

(2004) 10 AHC CK 0171

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1298 (S/B) of 2004

Subhash Chandra Dixit

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Oct. 6, 2004**Acts Referred:**

- Constitution of India, 1950 - Article 226, 277
- Uttar Pradesh Public Services (Tribunal) Act, 1976 - Section 5B

**Citation:** (2005) 5 AWC 5097**Hon'ble Judges:** P.K. Chatterji, J; Jagdish Bhalla, J**Bench:** Division Bench**Advocate:** Amit Bose, for the Appellant; Shabiul Husnain, C.S.C., for the Respondent**Final Decision:** Dismissed

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**Judgement**

Jagdish Bhalla, J.

The Petitioner who was in police force has been dismissed from service by the Senior Superintendent of Police, Bulandshahr by the order dated 23.4.2004 contained in Annexure-2 to the writ petition.

2. Aggrieved by the order of dismissal, the Petitioner filed a Civil Misc. Writ Petition No. 23055 of 2004, Subhash Chandra Dixit v. State of U.P. and Ors. before this Court at Allahabad. By a judgment and order dated 5.7.2004, the writ petition was dismissed on the ground of availability of alternative remedy before the State Public Service Tribunal. Consequent to this order, the Petitioner filed a Claim Petition No. 682 of 2004 before the State Public Service Tribunal, Lucknow, challenging his dismissal order. Along with the claim petition, the Petitioner filed an application for stay of order of dismissal from service.

3. The State Public Service Tribunal while admitting the claim petition rejected the interim relief application of the Petitioner in view of Section 5 (B) of U.P. Public

Services (Tribunals) Act, 1976 by the order dated 10.8.2004.

4. The Petitioner has filed instant writ petition praying inter alia for quashing of the order dated 10.8.2004, passed by the State Public Service Tribunal, in Claim Petition No. 682 of 2004 rejecting the stay application and the order of dismissal dated 23.4.2004, passed by the Senior Superintendent of Police, Bulandshahr.

5. Learned Counsel for the Petitioner has submitted that the order of dismissal has been passed in utter disregard of the principles of natural justice and against the provisions of Para 486 of the U.P. Police Regulation. Further, no reason has been recorded while dispensing with the enquiry against the Petitioner.

6. Relying upon [Chief Security Officer and Others Vs. Singasan Rabi Das, Kuldip Singh Vs. State of Punjab and Others](#), and [The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya](#), learned Counsel for the Petitioner contended that the order of dismissal is bad and cannot be sustained. Learned Counsel for the Petitioner has also placed reliance on [Public Services Tribunal Bar Association Vs. State of U.P. and Another](#), and has contended that in view of the observations made in this judgment by the Hon"ble Supreme Court, the High Court is competent to grant interim order in the matter relating to dismissal, removal and termination etc.

7. Having considered the facts and circumstances of the case in its entirety, we are of the view that it is not open to the Petitioner to challenge the order of dismissal before this Court when he has already availed alternative remedy of filing claim petition before the Tribunal and the same having been admitted. The Tribunal by its order dated 10.8.2004 has only rejected the application for stay.

8. It may be clarified that the Petitioner has challenged the order of dismissal in earlier Writ Petition No. 23055 of 2004 before this Court at Allahabad and the same was dismissed on the ground of alternative remedy, the second writ petition challenging the same order is not maintainable. Further in the case of Public Service Tribunal Bar Association (supra), the Hon"ble Supreme Court has laid down in clear words that judicial review of an order regarding which the jurisdiction of the Tribunal is barred would be available by approaching the High Court under Article 226 or 227 of the Constitution. As regard the interim relief is concerned the Hon"ble Supreme Court held that interim relief can be granted in an extreme and rare case where the order is passed mala fide or without following the procedure under law. In the present matter, the Petitioner had challenged the order of dismissal in Writ Petition No. 23055 of 2004 alongwith application for stay and this Court at Allahabad after considering the same has rejected the writ petition on the ground of alternative remedy. That being so, this writ petition involving the same issue, cannot be said to be maintainable.

9. As far as rejection of interim relief application by the Tribunal is concerned, there is no illegality in it and the Tribunal has rightly rejected the application for interim relief as the same was not maintainable in view of Section 5 (B) of U.P. Public Service

(Tribunal) Act, 1976. Further, we are of the considered opinion that the Petitioner was wrongly advised to make application for interim relief in view of the fact that the same was not maintainable. It appears that the Petitioner has deliberately moved this application with the intention to get the same rejected so as to create an artificial ground for challenging the same. These tactics on the part of litigant is highly deprecated.

10. Since, the claim petition has been admitted and the opposite parties have been allowed time to file written statement/counter-affidavit, we refrain ourselves from recording any finding as regard to the correctness of the impugned dismissal order dated 23.4.2004 as it may prejudice the case of either of the parties. In these circumstances, we are not dealing with the other cases relied upon by the learned Counsel for the Petitioner, touching the merits of the case because the matter is subjudice before the Tribunal.

11. For the reasons stated hereinabove, the writ petition lacks merit and is dismissed. Parties to bear their own costs.