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(2002) 94 FLR 763 : (2002) 3 UPLBEC 2379

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No. 4325 (S/S) of 1995

Virendra Kumar Sharma	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: Sept. 18, 2002

Acts Referred:

- Uttar Pradesh Rajya Sahkari Bhoomi Vikas Bank Employees Service Rules, 1976 - Rule 104

Citation: (2002) 94 FLR 763 : (2002) 3 UPLBEC 2379

Hon'ble Judges: Ashok Bhushan, J

Bench: Single Bench

Advocate: L.P. Misra, for the Appellant; N.N. Jaiswal, for the Respondent

Final Decision: Allowed

Judgement

Ashok Bhushan, J.
Heard Counsel for the petitioner and learned Standing Counsel who appears for Respondent No. 1. List has been revised but no one has appeared for Respondents No. 2 to 6.

2. This writ petition has been filed by the petitioner praying for quashing of the order dated 8.6.1995 passed by the opposite Party No. 3. Counter and rejoinder affidavits have been exchanged between the parties.

3. Petitioner''s case, in the writ petition, is that he was appointed as Assistant Accountant in U.P. Sahkari Gram Vikas Bank Limited. Petitioner, in Paragraph 7 of the writ petition, has Stated that regulations, namely, U.P. Rajya Sahkari Bhoomi Vikas Bank Employees Service Rules., 1976, has been framed and the same was approved by the Board on 22.2.1977. Reference has also been made to Regulation 100 of U.P. Cooperative Society

Employees" Service Regulations, 1975. Petitioner was suspended on 24.2.1979 and a first information report was lodged against the petitioner on which case Crime No. 49/79, u/s 409 of IP.C., was registered. During pendency of investigation in criminal case, charge-sheet was also issued on 11.3. 1980 alleging 8 charges against the petitioner. Petitioner submitted reply to the charge-sheet. Petitioner has submitted that no disciplinary proceedings could have been taken against him since for same charges the criminal trial was going on. The petitioner has further Stated in Paragraph 18 of the writ petition that Enquiry Officer did not fix any date for leading the evidence in support of the allegations. The petitioner claims to have submitted an application before the Enquiry Officer for staying the departmental proceedings on account of pendency of criminal case. Petitioner has stated that Enquiry Officer did not accept his request. The petitioner States that a show-cause notice was given to him and ultimately order dated 8th June, 1995 was passed dismissing him from service. The petitioner has further stated that the criminal case resulted in acquittal and by judgment dated 4.2.1994 passed by 8th Addl. Chief Judicial Magistrate, Meerut in Case No. 444 of 1993 the petitioner was honourably acquitted. The Counsel for the petitioner made following two submissions :--

(i) In view of Rule 104 of U.P. Rajya Sahkari Bhoomi Vikas Bank Employees Service Rules, 1976, the departmental proceedings could not have been initiated or proceeded with. Counsel for the petitioner also submitted that Rule 104 cast a prohibition on the respondents to proceed with the departmental enquiry.

(ii) The Enquiry Officer did not fix any date for holding any enquiry nor before the enquiry any proceedings took place for proving the charges against the petitioner.

4. I have considered the submissions of the Counsel for the petitioner. The first submission of the Counsel for the petitioner is regarding Rule 104 which is extracted below:--

"104. Enquiry or action when case is under police investigation or before Court : Even where a case against an employee of Bank is :

(a) Under police investigation, or

(b) Pending judicial enquiry or trial, the Bank may institute or proceed with departmental enquiry and take disciplinary action against the erring employee :

Provided that in the case covered under (b), the charges on which departmental enquiry is held or disciplinary action is taken are not those which are subjudice."

In the counter-affidavit, it is not denied that first seven charges which were mentioned in the departmental charge-sheet were same which were involved in the criminal trial. In Paragraph 6 of the counter-affidavit has been Stated that FIR confined to only seven irregularities whereas departmental charge-sheet contained 8 charges of misappropriation. Proviso to Rule 104, as extracted above, clearly contemplates that

charges on which departmental enquiry is held are not those which are subjudice under police investigation or a criminal trial. On plain reading of Rule 104, it is clear that there is a clear prohibition for the departmental enquiry to proceed against a charge which is engaging attention of criminal trial or police investigation. According to own showing of the respondents first seven charges were included in the FIR on which criminal trial took place. The respondents could not have proceeded with departmental enquiry against petitioner on the aforesaid seven charges. The dismissal order clearly proves that the dismissal of the petitioner is based on first 1 to 7 charges also. In view of specific provisions of Rule 104, the respondents could not have proceeded to enquire the allegations contained in charges No. 1 to 7 in the charge sheet which were engaging attention of criminal trial. In view of above, the Counsel for the petitioner is right in his submission that enquiry proceedings which resulted into dismissal of the petitioner is vitiated on this ground alone.

5. With regard to second submission of the Counsel for the petitioner it is suffice to say that in view of above that respondents were not entitled to proceed with the enquiry with regard to charges which were engaging attention of criminal trial, there is no necessity to consider this argument any further. There is one another reason on which the order of dismissal cannot be sustained. Admittedly all the charges against the petitioner are charges of financial irregularities and all the 8 charges in the charge-sheet are instances of different transactions alleged. Charge No. 8 is not substantially different from the earlier 7 charges. The petitioner has already been acquitted in the criminal case, which pertain to first seven charges. The dismissal order being based on same allegations, it is not safe to sustain the dismissal order. The Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Limited and Anr. 1993 (3) SCC 679, has laid down in paragraph 22 the principles on which the departmental proceedings and criminal trial can proceed. In the present case in view of specific provisions of Rule 104, departmental enquiry on same charges could not. have been proceeded. In Paragraph 34 of the aforesaid judgment the Apex Court held as under :--

"34. There is yet another reason for discarding the whole the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant"s residence and recovery of incriminating articles therefrom." The findings recorded by the Enquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Enquiry Officer that the Enquiry Officer, relying upon their Statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation,

therefore, where the appellant was acquitted by a judicial pronouncement with the finding that the "raid and recover)" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings to stand."

6. This Apex Court in M. Paul Authority"s case (supra) took the view that since in the criminal case delinquent was acquitted, there was no basis for maintaining the finding in the departmental enquiry. The aforesaid case is fully applicable in the facts of the present case. In the criminal charge when the petitioner has been acquitted from the charges, the findings recorded in the departmental enquiry cannot be allowed to stand.

7. In view of the above, the writ petition is allowed. The impugned order dated 8th June, 1995 is quashed. Petitioner will be entitled to his consequential benefits.