

RESERVED

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 10788 of 2023

Petitioner :- Masood Ahmad Khan

Respondent :- State of U.P. and others

Counsel for Petitioner :- Siddharth Khare, Senior Advocate

Counsel for Respondent :- C.S.C., Manas Bhargava, Nipun Singh

Hon'ble J.J. Munir,J.

This writ petition is directed against an order of suspension from service pending inquiry dated 21.06.2023 passed against the petitioner by the Chairman, Nagar Palika Parishad, Nethaur, District Bijnor.

2. In order to set the record straight, it is observed at the outset that the petitioner had mistakenly filed, along with the writ petition, a copy of the suspension order relating to another employee, also dated 21.06.2023, in place of the impugned suspension order. This was the result of a clerical error and the error being technical, was permitted to be rectified by bringing on record a copy of the impugned order (relating to the petitioner) *vide* order dated 17.07.2023. The said order has been brought on record through a supplementary affidavit dated 18.07.2021.

3. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Kauntey Singh, learned Counsel for the petitioner, Ms. Monika Arya, learned Additional Chief Standing Counsel on behalf of respondent Nos. 3 & 4 and Mr. Manas Bhargava, learned Counsel representing the Lokayukta, Uttar Pradesh.

4. The submission of Mr. Ashok Khare, learned Senior Advocate is that the impugned order, ordering suspension and initiation of departmental proceedings passed by the Chairman, Nagar Palika Parishad, Nethaur, Bijnor is without jurisdiction, because on identical grounds, the services of the petitioner had earlier been terminated by the Chairman, Nagar Palika Parishad, Nethaur, Bijnor *vide* an order of

16th September, 2019, which was quashed by this Court on ground that no departmental inquiry was held, and further that there was no cutting or overwriting regarding the petitioner's date of birth entered in his service book, as evident from an extract of the service book brought on record with the counter affidavit. It is pointed out by Mr. Khare that this Court not only quashed the earlier order terminating the petitioner's services, but also recorded a finding that there is no cutting or overwriting evident from the extract of the petitioner's service book brought on record along with the counter affidavit. On the foot of this fact, it is urged by the learned Senior Advocate that this Court proceeded to quash the order dated 16.09.2019 terminating the petitioner's services not only on ground of denial of opportunity or the absence of an inquiry being held against him, but also on the basis of a finding about the charge that in the extract of the service book brought on record by the respondent themselves, there is no cutting or overwriting to be found about the petitioner's date of birth. This Court, by the judgment and order dated 05.11.2019 passed in Writ - A No. 15338 of 2019, quashed the order dated 16.09.2019, terminating the petitioner's services and directed his reinstatement, with all consequential benefits. It is urged that no liberty was granted to the respondent-Nagar Palika Parishad to proceed afresh on the same charge against the petitioner. Therefore, according to Mr. Khare, there is no jurisdiction with the respondents to place the petitioner under suspension and proceed against him on the same charge of manipulating his date of birth in the service book.

5. It appears that the present order of suspension is a sequel to a report dated 24.03.2023 submitted by the Lokayukta of Uttar Pradesh to the State Government on a complaint made by one Wasiuddin against Smt. Firoza Khatoon, the Chairman, Nagar Palika Parishad, Nethaur, Bijnor, Dharmdev, the Executive Officer of the aforesaid Nagar Palika Parishad, the petitioner - Mansoor Ahmad Khan, Ghanshyam Singh, Tax *Amin* and Shabina Anjum, a Peon with the Nagar Palika Parishad. The

findings of the Lokayukta at page no. 53 of the Paper Book, relating to the petitioner, carried in paragraph No. 11 (iii), read to the following effect :

iii- श्री मसूद अहमद के शैक्षणिक अभिलेख व सेवा अभिलेख में अंकित जन्मतिथि में स्पष्ट रूप से लगभग 08 वर्ष का अन्तर होने के कारण उनकी सेवाएं दिनांक 16.09.2019 को समाप्त की गयी। माननीय उच्च न्यायालय द्वारा रिट याचिका संख्या-15338/2019 में पारित आदेश दिनांकित 05.11.2019 द्वारा सेवा समाप्ति संबंधित आदेश दिनांकित 16.09.2019 अपास्त किये जाने के कारण श्री मसूद अहमद, लिपिक को सवेतन सभी परिणामित लाभों के साथ दिनांक 19.11.2019 को आरोपी लोक सेवक श्रीमती फिरोजा खातून द्वारा बहाल किया गया। माननीय उच्च न्यायालय के आदेश दिनांकित 05.11.2019 के विरुद्ध आरोपी लोक सेवक श्रीमती फिरोजा खातून द्वारा कोई अपील प्रस्तुत न करना तथा तत्काल श्री मसूद अहमद को समस्त लाभ के साथ बहाल करना यह प्रदर्शित करता है कि आरोपी लोक सेवक द्वारा अपने पदीय दायित्व का निर्वहन शुद्ध अन्तःकरण से ईमानदारी व निष्ठापूर्वक नहीं किया गया है।

6. The order dated 16.09.2019 passed by the Chairman, Nagar Palika Parishad, Nethaur, Bijnor shows that in fact, it is not an order of termination of services. It is an order ceasing the petitioner's services on the ground that he had already crossed the age of superannuation. The order of 16th September, 2019 was passed on the basis of recommendations of a committee set up by the District Magistrate, Bijnor to examine Wasiuddin's complaint that the petitioner's date of birth was manipulated and incorrect, that he had managed to show wrongly in his service records. The committee appointed by the District Magistrate had returned a finding that the petitioner's date of birth in his school records i.e. Madarsa Islamia Arabia Mohalla Bandukchiyan, Kasba Dhampur relating to Class V, showed his date of birth to be 25.05.1957. This finding was recorded by the aforesaid committee on the basis of a report by the headmaster of the aforesaid Madarsa dated 25.07.2019. It was mentioned there that the petitioner had passed his Class V from the said Madarsa. It appears that the Additional District Magistrate (Administration) Bijnor, acting on behalf of the District Magistrate, Bijnor, addressed a memo dated 03.09.2019, asking the

Chairman that the petitioner ought to have retired on 31.05.2017, going by his date of birth found by the committee appointed by him, and yet he was continuing in service, illegally drawing on the State exchequer. The Chairman, as would appear from the order dated 16.09.2019, without holding any kind of an inquiry or instituting disciplinary proceedings against the petitioner, acted on the communication of the Additional District Magistrate (Administration) Bijnor dated 03.09.2019, and ordered that the petitioner's services would end with immediate effect, as he had crossed the age of superannuation on 31.05.2017. It was also directed that salary drawn after the said date would be calculated and recovered from the petitioner's post-retiral benefits. A perusal of the order passed by this Court on 05.11.2019 in Writ - A No. 15338 of 2019 would show that this Court was of opinion that the order determining petitioner's services could not have been passed without the Nagar Palika Parishad holding an inquiry, and merely acting on the communication dated 03.09.2019 from the Additional District Magistrate (Administration) Bijnor, addressed to the Executive Officer. The relevant findings of this Court read :

To this submission, no plausible objection could be taken by Sri Manu Saxena learned counsel for the respondent-Nagar Palika Parishad. He has placed reliance on the alleged report of the Principal which finds reference in the communication dated 03.09.2019 sent by the Additional District Magistrate (Administration), Bijnor to the Executive Officer, Nagar Palika Parishad. The documents appended as Annexure C.A. No.1 to C.A. No.4 (pages 11 to 22) of the counter affidavit are the documents appended by the complainant in his complaint. None of the documents are record of enquiry made at the ends of the Nagar Palika Parishad. The reliance placed on the letter of the Principal dated 15.03.2019 appended at page no.'18' of the paper book is misplaced as the said letter has been issued to one Wasiuddin under the Right to Information Act' 2005.

It is further relevant to note that the extract of the service book appended as Annexure No.C.A. '5' makes it clear that the date of birth of the petitioner entered therein is 25.05.1965. The assertion of the petitioner that there is no

cutting or overwriting in the service book of the petitioner is substantiated from the extract of the service book brought on record with the counter affidavit. In absence of any departmental enquiry into the said complaint made at the ends of the Nagar Palika Parishad, the order of cancellation of appointment of the petitioner passed by the Chairman, Nagar Palika Parishad, Nahtaura, Bijnor, based on the communication dated 03.09.2019 by the Additional District Magistrate (Administration), Bijnor cannot be sustained.

The office order dated 16.09.2019 passed by the Chairman, Nagar Palika Parishad, Nahtaur, Bijnor is hereby quashed. The communication dated 03.09.2019 cannot be made basis for terminating the services of the petitioner and the same is liable to be ignored as such.

7. It is, no doubt, true that this Court quashed the order dated 16.09.2019 dispensing with the petitioner's service on ground that he had already crossed the age of superannuation, which, in turn, is based on a case that he manipulated his date of birth in the service record. It is also true that the order of this Court carries a remark that a perusal of the extract of the service book, appended as C.A. 5 to the counter affidavit, indicates the petitioner's date of birth to be 25.05.1965, and further that the petitioner's assertion, that there is no cutting or overwriting in his service book, is substantiated on a perusal of the record annexed to the counter affidavit. The order, in substance, however, proceeds on the basis that without the Nagar Palika Parishad holding an inquiry to determine the petitioner's services, it could not be done acting on the communication dated 03.09.2019 from the Additional District Magistrate (Administration). It is also trite to say that this Court did not expressly grant permission to the Nagar Palika Parishad to proceed against the petitioner afresh. Now, the submission of the learned Senior Advocate for the petitioner, that the effect of the findings recorded by this Court in the judgment and order dated 05.11.2019 leaves the Nagar Palika Parishad with no jurisdiction to proceed against the petitioner, in their disciplinary jurisdiction, does not appear to be correct. The reason is that this Court essentially disapproved the movement order given to the petitioner by the Nagar Palika Parishad on

the basis of an inquiry held by the District Magistrate's office and the communication from the Additional District Magistrate, without the Nagar Palika Parishad themselves holding an inquiry in the matter. Certainly, the Nagar Palika Parishad, Nethaur, Bijnor are the petitioner's employers and before taking a decision in the matter, if the petitioner had manipulated his date of birth in his service records, they ought to have held an inquiry. They could have held an inquiry *simplicitor* to determine the petitioner's date of birth, but more logically, it had to be disciplinary proceedings, because there was not just the question what the petitioner's date of birth is; it involved an allegation that the petitioner had manipulated his date of birth in the service records to his advantage.

8. The remark in this Court's order dated 05.11.2019 that Mr. Khare has emphasized much, to the effect that there is no 'cutting' or 'overwriting' in the petitioner's service book, as appears from the extract of the service book brought on record with the counter affidavit filed by the respondent in Writ - A No. 15338 of 2019, in the opinion of this Court, does not close all avenues of inquiry. The reason is that the charge against the petitioner appears to be based on the petitioner's educational records from the *Madarsa* where he had studied, *prima facie* evidencing his date of birth, on a certification by its Headmaster, as 25.05.1957, that had been manipulated and entered in the service book instead, as 25.05.1965. The manipulation could be done by the petitioner by 'scoring off' or 'overwriting' or in some other manner, particularly, as he had charge of all the service records, including his own. Therefore, to infer from the remarks of this Court in the judgment that the *factum* of there being no 'cutting' or 'overwriting' in the extract of a copy of the service book gives a *quietus* to the issue, would be flawed reasoning. This Court's order dated 05.11.2019 cannot be held to exclude the scope of any inquiry being undertaken by the Nagar Palika Parishad in its disciplinary jurisdiction to determine whether the

petitioner had, indeed, manipulated and caused an incorrect date of birth to be entered in his service records.

9. The other contention advanced by Mr. Khare, that once this Court had declined to grant liberty to the Nagar Palika Parishad to proceed in the matter afresh, there is no scope for any further inquiry or disciplinary proceedings being taken against the petitioner with regard to the allegation/charge of manipulating his date of birth in his service records, also does not appear to be well-founded. Reference in this connection may be made to the decision of the Supreme Court in **Devendra Pratap Narain Rai Sharma v. State of U.P. and others**¹. In that case, the appellant before the Supreme Court was an Inspector-Qanungo in the Revenue Department of the State of Uttar Pradesh. By an order dated 21.04.1952, he was placed under suspension pending inquiry into certain charges by the Collector. In June, 1952, the Collector recommended to the Land Reforms Commissioner that the appellant be reverted to the post of Naib Tehsildar. The Commissioner further recommended to the State Government that the appellant be dismissed from service. The State Government dismissed the appellant from service by an order of 16th September, 1953. The appellant brought a suit in the Court of the Civil Judge, Lucknow, challenging the validity of the order of dismissal, primarily on ground that he was denied an opportunity of hearing and showing cause. The Trial Judge dismissed the suit, but this Court, on appeal, reversed the decree. This Court held that reasonable opportunity was not afforded to the appellant, either before the recommendation was made for the imposition of penalty or before the infliction of punishment. The action was, therefore, violative of Article 311 of the Constitution of India. This Court, therefore, granted a declaration that the appellant's dismissal from service was void, inoperative and illegal, and the appellant must be deemed to be continuing in service. The appellant was reinstated to his original post on 30.03.1959. The appellant, upon reinstatement, applied to the

¹ AIR 1962 SC 1334

Accountant General for payment of salary and allowances due to him. The Accountant General informed the appellant that he was entitled to draw pay and allowances with effect from the date of his reinstatement. The appellant's claim for arrears of pay and allowances for the period 21.04.1952 to 28.04.1959 was referred to the State Government, who would decide about the terms and conditions of the appellant's reinstatement. The Accountant General, accordingly, informed the appellant that action would be taken on receipt of instructions from the State. The appellant was, again, suspended *vide* an order dated 11.07.1959 issued by the Board of Revenue. The appellant was denied salary for the period that he remained out of service, but held entitled to subsistence allowance alone. It was, however, provided that the period that he remained out of service will be time during which he would earn ₹1/- per month as token pay, and that the said period would be treated as one spent on duty for the purpose of pension. The appellant, on occasion, challenged the order placing him under suspension pending inquiry afresh and the order directing inquiry as well, regarding the charges while posted at Garautha, District Jhansi through a writ petition. He also prayed for a direction that his full salary be paid. This Court held that the inquiry was not barred, though the order fixing the petitioner's salary at ₹1/- per month by the Board of Revenue for the period of time that he remained out of service was quashed, with a direction for consideration of the matter afresh, in the light of relevant rules, after hearing the petitioner.

10. On appeal to the Supreme Court, it was held by their Lordships in **Devendra Pratap Narain Rai Sharma** (*supra*):

7. In our view, the State Government was competent to direct a fresh enquiry against the appellant for dereliction of duty even if such dereliction was in the period relating to which proceedings were previously started and the appellant had been dismissed from service. The appellant was not in the earlier proceedings exonerated by the High Court in respect of the alleged misconduct charged against him, and, in any event, charge against him

in the second enquiry was different from the charge in the first enquiry. The High Court had in the suit challenging the order passed in the first enquiry expressly observed that on the question as to misconduct and the punishment, no opinion was expressed. The suit filed by the appellant was decreed only on the ground that he had not been afforded a reasonable opportunity of showing cause against the charge against him and also the punishment decided to be imposed upon him.

8. Authorities on which reliance was placed by counsel for the appellants, namely, *Dwarkachand v. State of Rajasthan* [ILR (1957) Raj 1049] , *Kanak Chandra Bairagi v. Supdt. of Police, Sibsagar* [ILR (1955) Assam 191] and *Mohan Singh Chaudhari v. Divisional Personnel Officer, Northern Railway, Ferozepore Cantt.* [ILR (1957) Pub 1833] , do not support the plea that the second enquiry is, in the circumstances of the case, barred. An adjudication on the merits by a quasi-judicial body may or may not debar commencement of another enquiry in respect of the same subject-matter. But in this case we are concerned with the scope of the High Court order. The binding effect of a judgment depends not upon any technical consideration of form, but of substance. The High Court in the appeal filed by the appellant in Suit No. 163 of 1954 did not exonerate the appellant from the charges. The High Court decreed the suit on the ground that the procedure for imposing the penalty was irregular, and such a decision cannot prevent the State from commencing another enquiry in respect of the same subject-matter consistently with the provision of Articles 310 and 311. In *Dwarkachand* case in a previous enquiry the public servant concerned had been exonerated; and in *Mohan Singh Chaudhari* case [ILR (1957) Pub 1833] a decision by the civil court declaring illegal an order dismissing a public servant by an officer not authorised in that behalf was held binding on all the parties in proceedings under Article 226 till such decision was set aside in accordance with law. In *Kanak Chandra* case [ILR (1955) Assam 191] it was held that an order in exercise of powers of revision by the Governor under the authority reserved to him setting aside an order of censure passed by a subordinate authority and dismissing the public servant concerned from service did not amount to a second departmental enquiry. These cases do not lend support to the proposition that after an order passed, in an enquiry against a public servant imposing a penalty is quashed, by a civil court, no further proceeding can be commenced

against him even if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated.

9. If the State Government was competent to order a fresh enquiry, we see no reason why it would be incompetent to direct suspension of the appellant during the pendency of the enquiry.

11. No doubt, **Devendra Pratap Narain Rai Sharma** is a case where the order had been quashed, because the Court had set aside the dismissal order on ground of denial of opportunity and non holding of inquiry. There was no adjudication on merits. But, what is relevant are that the remarks of their Lordships to the effect that 'an adjudication on merits by a quasi-judicial body' may or may not debar commencement of another inquiry in respect of the same subject matter. The question here is, if the remarks of this Court that there was no 'cutting' or 'overwriting' in the service book of the petitioner, based on a perusal of the extract of service book brought on record with the counter affidavit, exhausts the entire scope of the charge against the petitioner. As already said, the charge against the petitioner is about manipulating his date of birth in his service records, which is founded on a comparison of the date of birth in his service book and that in his school certificate. Apparently, the manipulation need not necessarily come about as a result of any scoring out or overwriting of the date of birth in his service book by the petitioner. The petitioner's date of birth could have been recorded by a manipulation done otherwise than through 'cutting' or 'overwriting'. Interestingly, in this case, the order that was quashed by this Court did not come about on the basis of proceedings drawn by the Nagar Palika Parishad, which may reflect with precision the manner in which the petitioner is said to have manipulated his date of birth in his service records, when action was taken earlier.

12. Now, from a perusal of the suspension order and the remarks of the Lokayukta, it appears that the charge has stemmed from a difference between the petitioner's date of birth by as much as eight

years between that recorded in his service book and the one in his educational certificates. In view of these facts, the fact that this Court did not grant liberty to proceed afresh against the petitioner while quashing the order on ground of denial of opportunity and acting on an unauthorized report, together with a remark that there was no manipulation by 'cutting' or 'overwriting' in the service book, in the opinion of this Court, would not at all debar the Nagar Palika Parishad from proceeding afresh in their disciplinary jurisdiction to inquire into the charge whether, indeed, the petitioner has manipulated his date of birth in his service book. Of course, the charge would have to be clear in its terms and cannot be about the manipulation being done through 'overwriting' or 'cutting', a fact upon which this Court has pronounced with finality. The manipulation done in any other fashion would be open to inquiry, strictly in accordance with law, where the Nagar Palika Parishad would have to establish the charge against the petitioner by evidence led before the Inquiry Officer.

13. It is made clear that nothing said in this order would be construed as an expression on merits, regarding the validity or worth of the charge, either way, and the Inquiry Officer would be free to determine the charge on the basis of evidence led before him. Of course, as already said, the issue of 'scoring out' or 'overwriting' the petitioner's date of birth in the service book shall not be inquired into.

14. Before parting with this matter, it must be mentioned that it was urged by Mr. Manas Bhargava, learned Counsel for the Lokayukta, on instructions received, that the impugned order being one passed pursuant to recommendations by the Lokayukta, cannot be questioned before this Court, in view of the provisions of Section 17(2) of the Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975², which read :

17(2) No proceedings of the Lokayukta or the Up-Lokayukta shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or the Up-

2 'the Act of 1975' for short

Lokayukta shall be liable to be challenged, reviewed or quashed or called in question in any Court.

15. This Court must remark that the Lokayukta functions under the Act of 1975. The reference in Section 17(2) excluding the jurisdiction of the Court to review or quash the order of Lokayukta or Up-Lokayukta, except on ground of jurisdiction, cannot be pleaded as a bar to this Court's jurisdiction under Article 226 of the Constitution. The reference to 'Court' or bar to the Court's jurisdiction under Section 17(2) of the Act would apply to Courts of ordinary jurisdiction; not the High Court exercising its writ jurisdiction under Article 226 of the Constitution.

16. In the result, this Court holds that there is no good ground to interfere with the impugned order, but directs that the inquiry against the petitioner be concluded within a period of three months hence, wherein the petitioner shall cooperate. The petitioner, during the period of suspension, shall be paid his subsistence allowance regularly. In the event of delay in concluding the disciplinary proceedings beyond the period of three months, it would be open to the petitioner to move this Court again, questioning his continued suspension from service on the ground of delay.

17. This writ petition stands **disposed of** in terms of the orders aforesaid.

18. There shall be no order as to costs.

Order Date :- October 19, 2023

I. Batabyal

(J.J. Munir, J.)