Ashok Kumar Vs State of U.P. and Another

None

Court: Allahabad High Court

Date of Decision: Sept. 5, 2006

Citation: (2006) 7 ADJ 589 : (2006) 4 AWC 4133

Hon'ble Judges: V.C. Misra, J; Amitava Lala, J

Bench: Division Bench

Judgement

Amitava Lala, J.
The order impugned under challenge being dated 7.8.2006 is Annexure-9 to the writ petition, whereunder the power of

drawing and disbursing of the Executive Engineer, M.L.C.D., Varanasi was withdrawn by the Senior Deputy Accountant General (Works)

requesting the State to make an alternative arrangement for smooth functioning of the division immediately. Such order has been challenged by

saying that the Senior Deputy Accountant General (Works) or the Accountant General has no authority to take an action, which is in the nature of

disciplinary action. This action is in persona against the petitioner herein. By filing counter-affidavit several provisions of Financial Handbook have

been shown by the respondents. Learned Counsel appearing for the respondent No. 2 said that first of all one aspect is to be clarified by this

Court as to who are the Divisional Officers. Now, we get the meaning of the same under Article 22 of Chapter II of the Financial Handbook, as

follows:

22. Divisional Officer.Ã¯Â¿Â½In this volume, this term is applied to an executive officer of the department who is in-charge of the division and is usually

of the rank of an executive engineer. It is also applicable to an officer of the department who is not subordinate to another executive or disbursing

officer of the department, even though the executive charge held by him may not be recognized as a ""division"" by the Government. Thus, the officer

in-charge of an independent sub-division will also be treated as a divisional officer for the purposes of these rules.

Therefore, one aspect is very clear that Executive Officer is a Divisional Officer. Now, about the power in respect of drawing and disbursing, we have gone through Article 133, which is as follows:

133. Disbursing officers of the department obtain cash for disbursement in two ways, viz. directly by bills drawn on the treasury or by means of cheques. For payment of pay and allowances of Government servants on the regular establishment not charted directly to works, heads of offices and other officers draw bills on treasuries in prescribed forms in accordance with the rules in Chapter XXI. All other disbursements are made by divisional officers, who may empower sub-divisional officers to make disbursements on their behalf. For this purpose, divisional officers are ordinarily placed by the Accountant-General in account with one or more treasuries within their division and they may either authorize sub-divisional officers to obtain money from the treasuries with the jurisdiction of the latter by drawing cheques or place them in funds by means of a fixed imprest or by transfer of cash from the divisional cash chest.

2. The contention of the petitioner is that if any action for irregularities are taken, that can only be taken by the State being appointing authority on the basis of the recommendation of the Accountant General. He or they cannot suo motu take action as against the officers. Learned Counsel appearing for the petitioner has also placed before this Court Annexure-1 to the rejoinder-affidavit by saying that Immediate superior authority, being the Englneer-in-Chief, has already communicated by a letter dated 25.8.2006 that there are no financial irregularities. However, the learned Counsel appearing for the respondent No. 2 by showing last portion of the letter has contended that unless power was lying with the Accountant General or Deputy Accountant General, there was no necessity to communicate to withdraw such power.

3. According to us, such portion of the letter making request to restore the power of drawing and disbursing of the Executive Engineer, is superfluous in nature as the authority, which has passed the order impugned, cannot take any disciplinary action excepting making a recommendation to the State. However, when we find from the letter of the superior authority that there is no financial irregularity, we cannot pass any order, which may unnecessarily create a complication in the service career of the petitioner. The scope is yet open to the State if there is any irregularity. The order impugned dated 7.8.2006, Annexure-9 to the writ petition, cannot be sustained, hence it is hereby quashed. The writ petition is, thus, disposed of.

4. No order is passed as to costs.

V.C. Misra, J.

5. I agree.