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(2010) 4 AWC 4018 : (2010) 125 FLR 638 : (2010) 2 UPLBEC 1028

Allahabad High Court

Case No: C.M.W.P. No. 41248 of 2009

Surendra Pratap Pracheta	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: March 8, 2010

Acts Referred:

- Constitution of India, 1950 - Article 311
- Penal Code, 1860 (IPC) - Section 323, 504, 506

Citation: (2010) 4 AWC 4018 : (2010) 125 FLR 638 : (2010) 2 UPLBEC 1028

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amreshwar Pratap Sahi, J.
Heard Sri S. P. Girl, learned Counsel for the petitioner and the learned standing counsel.

2. The services of the petitioner have been terminated on the solitary ground that the affidavit which was filed on 16.11.2006 did not disclose the correct facts pertaining to the pendency of the criminal case against the petitioner being Case No. 119 of 2001 u/s 323/504/506, I.P.C., Police Station Badlapur, district Jaunpur.

3. Learned Counsel for the petitioner Sri Giri contends that as a matter of fact the petitioner had no actual or constructive knowledge of the pendency of the said criminal case which has been made the basis of the passing of the impugned order and, therefore, the impugned order is vitiated. He further submits that the said issue which was raised in appeal as also before the revisional authority but the aforesaid aspect has been completely overlooked, therefore, the conclusions arrived at are vitiated. He relies on the

decision of Mohd. Tahir v. State of U.P. 2009 (9) ADJ 42.

4. Learned standing counsel on the other hand contends that the order sheet which has been filed by the petitioner himself in relation to the criminal case indicates that the processes had been issued on several occasions. As a matter of fact coercive steps have already been taken as it is admitted by the petitioner himself. It is, therefore, contended on behalf of the State that the petitioner was involved in a family squabble about which he had full knowledge as also that of the pendency of the said criminal case, and which he ought to have disclosed.

5. From a perusal of the impugned order as also the counter-affidavit, it appears that a charge-sheet has been submitted in the said criminal case and the matter has proceeded on several occasions. As a matter of fact the trial could not proceed on account of the absence of the accused and accordingly adjournments were granted. In order to enforce the attendance of the accused coercive steps had already been initiated.

6. The Supreme Court had taken another view on the set of facts that were pleaded therein in the case of State of M.P. v. Kamal Nayan Mishra 2009 LE 1312, para 9 of the said decision is quoted below:

Para 9.-There are also several other features in this case which distinguish it from Ram Ratan Yadav. First is that Ram Ratan Yadav related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a Government servant protected by Article 311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer, in the case of Ram Ratan Yadav, within the period of probation, in this case even after knowing that appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311.

7. A perusal of the said decision would indicate that where the document of attestation which was made the basis for dismissing the employee was required to be furnished after fourteen years of service and in view of the aforesaid fact the case of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, was distinguished. In the instant case also, the proximity of the incident of the action taken is comparable to the case of Ram Ratan Yadav (supra). The petitioner was appointed on 31.1.2007 and upon discovery of the aforesaid fact the order terminating the services of the petitioner was passed on 20.9.2007.

8. In such a situation keeping in view the background of the criminal case which was a family dispute and further the order sheet of the criminal case it cannot be presumed that

the petitioner had no knowledge of the pendency of the said criminal proceedings. The satisfaction arrived at by the authorities is founded on the report submitted by the Superintendent of Police. The inference drawn by the appellate authority as well as revising authority, therefore, cannot be said to be perverse and it is founded on material which was available on record. The judgment relied upon by the learned Counsel for the petitioner, therefore, codes not come to the aid of petitioner in the facts and circumstances of the present case.

9. The writ petition lacks merit and accordingly dismissed.