

(2011) 03 AHC CK 0406

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 14638 of 2010

Ram Sagar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 28, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2011) 4 ADJ 726 : (2011) 130 FLR 32

Hon'ble Judges: Sheo Kumar Singh, J; Sabhajeet Yadav, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned Counsel for the Petitioner and learned standing counsel for the Respondents.

2. By this petition, Petitioner has challenged the order dated 11.2.2010 passed by Government of Uttar Pradesh contained in Annexure-1 of the writ petition, whereby deduction of 10% pension for a period of 5 years is directed to be made from the pension of the Petitioner under Article 351A of Civil Service Regulations.

3. It is stated that while working on the post of Assistant Engineer in Irrigation Department of the Government w.e.f. 20.8.2002 to 3.8.2008 at Sirsi Dam Project, Mirzapur the Petitioner was entrusted with the construction of repairing work of Adhwa Dam and for the said purpose tender was invited on 21.2.2008 by Sri O.P. Srivastava, the then Executive Engineer, consequently the work of said Dam was allotted to 8 contractors. On completion of construction work complaints were received about the irregularities committed in the said construction work. Pursuant thereto, the Commissioner, Vindhyachal Division, Mirzapur directed the Technical Parikshak, Gram Vikas Vindhyachal Division, Mirzapur to hold an inquiry of said irregularities, thereupon the Technical Parikshak, Gram Vikas Vindhyachal Division, Mirzapur had made inspection and it was found that for repair of Adhwa Dam a sum

of Rs. 384.50 lakh was sanctioned but at the time of making local spot inspection the Petitioner who was Assistant Engineer did not supply drawing, specification, measurement book and contracts/work orders awarded to the contractors. Only extract copy of project was made available to the inspecting party. After making local spot inspection the Technical Parikshak/inspector, Gram Vikas Vindhyachal Division, Mirzapur appears to have submitted his report on 3.6.2008.

4. It is stated that for inspection of the aforesaid work of Adhwa Dam three members committee was also constituted by Principal Secretary, Government of Uttar Pradesh consisting of Executive Engineer, Superintending Engineer and Chief Engineer of Irrigation, Department of Government which had conducted a detail inquiry and submitted its report on 24.10.2008 by exonerating the Petitioner from all the charges indicated in the order of suspension despite thereof the Petitioner was placed under suspension vide order dated 4th August, 2008 passed by the Government of Uttar Pradesh. A copy of the order of suspension dated 4th August, 2008 is on record as Annexure-3 of the writ petition. The report of three members of committee dated 24.10.2008 is on record as Annexure-4 of the writ petition. The order of suspension was challenged by the Petitioner in Writ Petition No. 58321 of 2008 Ram Sagar Singh v. State of U.P. and Ors. and the same was stayed by this Court vide order dated 12.11.2008 contained in Annexure-5 of the writ petition, which is still pending and counter-affidavit has been filed by the Respondents wherein inquiry report of three members committee dated 24.10.2008 has not been disputed. The copy of the counter-affidavit filed in the aforesaid writ petition is also on record as Annexure-6 of the writ petition.

5. It is stated that after lapse of 9 months the Respondent No. 1 appointed another Inquiry Officer i.e. Chief Engineer, Water Resources Department. In the said formal disciplinary inquiry a charge-sheet dated 30.12.2008 containing five charges was served upon the Petitioner. After holding inquiry, the inquiry officer has submitted his report on 9.6.2009 wherein out of five charges the charges No. 1, 2, 4 and 5 have been found fully proved and charge No. 3 has been found partly proved against the Petitioner. Meantime the Petitioner was retired from service on 31.3.2009 on attaining the age of superannuation but the pending inquiry against him was continued under Article 351A of Civil Service Regulations. After submission of inquiry report, a show-cause notice was served upon the Petitioner, whereupon he has submitted his detail reply, and after considering the inquiry report and reply submitted by the Petitioner, vide impugned order dated 11th February, 2010, the disciplinary authority has awarded a penalty of deduction of 10% pension of the Petitioner for a period of five years.

6. Having considered the rival submissions of learned Counsel for the parties and on perusal of record we find that the findings recorded by the Inquiry Officer and Disciplinary Authority against the Petitioner are based on material evidence on record and cannot be said to be perverse or without evidence, as such the findings

of Inquiry Officer and Disciplinary Authority in respect of the delinquency of the Petitioner pertaining to the charges levelled against him cannot be faulted with. Learned Counsel for the Petitioner could not point out any procedural illegality in holding disciplinary inquiry against the Petitioner, as such the disciplinary inquiry held against him cannot be faulted with on that count also. So far as quantum of punishment is concerned, in given facts and circumstances of the case, in our view, the quantum of punishment is proportionate to the charges found proved against the Petitioner and cannot be said to be excessive, exorbitant, irrational and in any manner disproportionate to the charges found proved against the Petitioner. As such, in given facts and circumstances of the case we are not inclined to interfere in the order impugned in the writ petition.

7. The submission of learned Counsel for the Petitioner that three members joint committee appointed by the Government for inspection of work under dispute had exonerated the Petitioner from the allegations levelled against him and had indicated the Executive Engineer responsible for financial and technical irregularities in the disputed construction work but in stead of taking disciplinary action against the Executive Engineer the Petitioner was wrongly and illegally subjected to disciplinary inquiry, appears to be misplaced and cannot be accepted for the simple reason that the Disciplinary Authority while passing detailed, reasoned and speaking order has categorically held that at the time of inspection made by three members joint committee the Petitioner did not furnish drawing, specification, measurement book and other documents relating to contracts awarded to the contractors and avoided the inspection of essential and relevant records whereas while holding formal disciplinary inquiry the Inquiry Officer has examined the aforesaid documents and found that the Petitioner has committed financial and technical irregularities while execution of repairing work of Adhwa Dam and out of five charges levelled against the Petitioner four charges were fully proved and only charge No. 3 was partly proved against him. Thus, after considering the findings of Inquiry Officer submitted in formal disciplinary inquiry on 9.6.2009 and after going through the reply of show-cause notice submitted by the Petitioner vide detailed and reasoned order running into several pages, the Disciplinary Authority has agreed with the findings of Inquiry Officer and also found the Petitioner guilty of the charges levelled against him. Therefore, the submission of learned Counsel for the Petitioner in this regard cannot be accepted.

8. Another submission of learned Counsel for the Petitioner that Executive Engineer was responsible for technical and financial irregularities but was not subjected to any disciplinary inquiry and Petitioner alone was singled out and discriminated in the matter of disciplinary inquiry, can also not be accepted for the aforesaid reasons and further reason that even if it is assumed that in given facts of the case, Shri O.P. Srivastav, the then Executive Engineer was responsible for technical and financial irregularities in the disputed construction but he was not subjected to any disciplinary action in such situation it can be assumed for the sake of arguments

that such approach of the Government is wrong and contrary to law even then in our considered opinion, the Petitioner cannot claim same benefits, under Article 226 of the Constitution of India on the alleged ground of discrimination and violation of Article 14 of the Constitution for the simple reason that judicial process cannot be abused to perpetuate the illegalities and any illegal or wrong order or action of the Government cannot be made foundation for claiming equality for enforcement of such order.

9. In this connection, it would be useful to refer a decision rendered by Hon"ble Apex Court in *State of Bihar and Ors. v. Kameshwar Prasad Singh and Anr.* JT 2000 (5) SC 2306 : AIR 2000 SC 306, wherein, while dealing with the scope and content of Article 14 of the Constitution of India, in para 30 of the decision, Hon"ble Apex Court observed as under:

30". The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in [Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others](#), held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the Petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

Again in [Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others](#), this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the Respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus, considered, we hold that the High Court was clearly in error in directing the Appellants to allot the land to the Respondents.

In [State of Haryana and Others Vs. Ram Kumar Mann](#), This Court observed:

The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstances without any rational basis or relationship in that behalf. The Respondent has no right whatsoever and cannot be given the relief wrongly given to them, i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstances person claim equality u/s 14 for reinstatement? The answer is obvious "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.

10. In view of aforesaid legal position stated by the Hon. Apex Court, we are of the considered opinion that even if Shri O.P. Srivastava, the then Executive Engineer, Sirsi Dam Project, Mirzapur, had committed any technical and financial irregularity in the matter of awarding contracts and execution of those contracts and Govt. has committed wrong in not taking any disciplinary action against him, even then, the Petitioner cannot claim same and similar benefit on the ground of alleged discrimination, as the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in negative manner. The benefits extended to some persons in an irregular or illegal manner cannot be claimed by citizens on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in this Court. In our view, before a claim based on equality clause is upheld it must be established by the Petitioner that his case being just and legal and has been denied to him while it has been extended to others and in this process there has been a discrimination. In case such action is repeated in case of the Petitioner also in that eventuality the same illegality would be repeated, as such this Court cannot ask the Respondents to repeat the same illegality and irregularity which has been caused in favour of O.P. Srivastava, the then Executive Engineer.

11. However, having regard to the facts and circumstances of the case, we are of the view that the State Government should give a fresh look in the matter of alleged financial and technical irregularity committed by Shri O.P. Srivastava, the then Executive Engineer while awarding and executing contracts of repairing work of Adhwa Dam and pass appropriate order on the basis of materials collected by the

three members committee and other inquiring bodies which were entrusted to make inquiry in the complaints received in respect of financial and technical irregularities committed by the officers. Such order should be passed in accordance with law without being influenced by any observation made by us as we have not examined the case of Sri O.P. Srivastava on merit and nor his case was before us. We have proceed to make aforesaid observation merely on the basis of assertions made by the Petitioner and materials placed before us, without going in to merits, but still we hope and trust that in case any material is found objectionable against Sri O.P. Srivastava in such investigation and inquiry, Government should deal appropriately in accordance with the provisions of law.

12. With the aforesaid observation and direction, the instant writ petition is liable to be dismissed. Accordingly, writ petition fails and is dismissed.