

**(2011) 09 AHC CK 0349**

**Allahabad High Court**

**Case No:** Writ A No. 11195 of 2007

Umesh Narain Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 22, 2011

**Hon'ble Judges:** Sabhajeet Yadav, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Sabhajeet Yadav, J.

Heard learned Counsel for the Petitioner and Sri Srikant Shukla, learned Counsel appearing for the Respondents No. 2 and 3. By this petition, the Petitioner has challenged the order dated 19.9.2006 passed by Managing Director, U.P. Co-operative Federation Ltd., Lucknow, contained in Annexure-8 of the writ petition, whereby the Petitioner has been dismissed from service while working on the post of Junior Engineer in U.P. Co-operative Federation Ltd. and a sum of Rs. 23,705/-has also sought to be recovered from him. While entertaining the writ petition on 28.2.2007 this Court has merely stayed the recovery sought to be made from the Petitioner and did not stay the order of dismissal.

2. Learned Counsel for the Petitioner has submitted that during the course of inquiry the Petitioner has sought several documents but were not supplied to him, despite thereof, out of six charges levelled against him, two charges were found not proved against him and out of four charges, some charges were found partly proved against him. Besides this, on identical charges levelled against the Assistant Engineer, he was given penalty of merely a censor and a recovery of Rs. 23,705/-was made from him. Contrary to it, besides the aforesaid amount sought to be recovered from the Petitioner, he has also been dismissed from service. The submission is that Petitioner has been discriminated in the matter of employment as on identical charges Assistant Engineer has been given minor penalty whereas the Petitioner has been dismissed from service by imposing major penalty upon him.

3. It is further submitted by learned Counsel for the Petitioner that punishment awarded to the Petitioner is highly disproportionate to the gravity of the charges found proved against him, thus the punishment awarded to the Petitioner is excessive and exorbitant and arbitrary, therefore, cannot be sustained.

4. Further submission of learned Counsel for the Petitioner is that under the provisions of Regulation-87 of U.P. Co-operative Societies Employees Service Regulations, 1975 before any major penalty could be imposed against the Petitioner, prior concurrence ought to have been obtained from the Board and before giving approval of major penalty Board was required to hear the Petitioner but No. opportunity of hearing has been provided to the Petitioner before the Board prior to passing of the impugned order against him. While elaborating his submission he has submitted that the Managing Director has merely issued show cause notice to the Petitioner along with copy of inquiry report. On receipt of the same when the Petitioner has asked copies of the documents for reply of said show cause notice, instead of furnishing those documents the Managing Director has referred the matter before Board for seeking approval under Regulation 87 of the Regulations and No. opportunity of hearing has been provided to the Petitioner before any approval given by Board, therefore, the impugned order passed by concerned Respondents cannot be sustained.

5. In support of his submission he has also placed reliance upon two decisions of this Court rendered in Vijay Shanker Rai v. State of U.P. through Secretary (Co-operative) Government of Uttar Pradesh, Lucknow and Ors. 2006 (65) ALR 54, wherein in para 13 of the decision this Court observed as under:

13. A proper appreciation of Regulation 87 reveals that the word prior approval has been specifically included in the Regulation which can have No. other meaning but that before passing any order of major penalty as contemplated under Regulation 84 1 (e) to (g), the Board of Directors has to apply its mind and then only an order imposing a major penalty can be passed. I draw strength from the decision cited by learned Counsel for the Petitioner supra and I am in agreement with the said judgment. To my mind, No. other interpretation of Regulation 87 can be given. To do so, would render the very purpose of the rule redundant and the purpose for which the rule has been enacted would fail.

6. The aforesaid judgement rendered by Hon"ble Single Judge has been up-held by Division Bench of this Court in Special Appeal No. 986 of 2006, U.P. Upbhokta Sahkari Sangh Ltd. Lucknow through its Managing Director and Anr. v. Vijay Shanker Rai 2006 (65) ALR 510, wherein the Division Bench of this Court after referring several other decisions in para-8 and 11 of the decision observed as under:

8. Moreover, the purpose and object requiring the management to seek prior concurrence of the Board is to protect the employee from any arbitrary and illegal punitive action on the part of the management without strictly observing procedure

prescribed in the Regulations. The Board, being an independent statutory body, is expected to scrutinize the matter as to whether the proceedings have been conducted in a fair and impartial manner, consistent with the procedure prescribed under the rules and the employee is not being unduly harassed. Therefore, we are of the view that the, Hon"ble Single Judge has rightly held that without prior concurrence of the Board the order of dismissal passed by the management was unsustainable and the same was liable to be quashed.

11. We, therefore, modify the order of the Hon"ble Single Judge and while upholding the judgment under appeal setting aside the dismissal order, modify rest of the directions and provide that the Appellant is at liberty to take further action for seeking prior concurrence of the Board under Regulation 87 in accordance with rules. The Board shall consider the matter after affording opportunity of hearing to both the sides and shall take decision as expeditiously as possible, preferably within a period of three months from the date of receiving proposal, if any, from the Appellant along with the certified copy of this order.

7. The aforesaid decisions are binding upon this Court also, therefore, in my opinion, the Board was required to give opportunity to the Petitioner to have his say in the matter before approval was granted for imposing major penalty upon him but in fact the Board did not afford any opportunity of hearing to the Petitioner before imposing major penalty, as such the impugned order dated 19.9.2006, dismissing the Petitioner from service, passed by Managing Director without prior opportunity of hearing provided by the Board, cannot be sustained and the same is hereby quashed.

8. The matter is remitted back before the Board constituted under the Regulations, 1975 to consider the matter afresh by providing opportunity of hearing to the Petitioner as well as Respondents and pass fresh order in the light of submissions made by the Petitioner indicated herein before in this judgement. The aforesaid exercise has to be undertaken and completed by the Board within a period of three months from the date of production of certified copy of this order before the Board.

9. With the aforesaid observation and direction, writ petition succeeds and allowed to the extent indicated herein before.