(2014) 08 AHC CK 0103

Allahabad High Court

Case No: Special Appeal No. 1128 of 2005

Director		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Aug. 14, 2014

Citation: (2014) 8 ADJ 578 : (2014) 106 ALR 629 : (2014) 143 FLR 941

Hon'ble Judges: Rakesh Tiwari, J; Akhtar Husain Khan, J

Bench: Division Bench

Advocate: Siddharth Singh, Advocate for the Appellant; Ashok Khare, P.N. Ojha and Vijay Kumar Singh, Advocate for the Respondent

Judgement

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Rakesh Tiwari, J.
Heard learned Counsel for the parties on Civil Misc. Delay Condonation Application No. 233079 of 2013 and Civil Misc. Restoration Application No. 233082 of 2013 and perused the affidavits filed in support of the aforesaid applications. Cause shown is sufficient. Delay is condoned. The application for condonation of delay is allowed. The order dated 3.9.2011 dismissing the appeal in default is recalled and the appeal is restored to its original number and status. Heard learned Counsel for the parties on merit with regard to special appeal and perused the record.

2. This Intra-Court appeal has been preferred challenging the validity and correctness of the impugned judgment and order dated 15.4.2004 passed in Civil Misc. Writ Petition No. 5596 of 1998, Harbansh Singh v. State of U.P. and others, whereby the aforesaid writ petition was allowed.

3. Brief facts giving rise to the instant appeal are that Harbansh Singh, respondent No. 2 (since deceased) was working as the Officer-in-Charge at Sugarcane Breeding and

Research Centre, Nichlaul, Mahrajganj. While working he was charge-sheeted and after an enquiry his services were terminated by the order dated 21.1.1998. Aggrieved, respondent No. 2 (since deceased) preferred Civil Misc. Writ Petition No. 5596 of 2004, Harbansh v. State of U.P., and others, which was allowed vide judgment and order dated 15.4.2004, the relevant portion of which reads thus:

"Clause 18.10 of the Service Rules provides that before any action is taken, the enquiry report ought to be supplied to the incumbent. A clear statement to the effect that the enquiry report was not supplied to the petitioner before the impugned order was passed has been made in paragraph 14 of the writ petition. This statement has not been denied in the counter-affidavit, though it has been explained that the show cause notice was based upon the enquiry report and the petitioner himself never demanded a copy of the report. The law casts a duty upon the employer to supply a copy of the enquiry report before or alongwith the show cause notice in case the Enquiry Officer is other than the Disciplinary authority. In the present case, both the authorities were different and it is immaterial whether the incumbent had demanded the copy of the enquiry report. The law in this regard is very settled that if the enquiry report is not supplied, the resultant order is vitiated as non-supply would be in violation of principles of natural justice. The Apex Court in Union of India and others Vs. Mohd. Ramzan Khan, Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, has consistently taken this view. In my view, the contention of the learned Counsel for the petitioner has substantial force and the impugned order is not legally sustainable.

Normally the matter should be remanded to the authorities concerned for passing orders afresh after supplying a copy of the enquiry report, but since Harbansh Singh is already dead, remand would be futile.

In view of the discussions hereinabove, the writ petition succeeds and is allowed and the impugned order dated 21.2.1998 is hereby quashed. The respondents are hereby directed to release the entire salary payable to Sri Harbansh Singh to his heirs who are petitioners in this case in accordance with law and to further release the family pensions etc. payable to them within a period of ten weeks from the date of submission of a certified copy of this order.

No order as to costs."

4. Feeling aggrieved by the aforesaid judgment and order dated 15.4.2004, appellants have filed this appeal on the ground that it is settled law that mere non-supply of copy of inquiry report would not make the termination order bad and delinquent employee has to explain and demonstrate that non-supply of copy of inquiry report has affected his right or caused prejudice to him; that the Writ Court has failed to consider that respondent No. 2 (since deceased) was charged with serious offences of misconduct and misappropriation of public fund and that the Writ Court by the impugned judgment has erroneously directed the appellants to pay full back wages and since the respondent No. 2 had expired in the

mean time, a direction has been issued to pay family pension to his family. It is stated that the learned Single Judge has failed to consider that before terminating the services of respondent No. 2 (since deceased), the appellants had afforded full and fair opportunity of hearing to him, hence, in this view of the matter, the impugned judgment and order is liable to be set aside.

5. In support of the aforesaid grounds, learned Counsel for the appellants has relied upon paragraph 20 of the judgment rendered in the case of Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, . Paragraph 20 of the judgment reads thus:

"20. It was also observed in B. Karunakar case that in the event the enquiry officer"s report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice has been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee."

6. Per contra, learned Counsel for the respondents submits that a copy of the inquiry report was not supplied to respondent No. 2 (since deceased) either after conclusion of the inquiry or alongwith the show cause notice issued by the Disciplinary Authority and as such the termination order depriving him a reasonable opportunity of hearing and being in violation of principles of natural justice was illegal. According to him, the Writ Court has rightly set aside the termination order and there being no illegality or infirmity in the impugned order, hence it requires no interference by this Court.

7. After hearing learned Counsel for the parties and on perusal of the record it appears that Clause 18.10 of the Service Rules provides that before any action is taken against a delinquent employee, copy of the inquiry report should be supplied to him. In paragraph 14 of the writ petition it was averred by the petitioner-respondent No. 2 (since deceased) that the copy of the inquiry report was not supplied to him before passing of the impugned order of terminating his services. This averment is not denied in the counter-affidavit, hence being un-rebutted is liable to be accepted. Moreover, it was duty of the employer to provide a copy of the inquiry report to the delinquent employee on conclusion of the enquiry or alongwith the show cause notice in case the Enquiry Officer was other than the Disciplinary Authority. It is well settled law that if the copy of the inquiry report is not supplied to the delinquent employee, it would vitiate the order of punishment as has been held in the cases of Union of India and others Vs. Mohd. Ramzan Khan, and Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, .

8. In our considered opinion, the learned Single Judge has rightly held that normally in such cases the matter should be remanded to the authorities concerned for passing order afresh after supplying a copy of the inquiry report but respondent No. 2 (since deceased) has already expired, remand would be futile.

9. As regards the ruling cited by the learned Counsel for the appellants it is sufficient to say that it is clearly distinguishable and is not applicable to the facts and circumstances of the present case. There appears to be no illegality or infirmity in the impugned order of the learned Single Judge, hence the special appeal is liable to be dismissed. For all the reasons stated above, the special appeal is dismissed. No order as to costs.