, Minor Irrigation.

From perusal of contents of paragraph 15 of the counter affidavit it transpires that Shri R.S.Jurail, the then Chief Engineer was not appointed as Enquiry Officer by name, rather he was nominated as Enquiry Officer by designation as Chief Engineer, Minor Irrigation. There is no denial with respect to not serving of any notice to the petitioner while obtaining the fresh enquiry report.

After going through the contents of paragraph 15 of the counter affidavit it further transpires that the respondents have tried to justify their stand saying that no particular enquiry officer was appointed for holding the enquiry but the person occupying that very post of Chief Engineer was authorized to hold the enquiry. In fact Sri Jurail retired in the year 2007 and supplementary enquiry report was sought in the year 2008 (to be more specific date 10.4.2008), when the first enquiry officer had already retired. It is worth while to note that subsequent report was submitted by another Chief Engineer, rather than the first one who retired on 31.8.2007.

Rule 7 of the Rules of 1999 deals with the procedure for imposing major penalties, which in fact, has been imposed in the case of the petitioner. The relevant portion of aforesaid rule for the purposes of lis involved in this petition is reproduced below.

Rule 7. Procedure for imposing major penalties :-Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :

(i)The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii)The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority.

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

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Rule 8 of the aforesaid rule deals with the submission of report and Rule 9 deals with the action on the inquiry report submitted by Inquiry Officer. Here we would like to reproduce the Rule 9 of the aforesaid rule for appreciation, which is as under :-

Action on Inquiry Report :-(1)The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-enquiry to the same or any other Inquiry Officer under intimation to the charged Government Servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2)The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3)In case the charges are not proved, the charged Government Servant shall be exonerated by the Disciplinary Authority of the charges and inform him accordingly.

(4)If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government Servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government Servant.

From the perusal of Rule 7 (i) of the aforesaid rule, it transpires that the disciplinary authority is under an obligation to inquire into the charges himself or appoint an 'Authority Subordinate' to him as Inquiry Officer, whereas Rule 9 of the aforesaid Rules provides that the Disciplinary Authority may, for the reasons to be recorded in writing, remit the case for re-enquiry to the same or any other Inquiry Officer, under intimation to the charged Government Servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority according to the provisions of Rule 7. If both the rules, i.e. Rule 7 and Rule 9 are read together then it would transpire that a particular person is to be appointed by the disciplinary authority to hold an inquiry in accordance with the procedure given under Rule 7 and thereafter it is incumbent upon him to

submit the report before the disciplinary authority. The disciplinary authority may agree or disagree with the inquiry report. In case of disagreement, he may ask the same the Inquiry Officer to re-enquire the matter from such stage as required by him or change the Inquiry Officer, which is in the sole domain of disciplinary authority, but before doing so, it is mandatory on the part of the disciplinary authority to record reasons for change of inquiry Officer or re-enquiry by the same Inquiry Officer and that has to be intimated to the charged officer.

From the perusal of stand taken by the respondents in their counter affidavit it is clear that no intimation had ever been given to the charged officer before calling for the supplementary inquiry report. The respondents have tried to justify their action by saying that no fresh inquiry was called for and only some clarification on certain point was required by the disciplinary authority from the inquiry officer. The respondents have also come up with the case in reply to the petitioner's stand (that earlier inquiry officer has retired and alleged clarification/supplementary report was submitted by another Chief Engineer without there being any intimation to the petitioner) by saying that no particular person was appointed to hold the inquiry but a person holding a particular post was designated as inquiry officer. Therefore after the retirement of erstwhile Chief Engineer who had submitted earlier inquiry report, the person occupying such post was required to submit the clarification/supplementary inquiry report as directed by the disciplinary authority. What we find from the close scrutiny of Rules 7 and 9 of aforesaid Rules of 1999 is that it is not any person occupying a particular post who can be authorised to hold an inquiry but only a particular person occupying the post who is intended to be appointed to hold an inquiry. The 'Authority Subordinate' mentioned in Rule 7 means a particular person occupying the post and not the persons subsequently taking charge on that very post. Had such been the intention of Rule 7 there was no need for stipulating a condition under Rule 9 to give intimation to the delinquent employee in the case of change of Inquiry Officer.

Therefore, to our mind, the stand taken by the respondents is wholly misconceived and untenable in the eye of law. In other words, if for the sake of argument even if it is assumed that the new person who has occupied the post of Chief Engineer was entitled to submit supplementary inquiry report or submit the clarification in

the earlier inquiry report, we find that the ingredients of Rule 9 (1) are still unsatisfied, as no reason has been recorded by disciplinary authority before asking for supplementary inquiry report or clarification, coupled with the fact that no notice was given to the petitioner before calling for the clarification to the earlier inquiry report.

In view of the foregoing discussions, we find that inquiry itself is vitiated as it has been held in violation of Rules 7 (1) and 9 (1) of the Rules of 1991.

In the result, the writ petition succeeds and is allowed. The impugned order dated 9.9.2009 is hereby quashed. However, the respondents are free to hold further inquiry taking notice of Sub-rule (1) of Rule 9 and for that no fresh sanction would be required as contemplated under Regulation 351 (A) of the Civil Services Regulations.

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