

(2013) 04 AHC CK 0135

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1315 (S/B) of 2003

Satya Deo Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 2, 2013

Hon'ble Judges: Rajiv Sharma, J and Arvind Kumar Tripathi (II), J

Final Decision: Dismissed

Judgement

Arvind Kumar Tripathi (II), J.

Heard Mr.Manish Mishra, learned Counsel for the petitioner and Ms.Sangeeta Chandra, learned Additional Chief Standing Counsel.

By means of instant writ petition, the petitioner prays for quashing the impugned judgment and order dated 8.6.2001 passed by the State Public Services Tribunal and the orders dated 20.10.1992, 12.1.1993 and 6.6.1993.

In brief, the case of the petitioner is that vide order dated 21.7.1992, the petitioner was suspended and a preliminary enquiry was conducted. When a show cause notice was issued to the petitioner, the petitioner tendered his reply. Thereafter, vide impugned order dated 29.10.1992, the petitioner was awarded punishment thereby withholding his integrity certificate for the year 1992. Thereafter, vide order dated 12.1.1993, the opposite party No.4 passed another punishment order through which the payment of suspension period from 25.2.1992 to 8.7.1992 was withheld. Against the said orders, the petitioner preferred a departmental appeal before the competent authority, which was rejected vide order dated 6.6.1993. Being aggrieved, the petitioner preferred revision. During pendency of revision, the petitioner has also filed a claim petition. As the claim petition was dismissed vide impugned judgment and order dated 8.6.2001, the instant writ petition has been filed.

Learned Counsel for the petitioner contends that the punishment of withholding integrity certificate is not defined as punishment in para 4 of U.P. Police Officers of

the Subordinate Ranks (Punishment & Appeal) Rules, 1991, the opposite parties have wrongly withhold the integrity of the petitioner. Not only this, they have also withheld the payment of suspension period from 25.2.1992 to 8.7.1992. Therefore, the petitioner is deprived of promotion, promotional pay scale and time scale etc. In support of his contention that the disciplinary authority cannot withhold integrity, he has relied upon the case of Vijay Singh versus State of U.P. and others [2012 (2) ESC 206 (SC)].

On the other hand, learned Additional Chief Standing Counsel submits that the petitioner without waiting for the outcome of revision, preferred claim petition. Further, as the Tribunal has considered all aspects of the matter, no interference is required in the impugned judgment and order.

Considered the submissions made by the learned Counsel for the parties and perused the record, including the impugned judgment and order. The charge behind the above punishment order was that when the petitioner was posted at Police Chowki Mahabir Nagar, he was on picket duty alongwith another Constable on 18.2.1992 from 12 noon to 6 p.m. at Bijlighar. On suspicion, when they checked a boy, namely, Pankaj, in Karbala Gali No.2, a knife was recovered from him. The allegation against the petitioner was that he left him after obtaining illegal gratification from the father of the boy, namely, Kali Charan. When Kali Charan moved an application, a case crime No.341 of 1992 under Section 384 IPC was registered and the matter was investigated by the Circle Officer, Nagar, Firozabad, who, in turn, submitted the enquiry report on 4.9.1992. In the report, he reported that the integrity of both Constables as suspicious. Therefore, he recommended for withholding of integrity for the said period. In the backdrop, not only the punishment order of withholding integrity but also salary for the said period has been withheld. Relevant paragraphs 14 to 17 of the judgment of Vijay Singh (supra) are reproduced as under:

"14. The present case shows dealing with the most serious issues without any seriousness and sincerity. Integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness rectitude, sinlessness and sincerity. The charge of negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity.

Withholding integrity merely does not cause stigma, rather makes the person liable to face very serious consequences. (Vide: Pyare Mohan Lal v. State of Jharkhand and others, AIR 2010 SC 3753).

15. Unfortunately, a too trivial matter had been dragged unproportionately which has caused so much problems to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for

which disciplinary proceedings could be initiated. It is settled legal proposition that the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct (See: M/s Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut and others, AIR 1984 SC 505 and A.L. Kalra v. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361).

16. Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim *nulla poena sine lege* which means that a person should not be made to suffer penalty except for a clear breach of existing law. In *S. Khushboo v. Kanniammal and another*, AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Indian Penal Code, 1860, Section 2 (n) of Code of Criminal Procedure, 1973, or Section 3 (38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.

Thus, in view of the above, the punishment order is not maintainable in the eyes of law.

17. In the result, appeal succeeds and is allowed. The impugned order dated 8.7.2010 withholding integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. Respondents are directed to consider the case of the appellant for all consequential benefits including promotion etc. if any, afresh taking into consideration the service record of the appellant in accordance with law."

Here, in this case also, petitioner's integrity certificate for the year 1992 was withheld, though it does not attract the provisions of Section 4 of U.P. Police Officers' of the Subordinate Rank (Punishment & Appeal) Rules, 1991. Therefore, the case law of *Vijay Singh* (supra) relied upon by the petitioner's counsel is squarely applicable. As this aspect has not been dealt with by the Tribunal, the impugned judgment and order passed by the Tribunal is liable to be quashed.

Keeping in view all aspects of the matter, particularly the case law of *Vijay Singh* (supra) cited by the petitioner, the writ petition is allowed and the impugned judgment and order dated 8.6.2001 passed by the Tribunal, contained in Annexure No.1 to the writ petition is quashed and all subsequently orders in this regard are quashed. Respondents are directed to consider the case of the petitioner for all consequential benefits including promotion etc. if any, afresh taking into consideration the service record of the petitioner in accordance with law.