

A.F.R.

Reserved

Court No. - 22

Case :- SERVICE SINGLE No. - 17321 of 2018

Petitioner :- Leeladhar

Respondent :- State Of U.P. Thru. Prin. Secy. Home And
Ors.

Counsel for Petitioner :- Avinash Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

Heard Shri Avinash Tiwari, learned counsel for the petitioner and learned State Counsel for the respondents.

The present writ petition has been preferred for quashing of the impugned dismissal order dated 03.05.2018 passed by the respondent no. 3 i.e. the Superintendent of Police, District Raibareli with all consequential benefits of the services.

The learned counsel for the petitioner has submitted that the petitioner was initially appointed on the post of Constable in the year 1986 and subsequently promoted as Head Constable in the year 2017. On 12.07.2017, one Smt. Archana, wife of late Makhan Kurmi made a frivolous complaint of bigamy against the petitioner. The I.G. (Lokasikayat), Uttar Pradesh vide its order dated 12.07.2017 directed respondent no. 3 i.e. the Superintendent of Police, District Raibareli to conduct a preliminary inquiry. The preliminary enquiry was conducted by Circle Officer, Salon. After culmination of the enquiry, the preliminary enquiry report was submitted on 30.08.2017. In the

preliminary enquiry, the complainant, Smt. Archana made a statement that she had in close proximity and having a love affair with the petitioner and they got married, from that wedlock, a son was born.

The Charge-Sheet dated 09.10.2017 was issued against the petitioner under Rule 41 of the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991.

The learned counsel for the petitioner has further submitted that in support of the charges levelled against the petitioner only two documents were relied, the first was the testimony given by the complainant during the preliminary enquiry and second one was the preliminary enquiry report, except that no other documents or evidence in support of the charges was enclosed along with the charge sheet. In reply thereto, the petitioner submitted its detailed reply denying the charges of bigamy.

The statement of the complainant was also recorded during the regular departmental enquiry, where the complainant has given a categorical statement that she does not reside with the petitioner nor she has married with him. She further made a statement that she lives along with her parents and having no child from the petitioner.

The learned counsel for the petitioner has further submitted that the Enquiry Officer only on the basis of the statement given by the complainant during preliminary enquiry drawn a conclusion that the case of bigamy is proved against the petitioner. It has further been submitted that except the statement of the complainant during the preliminary enquiry, no other

evidence or material was on the record before the enquiry officer, which could prove the charge of bigamy against the petitioner, thus, the impugned order of dismissal dated 03.05.2018 is only based on statement of the complainant recorded during the preliminary enquiry and the said fact is not disputed rather admitted in para 9 and 10 of the counter affidavit.

It has also been submitted that the evidence recorded during the preliminary enquiry cannot be used in regular departmental enquiry and in support of this placed reliance on the following judgments :-

- (1) *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra & others reported in AIR 1997 SC 2148.*
- (2) *Nirmala J. Jhala Vs. State of Gujarat and another reported in 2013 (31) LCD 762 (SC)*
- (3) *Champaklal Chimanlal Shah vs. Union of India reported in AIR1964 SC 1854.*
- (4) *State of U.P. Vs. Jai Singh Dixit reported in 1975 ALR 64*
- (5) *Raj Veer Singh Vs. State of U.P. and others reported in 2010 (10) ADJ 246.*

On the other hand, learned State Counsel has submitted that the complainant during the preliminary enquiry had made a statement before the Circle Officer, Salon that she had an affair with the petitioner and they married subsequently and from that, a son has born but failed to dispute the statement made on behalf of the petitioner that during the regular departmental enquiry, the complainant had given a statement denying the marriage and residing with the petitioner.

After hearing the learned counsel for the parties, the position which emerges out is that there was no evidence or material to prove the charge of bigamy against the petitioner in the regular departmental enquiry but the enquiry officer, on the basis of the statement given by the complaint Smt Archana during the preliminary enquiry arrived at a conclusion that charge of bigamy is proved against the petitioner.

Further, the Hon'ble Apex Court in the case of Narayan Dattatraya Ramteerthakhar (supra) has held that the preliminary enquiry has no bearing with the enquiry conducted after issuance of charge sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry, a preliminary enquiry loses its importance. Similarly, the Hon'ble Apex Court in the case of Nirmala J Jhala (supra) has held that evidence recorded in preliminary enquiry cannot be used in regular enquiry, as the delinquent is not associated with it, and opportunity to cross examine the persons examined in such enquiry, is not given. Using such evidence would be violative of the principles of natural justice. The preliminary enquiry is useful only to take a prima-facie view, as to whether there can be some material in the allegation made against an employee, which may warrant a regular enquiry.

The learned State Counsel has not able to show any other material or record, neither in the enquiry report nor in counter affidavit, which could prove the charge of bigamy against the

petitioner except the statement given by the complainant during the preliminary enquiry.

Further, the respondents failed to dispute that the order of dismissal of the petitioner was only based on the statement of the complainant made during the preliminary enquiry and as per the law discussed hereinabove, the enquiry officer conducting the regular enquiry erred in relying upon the statement given by complainant during preliminary enquiry, therefore, the finding holding that charge against the petitioner is proved, is vitiated under the law.

Taking into consideration the aforesaid discussion, it is found that the dismissal order of the petitioner dated 03.05.2018 passed by the respondent no. 3 is bad in the eyes of law and is hereby quashed.

The petitioner shall be reinstated in the service with immediate effect and is entitled for 50% of the back wages from the date of impugned order dated 03.05.2018.

The writ petition is *allowed*.

Order date :- 15.10.2020

Ashish