

Pushpendra Singh Yadav and Hemvir Singh Vs State of U.P.

Court: Allahabad High Court

Date of Decision: Oct. 1, 2007

Acts Referred: Constitution of India, 1950 " Article 226, 311

Citation: (2008) 6 AWC 6134 : (2007) 115 FLR 1135

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

The petitioner who was appointed as Police Constable has come up in this writ petition against the order of termination of his services dated

12.9.2007 passed by the Senior Superintendent of Police, Agra. The counsel for the petitioner submits that since the fundamental right of the

petitioner as guaranteed under Article 311(2) of the Constitution has been violated, hence he has come up in this writ petition before this Court.

2. He also submits that Rule 8(2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 provides

that no Police Officer shall be dismissed, removed or reduced to rank except after proper inquiry and disciplinary proceedings as contemplated in

the enquiry.

3. The counsel for the petitioner further submits that the petitioner has not been afforded an opportunity of hearing before passing the impugned

order of termination hence, the principle of natural justice has been violated.

4. In support of the aforesaid contention he has placed reliance upon the following rulings.

1. (2002) 1 UPLBEC 705 Pradeep Kumar Singh v. U.P. State Sugar Corporation and Anr. And

2. (2006) 3 UPLBEC 2569 Sadan Lal v. State of U.P. and Ors.

5. In paragraph 13 of the judgment rendered in Pradeop Kumar Singh (supra) the Court has placed reliance upon the judgment of the case of

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in which it was held-

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ

petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar

in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there

has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vices of an Act is

challenged.

6. In case of *Sadan Lal* (supra) the Court allowed the writ petition by setting aside the termination order of the petitioner holding that the services

of the petitioner were terminated without issuing any charge sheet and without giving an opportunity of hearing and held that such termination is

illegal and is in violation of the relevant provisions of law. In that case the Court has not touched the question of alternative remedy available to the

petitioner.

7. Thus the Apex Court itself in the case of *Whirpool Corporation* held that remedy under Article 226 of the Constitution is discretionary. Though

alternate remedy may not be a bar but where a statutory remedy is provided the High Court may not entertain a writ petition.

8. In my opinion, the petitioner can also raise all these questions i.e. violation of the Fundamental rights, violation of the principle of natural justice

and not affording of opportunity of hearing before the Revisional Court as well as before the U.P. Public Services Tribunal.

9. The allegations against the petitioner are that the Chowki Incharge has taken Rs. 5,000/- in collusion with the petitioner in a criminal case, which

is quite serious in nature.

10. Moreover, the appeal is provided u/s 20 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991.

The appeal is a continuation of proceedings. The petitioner has not only a statutory remedy of appeal u/s 20 of the aforesaid Rules but has also a

remedy of revision u/s 23 of the aforesaid Rules if he is aggrieved by the decision of his appeal u/s 20 of the aforesaid Rules. Even thereafter the

petitioner has an efficacious and alternative remedy of approaching the U.P. Public Services Tribunal if he is aggrieved by the order under revision,

hence this Court is not inclined to interfere in this matter.

11. For the reasons stated above, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.