

Swaraj Bhushan Tripathi Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Feb. 1, 2013

Hon'ble Judges: Rajiv Sharma, J and Satyendra Singh Chauhan, J

Final Decision: Dismissed

Judgement

Satyendra Singh Chauhan, J.

Heard Sri M.D. Singh "Shekhar", Senior Advocate, assisted by Sri S.K. Mishra, appearing on behalf of the petitioner and learned Standing Counsel.

2. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner challenges the enquiry report dated 11.12.2009

submitted by the Enquiry Officer, namely, Sri Ramesh Chandra Dhildiyal, Joint Secretary, Basic Education, Government of U.P., Lucknow

(respondent No. 2), contained in Annexure No. 14 to the writ petition.

3. Shorn off unnecessary details the facts of the case are that the petitioner, who was working as District Basic Education Officer at Bahraich, was

placed under suspension in contemplation of disciplinary proceedings vide order dated 24.7.2003 inter alia on the grounds that he offered

appointment to the B.Ed. Degree holders as Assistant Teacher in the department of Basic Education. A chargesheet was served upon the

petitioner on 21.8.2003. Thereafter, the enquiry was conducted against the petitioner and the Enquiry Officer had submitted his report on

19.6.2004. Subsequently, the petitioner had approached this Court by filing writ petition No. 1299 of 2006, challenging his suspension order

dated 24.7.2003. A coordinate Bench of this Court, while disposing of the writ petition, directed to conclude the enquiry within two months,

otherwise suspension order will be revoked.

4. According to the petitioner, neither the enquiry was concluded within the period prescribed by this Court nor the petitioner was paid subsistence

allowance. However, vide order dated 16.1.2008, services of the petitioner were dismissed by the disciplinary authority. Feeling aggrieved, the

petitioner approached this Court by filing writ petition No. 23432 of 2008, which was dismissed on the ground of availability of alternative remedy

with a direction to the State Public Services Tribunal to decide the claim of the petitioner within a period of six months vide order dated 7.5.2008.

Pursuant to the order dated 7.5.2008, the petitioner challenged the order of dismissal from service dated 16.1.2008 before the State Public

Services Tribunal by filing Claim Petition No. 998 of 2008. The Tribunal, vide order dated 24.11.2008, after hearing the parties and perusing the

records, allowed the claim petition with a direction for reinstatement of the petitioner in service with all consequential benefits. However, the

Tribunal granted liberty to the State Government to hold fresh enquiry in accordance with Rules and observing the principles of natural justice.

5. Not being satisfied with the judgment and order dated 24.11.2008 of the Tribunal, the State Government assailed the judgment and order dated

24.11.2008 by filing writ petition No. 434 (S/B) of 2009. A coordinate Bench of this Court, vide order dated 18.3.2009, disposed of the writ

petition by modifying the judgment and order dated 24.11.2008 passed by the Tribunal to the extent that the consequential benefits awarded by

the Tribunal shall depend upon the outcome of the fresh inquiry, if any. Further it was provided that if any enquiry is initiated against the petitioner,

it shall be concluded by the State within three months from the date of the order. Against the order dated 18.3.2009 of the High Court, the State

has preferred Special Leave to Appeal No. 25485 of 2009. The Apex Court, vide judgment and order dated 1.10.2009, dismissed the special

leave petition with the following directions :

We see no reason to interfere in this S.L.P. particularly when the High Court has remitted the matter for de novo enquiry. However, since the

period of three months for conducting de novo enquiry has since elapsed, we extend the time to complete the said enquiry within three months

from today. In the circumstances, the contempt proceedings instituted by the delinquent shall remain suspended for three months.

6. After the above order dated 1.10.2009 passed by the Apex Court, the petitioner was attached to the office of Assistant Director of Education

(Basic), Kanpur Region, Kanpur Nagar (respondent No.3) as a suspended employee and accordingly, the petitioner joined in the office of

respondent No.3 on 4.11.2009. Thereafter, enquiry was initiated against the petitioner after serving a chargesheet afresh on 4.11.2009 and the

officer, who had earlier submitted enquiry report i.e. Sri Ramesh Chandra Ghildiyal (respondent No.2) against the petitioner, was again appointed

as Enquiry Officer. However, after joining the duties in the office of respondent No.3, the petitioner fell ill as he suffered from Viral Hepatitis and

the petitioner got himself medically examined in T.B. Sapru District Hospital, Allahabad and the Doctor advised him to take bed rest. In these

circumstances, the petitioner submitted an application for leave on 14.11.2009 to the Enquiry Officer (respondent No.2), informing him that he will

not be able to attend the enquiry proceedings as he is seriously ill. Subsequently, on 26.11.2009, the petitioner moved an application before the

Assistant Director of Education (Basic), Kanpur Region, Kanpur Nagar for changing the Enquiry Officer but when nothing was done, the petitioner

moved another application on 14.12.2009 for change of Enquiry Officer (respondent No.2).

7. According to the petitioner, prior to any order being passed on the aforesaid application for change of enquiry i.e. letter dated 26.11.2009, the

Enquiry Officer proceeded with the enquiry ex parte and submitted the impugned ex parte enquiry report dated 11.12.2009 to the disciplinary

authority. According to him, petitioner, after getting rid off his illness, reported his duties in the office of respondent No. 3 on 21.12.2009 and then,

he came to know that the enquiry against him has already been concluded as the Enquiry Officer has submitted its report on 11.12.2009.

Subsequently, vide letter dated 29.12.2009, the petitioner was informed that his application for change of Enquiry Officer has been rejected.

Thereafter, the State Government directed the petitioner to submit representation within 15 days vide order dated 29.12.2009, which was served

upon the petitioner on 19.1.2010. Hence the instant writ petition.

8. Sri M.D. Singh "Shekhar", Senior Advocate, appearing on behalf of the petitioner submits that respondent No.2/Enquiry Officer was biased

towards the petitioner as in earlier enquiry against the petitioner, the respondent No.2 was also Enquiry Officer, who did not conduct fair enquiry

and in predecided manner submitted enquiry report against the petitioner, which was quashed by this Court and as such, there was no occasion to

appoint the respondent No.2 as Enquiry Officer against whom there was serious allegations levelled by the petitioner. For the said reasons, the

petitioner moved an application for change of Enquiry Officer before the respondent No.1 on 26.11.2009, praying therein to appoint an other

Enquiry Officer except the respondent No.2 but nothing was done and as such, the petitioner moved another application/reminder for change of

enquiry officer on 14.12.2009 but again nothing was done. He submits that when the petitioner joined on 21.12.2009, then, he was informed that

the Enquiry against the petitioner has already been concluded during his illness period and the impugned ex parte enquiry report was also submitted

by the Enquiry Officer. Thus, the impugned enquiry report is an ex parte report, which was submitted by the respondent No.2/Enquiry Officer

without taking into consideration the serious ailment and in total breach of the principles of natural justice.

9. Elaborating his submissions, learned Counsel for the petitioner has submitted that the Apex Court, vide order dated 1.10.2009 passed in

Special Leave Petition No. 11880 of 2009, had directed that enquiry should be conducted against the petitioner within a period of three months

from the date of passing of the judgment and order by the Apex Court but on 4.11.2009 i.e. after the period of one month, a show cause notice

was issued to the petitioner and second show cause notice was given to the petitioner on 19.12.2009, when the applications moved on behalf of

the petitioner before the respondent No.1 for change of Enquiry Officer were pending and were decided on 29.12.2009 and during the pendency

of the applications of the petitioner, enquiry was concluded and the Enquiry Officer has submitted impugned ex parte report.

10. Learned Counsel for the petitioner has contended that apart from the defects in the enquiry, there petitioner has been discriminated and was

not treated fairly as on the same charges and allegations, four District Basic Education Officers were placed under suspension including the

petitioner and during the pendency of enquiry, three District Basic Education Officers, namely, Sri Ramesh Singh, Sri K.C. Bharti and Sri T.N.

Pachauri were reinstated in service except the petitioner. He submits that B.Ed. Degree holders, in whose favour petitioner offered appointment as

Assistant Teacher, approached this Court and this Court has passed the order in favour of B.Ed. Degree holders. Finally, the matter went up to the

Apex Court and the Apex Court uphold the judgment passed by this Court and presently, B.Ed. Degree holders are working as Assistant Teacher

in the Basic Education Department.

11. Lastly, learned Counsel for the petitioner submits that on the date of joining i.e. 21.12.2009, the petitioner was also served a letter dated

21.12.2009, whereby he was served the copy of the orders dated 2.12.2009, 4.12.2009 and 7.12.2009. He submits that in the counter affidavit

filed on behalf of the State, it has been alleged that despite the publication of notice in the daily newspaper on 7.12.2009, petitioner chooses not to

appear before the Enquiry Officer but the fact is that a notice was published on 7.12.2009 in daily newspaper only for district Kanpur Nagar and

not for other districts, therefore, when the petitioner was going under treatment in district Allahabad, there was no occasion to appear before the

Enquiry Officer as the notice so published on 7.12.2009 did not come to the knowledge of the petitioner.

12. Refuting the allegations made by the learned Counsel for the petitioner, learned Standing Counsel has contended that due opportunity was

afforded to the petitioner to defend himself and keeping in view all the materials available before the Enquiry Officer, enquiry report was submitted,

which was accepted by the disciplinary authority, accordingly, the petitioner was punished, therefore, the impugned enquiry report does not suffer

from any illegality, hence, no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India.

13. Clarifying the position, learned Standing Counsel pointed out that in compliance of the order passed by the Apex Court, the Enquiry Officer

has provided an opportunity of oral hearing on 10.12.2009 vide letter dated 2.12.2009 and an information in this regard was also sent by the

respondent No.3 vide letter dated 4.12.2009 and 7.12.2009 and for abundant precaution, a press notice was also published informing the

petitioner about the date of hearing on 7.12.2009 but despite this, the petitioner did not turn up on the date fixed for personal hearing on

10.12.2009 and as such, Enquiry Officer finding no way out has submitted Enquiry Report to the Government on 11.12.2009 and the

Government, in its turn by following principles of natural justice, has provided the copy of the enquiry report vide letter dated 19.12.2009, by

which the petitioner was asked to submit his explanation but the petitioner did not avail any benefit of so many opportunity given to the petitioner to

defend his case.

14. The question now to be examined by us is as to whether enquiry was conducted with due observance of principles of natural justice and

whether petitioner was treated fairly or not.

15. From perusal of the record, it appears that the petitioner moved an application on 26.11.2009 to the respondent No.1 for change of Enquiry

Officer. This application was moved by the petitioner on account of the fact that the respondent No.2 was highly biased towards the petitioner. In

earlier enquiry against the petitioner, the same officer was the Enquiry Officer, who submitted enquiry report against the petitioner, which was

quashed by this Court. Therefore, it was not proper on the part of the State Government to appoint the respondent No.2 as Inquiry Officer against

whom serious allegations were levelled by the petitioner. The petitioner had requested the respondent No.1 to appoint any other Enquiry Officer

except the respondent No.2. When nothing was done, then, the petitioner moved another application on 14.12.2009 with the same request to the

respondent No.1. It has not been disputed that the petitioner was ill and he gave information to the Enquiry Officer. It comes out from the record

that the petitioner after getting rid off his illness, reported for his duties in the office of respondent No.3 on 21.12.2009, then, on the same day, i.e.

21.12.2009, the petitioner was served a letter of dated 21.12.2009, whereby he was served the copy of orders dated 2.12.2009, 4.12.2009 and

7.12.2009 and he also come to know that Enquiry Officer has submitted its ex parte report. It is an admitted fact that the petitioner gave

applications for change of Inquiry Officer, which were pending before the State Government and the same were decided on 29.12.2009 i.e. after

submission of the enquiry report. Thus, it is clear that the enquiry was conducted in haste manner.

16. We also find force in the submission of petitioner's Counsel that the petitioner has been subjected to hostile discrimination, which is evident

from the fact that on the same charges and allegations, four District Basic Education Officers were placed under suspension including the petitioner

and during pendency of enquiry, three District Basic Education Officers, namely, Sri Ramesh Singh, Sri K. C. Bharti and Sri A. N. Pachuri were

reinstated in service. Now Sri Ramesh Singh, who was posted at district Gorakhpur and Basti, has now been posted as Senior Lecturer at DIET,

Faizabad, Sri K. C. Bharti, who was placed at district Maharajganj has now been posted as Senior Lecturer/Officiating Principal at DIET, Sant

Kabir Nagar and Sri A. N. Pachuri, who was posted at District Bulandshahr, who has died during pendency enquiry, had also been given posting,

but the petitioner, who was posted at district Bahraich, is still under suspension. This act on part of the authorities shows discriminatory and mala

fide exercise of powers by the respondent authorities.

17. A Division Bench of this Court in the case of Parasu Ram Singh Vs. Secretary of Agriculture, U.P. Lucknow and others reported in [2008

(26) LCD 1522] has held as under:

This Court has already held that after the charge sheet is given to a delinquent employee an oral enquiry is must, whether the employee requests

for it or not. The record which has been produced before us reveals that after submission of reply to the charge sheet, no date or time was fixed by

the Enquiry Officer for recording of evidence of the witnesses on behalf of the Department to prove the charges as also for the defence witnesses

for holding the enquiry. We are of the view that the petitioner was not given proper opportunity of hearing and no oral enquiry as required by law

was held.

18. A Division Bench of this Court in the case of Radhey Kant Khare Vs. U.P. Cooperative Sugar Factories Federation Ltd. reported in [2003

(21) LCD 610] has also held as under:

8. After a charge sheet is given to the employee an oral enquiry is a must, whether the employee requests for it or not. Hence a notice should be

issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should

first be led in his presence vide A.C.C. Ltd. v. Their Workmen (1963) II LLJ 396 (SC). Ordinarily, if the employee is examined first it is illegal

vide Anand Joshi v. MSFC 1991 LIC 1666 Bom., S.D. Sharma v. Trade Fair Authority of India 1985 (II) LLJ 193, Central Railway v. Raghubir

Saran 1983 (II) LLJ 26. No doubt in certain exceptional cases the employee may be asked to lead evidence first, vide Firestone Tyre and Rubber

Co. Ltd. v. Their Workmen AIR 1968 SC 236, but ordinarily the rule is that first the employer must adduce his evidence. The reason for this

principle is that the charge sheeted employee should not only know the charges against him but should also know the evidence against him so that

he can properly reply to the same. Where no witnesses were examined and no exhibit or record is made but straightaway the employee was asked

to produce his evidence and documents in support of his case it is illegal vide P.C. Thomas v. Mutholi Cooperative Society Ltd. 1978 LIC 1428

Ker, and Meenglas Tea Estate v. Their Workmen AIR 1963 SC 1719.

19. In the facts of present case, there is no oral inquiry. The perusal of the inquiry report establishes that no witness was examined, therefore, the

inquiry report cannot be sustained in view of the aforementioned factual and legal position. It is also important to mention that the authorities failed

to consider the very vital fact that the petitioner was confined to bed and was being treated at Allahabad, whereas the notice was published in a

newspaper having large circulation in Kanpur district and as such, it is quite possible that the petitioner could not lay hand on the notice or to be

aware about the notice in respect of inquiry.

20. Natural justice has a prime role to play in the matter where the justice has to be secured. Natural justice is another name for commonsense

justice.

21. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the

administration of justice in a common sense/liberal way. Justice is based substantially on natural ideals and human values. The administration of

justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic

technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

22. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What

particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and

circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an

administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural

justice. The expression "civil rights but of civil liberties, material deprivations and nonpecuniary damages in its wide umbrella comes everything that

affects a citizen in his civil life.

23. In D.K. Yadav Vs. J.M.A. Industries; (1993) 3 SCC 259 the Apex Court while laying emphasis on affording opportunity by the authority

which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to

answer the requirement of Article 14. The Hon"ble Apex Court concluded as under:

The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed

by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of

Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of

Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive.

24. At this juncture, it would be relevant to produce relevant portion of paragraph 34 of the judgment rendered in State Bank of Patiala and others

v. S.K.Sharma, JT 1996(3) SC 722. Though this decision was given in a service matter but the Hon"ble Apex Court has dealt with the principles

of natural justice and the result, if it is not followed:

Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural

justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the

Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule,

as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e.

between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it

void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law,

i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram

partem) has to be examined from the standpoint of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the

circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the

said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down

elsewhere.)

25. While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind

the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this

objective which should guide them in applying the rule to varying situations that arise before them.

26. When the application for change of the Inquiry Officer was preferred by the petitioner, against whom he has no faith, there was no occasion to

proceed with the enquiry and keep the application pending which resulted in serious prejudice to the petitioner. It was the duty of the State

Government to remove the doubts and apprehensions, which were in the mind of the petitioner, showing fair treatment to him, who had already

suffered a lot and the mental agony was continuing. It is an admitted fact that on the application for change of inquiry, the order was passed after

submission of inquiry report.

27. During the course of arguments, Sri M.D. Singh "Shekhar", Senior Advocate, appearing on behalf of the petitioner has informed that the

respondent No.2/Inquiry Officer has retired from service on attaining the age of superannuation and as such, he has no grievance against any

person and therefore, interest of justice would suffice, if any officer is appointed as Inquiry Officer to conduct the inquiry.

28. Taking the holistic view of the matter and the fact that there should be fairness and transparency in the action of the State Authorities, we allow

the writ petition and quash the impugned inquiry report dated 11.12.2009 submitted by Sri Ramesh Chandra Dhildiyal, Joint Secretary, Basic

Education, Government of U.P., Lucknow/Enquiry Officer (respondent No. 2), contained in Annexure No. 14 to the writ petition. However, the

State Government is directed to conduct de novo inquiry in respect of the same charges and complete the same within a period of one month, from

the date of receipt of a certified copy of this order, after giving due opportunity of hearing and observance of procedure prescribed under law. On

receipt of the Inquiry Report, the disciplinary authority shall pass appropriate order in accordance with law, within next one month.