

## Nagendra Kumar Thakur - Petitioner @HASH State of U.P. And 5 Others

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Oct. 19, 2016

**Acts Referred:** Constitution of India, 1950 - Article 226

**Citation:** (2016) 11 ADJ 134 : (2017) 1 ESC 112

**Hon'ble Judges:** Vipin Sinha, J.

**Bench:** Single Bench

**Advocate:** Vineet Kumar Singh and H.N. Singh, Advocates, for the Petitioner; C.S.C, for the Respondents

**Final Decision:** Allowed

### Judgement

Vipin Sinha, J. - The present writ petition has been filed seeking the following prayer:

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.04.2014 passed by the respondent no. 2,

impugned order dated 18.10.2013 passed by the respondent no. 3 and impugned order dated 01.07.2013 passed by the respondent no. 4.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the impugned orders referred to

above,

(iii) Issue a writ, order or direction in the nature of certiorari quashing the finding/report dated 22.05.2013 submitted by the Presiding

Officer/Enquiry Officer, Pipari, Sonebhadra and the disciplinary proceedings initiated against the petitioner may also be quashed.

(iv) Issue a writ order or direction in the nature of mandamus commanding the respondents to pay the arrears of salary admissible to the post of

Leading Firearm already deducted pursuant to the impugned orders referred to above for a period of one year with effect from 01.06.2013 to

31.05.2014 to the petitioner along with interest at market rate.

(v)  $\tilde{A} \hat{A}_{\hat{A}} \hat{A} \frac{1}{2} \dots$

(vi)  $\tilde{A} \hat{A}_{\hat{A}} \hat{A} \frac{1}{2} \dots$

2. Contention of learned counsel for the petitioner is to the effect that initially a complaint was filed against the petitioner with regard to his

character and also a theft of a wireless and the petitioner was placed under suspension. The complaint is Annexure-7 at page 60 to the writ

petition.

3. Aggrieved against the suspension order, the petitioner has filed a writ petition before this Court being Writ Petition No. 39172 of 2012, which

was disposed off finally on 16.08.2012 with the following direction:

Considering the facts and circumstances, disciplinary proceedings against the petitioner may go on but the effect and operation of the suspension

order dated 28.07.2012 shall remain stayed. The respondents are further required to conclude the disciplinary proceedings in accordance with law

expeditiously, preferably, within a period of two months from the date of receipt of certified copy of this order subject to cooperation by the

petitioner.

4. Subsequently, a charge sheet was served upon the petitioner and thereafter enquiry proceedings were initiated and in the enquiry proceedings

the petitioner was found guilty and a punishment was proposed. Relevant portion of the enquiry report reads as follows:

cpko i{k ds lk{kh dze"%" Jh fgjkeuh iq= cqMqd fuoklh mjekSjk Fkkuk jkcVZ~lxat tuin lksuHknz] Jh ykyefu ik.Ms; iq= LoO mfnr ik.Ms; fuoklh yks<+h tuin lksuHknz]

Jh cnzh izlkn iq= jkey[ku "kekZ fuoklh ykS<+h Fkkuk jkcVZ~lxat tuin lksuHknz vkjsfir yM+dh ds firk Jh NksVsyky iq= Maxj fuoklh yks<+h Fkkuk jkcV~Zlxat tuin

lksuHknz ,oa vkjsfir yM+dh dh ekWa Jherh ckch nsoh iRuh NksVsyky fuoklh yks<+h Fkkuk jkcVZ~lxat tuin lksuHknz ds vfHkdFku ,oa muls iwNs x;s iz"uksa ds mRrj

esa vkjsih ,oa vkjsfir efgyk ehjk dks cnuke djus ds fy, >wBh vQokg Qsykus dh ckr dgh x;h rFkk vkjsfir efgyk }kjk vkjsiksa dk [k.Mu djrs gq;s vkjsfir yhfMax

Qk;jeSu dks u tkuus ,oa igpkuus rFkk fdh izdkj ls laca/k u gksus dh ckr dgh x;h gSA cpko i{k ds vfHkdFkuksa ,oa iz"uksa ds mRrj ls vkjsih dh rFkk dfFkr efgyk ehjk

ls voS/k laca/k u gksus dh ckr ifjyf{kr gks jgh gSA

vfHk;kstu i{k ds xokgksa us vfHkdFkuksa ,oa izfrijh{kk esa vkjsih yhfMax Qk;jeSu ukxsUnz dqekj Bkdqj ds pkjf=d f"kd;rk;sa dh ckr crk;h x;h gS tcfD cpko i{k ds

lkf{k;ksa }kjk vkjsi dk [k.Mu djrs gq;s fdh izdkj dk laca/k esa vkjsih ls u gksuk crk;k x;kA

foHkkxh; dk;Zokgh ds dze esa vkjsih ds fo:) ijhf{kr vfHk;kstu ,oa cpko i{k ds lkf{k;ksa ds vfHkfyf{kr fd;s x;s c;ku rFkk ijh{kk@izfrijh{kk ,oa vkjsih }kjk vkjsi i= ds

dze esa izLqr fd;s x;s izR;qRrj ,oa izkjfEHkd tkWap vkj;k rFkk i=koyh ij miyC/k vfHkys[kksa rFkk lexx lk{;ksa ds ifj"kyu] fo"ys""k.k ls vkjsih ukxsUnz dqekj Bkdqj ds

fo:) ehjk uked yM+dh ls izR;{k@ijks{k :i ls voS/k laca/k gksus ds izekf.kd lk{; ugh ik;s fdUrj vkjsih ukxsUnz dqekj Bkdqj iqfyl foHkkx ds vuq"kkflr cy esa yhfMax

Qk;jeSu in ij gksrs gq;s pkjf=d vkpj.k dk izn"kJu fd;k tkuk ik;k x;k ftlds dkj.k in dh xfjek ,oa iqfyl foHkkx dh Nfo /kwfey gqbZ ftlds fy, yhfMax Qk;jeSu ukxsUnz dqekj

Bkdqj iw.kZr;k nks""kh ik;s tkrs gSA

5. Aggrieved against the said proposed punishment dated 22.05.2013, the petitioner filed an appeal and the appeal too was dismissed vide order

dated 18.10.2013. Thereafter, the petitioner filed a second writ petition being Writ Petition No. 71018 of 2013 and the said writ petition was also

dismissed on 02.01.2014 on the ground that petitioner has an statutory alternative remedy of filing a revision under Rule 23 of the Rules and thus,

on this ground itself, the said writ petition was dismissed. In compliance of the order of the Writ Court dated 02.01.2014, the petitioner filed a

revision, which has been dismissed vide order dated 13.04.2014, aggrieved against which, the present writ petition has been filed.

6. At the very outset, the attention of the Court has been drawn to the complaint, which is to the effect that the character of the petitioner is

doubtful and thus, the matter may be enquired into and it appears that thereafter the matter was enquired into by the LIU Unit and the report of the

LIU Unit is Annexure-8, page 61 to the writ petition, a perusal of which shows that there are only general allegations and there is no specific

finding as to whether any woman or girl has lodged a complaint or has made any allegation against the petitioner.

7. The attention of the Court has also been drawn to the enquiry proceedings and the finding recorded therein. The relevant finding is being quoted

herein below:

iqfyl foHkx ds vuq"kkflr cy esa yhfMax Qk;jeSu in dh xfjek ds fo:) vkpj.k dk nks""kh ikrk gwWaa yhfMax Qk;jeSu dks bl nks""k fy;s mRrj izns"k v/khuLFk Js.kh ds

iqfyl vf/kdkfj;ksa dh (n.M ,oa vihy) fu;ekoyh 1991 ds fu;e&4(d) ds nh?kZ "kflr;ka vUrxZr mifu;e rhu esa fu/kkZfjr n.M le; osrueku esa fuEuLrj izdze ij ,d o""kZ ds fy;s

voufr dk n.M izLrkfor djrk gwWaa

8. Thus, it is apparent that even in the enquiry proceedings nothing incriminating was found against the petitioner and even though the enquiry

officer has given a finding that there is no evidence on record to show that there is any complaint against the petitioner but still solely on the ground

as quoted above, punishment has been proposed against the petitioner.

9. Aggrieved against the said proposed punishment, the petitioner had filed an appeal and in the appeal, the Appellate Authority has perused the

statement of Sri R.K. Rai, Fire Service Officer, who has given a detailed report, which reads as follows:

mlds ckn eSaus vius Lrj ls tkudkj izklr fd;k rks vkjksi lgh izhrh gqvk rFkk Kkr gqvk fd mDr yhfMax Qk;jeSu dk tuin ds vU; {ks= esa Hkh dbZ yM+fd;ksa ,oa vkSjrkSa

ls laca/k gS rFkk os izk;% vkrh tkrh gSA Qk;jeSu ds lkFk dksbZ vugksuh u gks rFkk iqfyl foHkx dh Nfo cpkus ds mn~ns"; ls bldh fyf[kr lwpuq iqfyl v/kh{kd dks fn;k]

bl ij fopkj.kh; ;g gS fd vfXu"keu vf/kdkjh }kjk fdlh yM+dh ;k vkSjr dk uke vafdr ugha fd;kA vkt rd bl laca/k esa turk ds fdlh O;fDr }kjk f"kd;rh izkFkZuki= ugha fn;k

x;kA QthZ :i ls tkWap ds nkSjku ehjk iq=h NksVsyky dk uke yk;k x;k ftlus o mlds ekrk firk us ihBklhu vf/kdkjh dks crk;k fd os ukxsUnz dqekj Bkdqj dks u rks tkurs gSA

vkSj u gh igpkurs gSA tkWap o foHkkxh; dk;Zokgh ds nkSjku dbZ lkf{k;ksa dks ijhf{kr fd;k x;k] ftUgksaus Hkh ?kVuk ds IEcU/k esa vufHkKrk izdV dh gSA

,y0vkbZ0;w0 dh vk[k;k Hkh iw.kZr;k eux<+Ur ,oa QthZ gS] D;ksafd mlesa Hkh fdLh yM+dh ;k efgyk dk uke vafdr ugha gSA fujh{k;d ,y0vkbZ0;w0 }kjk crk;k fd muds

}kjk tkjh m0fu0 ,y0vkbZ0;w0 Jh iUuk yky frokjh ls dj;k x;h gSA tkWap ds nkSjku fdLh yM+dh dk c;ku vafdr ugha fd;k x;k gSA

10. But still the Appellate Authority proceeded to dismiss the appeal. Thus, it is clear that there is no evidence against the petitioner and on the

basis of conjectures and surmises and being hypersensitive to the reputation of the Fire Department, the appeal was dismissed.

11. Similarly, the Revising Authority also without appreciating the fact that there was no evidence on record whatsoever, which may show that the

petitioner was having illicit relations with any woman or girl has dismissed the revision vide order dated 13.04.2014.

12. Learned counsel for the petitioner has vehemently submitted that there was no evidence whatsoever before the enquiry officer or before the

Appellate Authority or Revisional Authority regarding his having illicit relations with any woman or girl and no complaint of any sort was received

from any woman or girl and thus no criminality can be attributed to his character.

13. Learned counsel for the petitioner further submits that initially the petitioner was implicated in a case of wireless theft, which was ultimately

closed after recovering the amount from the petitioner even though he was not involved in the said theft.

14. Aggrieved against the said implication, the petitioner has filed a number of complaints against his seniors before the National Commission,

Backward Commission and Police Authorities, aggrieved against which the higher authorities have implicated him in the present proceedings.

15. It is also submitted that acting on the said complaints, enquiry was also conducted against the respondent no. 6 in which charge sheet has been

served upon the respondent no. 6.

16. Heard Sri Vineet Kumar Singh, learned counsel for the petitioner and learned standing counsel for the respondents.

17. Learned standing counsel does not dispute the fact that as far as the report of the LIU Unit is concerned, it seems that there is no complaint

against the petitioner. In the report itself there is no incriminating material which may show the involvement of the petitioner in any illegal activity or

immoral conduct or doubt about the character of the petitioner. There is nothing on record to show that the petitioner was having any illicit relation

with any woman or girl. The entire proceedings smacks of malafide, which are writ large on the face of the record and apparently the same has

been initiated in view of the fact that the petitioner had lodged a complaint against the respondent no. 6.

18. In view of aforesaid facts and circumstances of the case, the writ petition is allowed. The impugned orders as mentioned in the prayer are

quashed and set aside.

19. In paragraph no. 37 of the writ petition, it has been mentioned that in pursuant to the impugned orders an adverse entry has been made in the

service record of the petitioner and the order imposing punishment has already been given effect to.

20. In view of aforesaid, this Court deem it fit to direct that the adverse entry, if any, in pursuance of the impugned order in the service record shall

be expunged within a period of one month from the date of production of certified copy of this order. It is further directed that in case any

deductions from the salary of the petitioner has been made, the same shall be refunded to the petitioner within a period of one month from the date

of production of certified copy of this order.