

Court No. - 6

Case :- WRIT - A No. - 393 of 2025

Petitioner :- Smt. Sarita Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Special Secy. Deptt. Of Agriculture Lko And 3 Others

Counsel for Petitioner :- Rajat Rajan Singh, Abhinav Mishra

Counsel for Respondent :- C.S.C., Abhinav Trivedi

Hon'ble Alok Mathur, J.

1. Heard learned counsel for the petitioner, learned Standing counsel for State- respondent No.s 1,3 and 4.

2. It has been submitted on behalf of the petitioner that the petitioner has retired from the post of Administrative Officer (Agricultural Directorate, U.P.) on 30.11.2021 and it is after nearly three years from the date of superannuation that charge sheet dated 14.8.2024 was served upon the petitioner with regard to certain allegations pertaining to making appointment on compassionate grounds while she was holding the post of Senior Assistant in the office of Directorate of Agriculture, U.P. It is further noticed that consequently the respondents could obtain sanction for prosecution from respondent No.2 on 27.3.2024 and accordingly it is in pursuance of the sanction so obtained that the respondents want to proceed with the departmental proceedings against the petitioner and issued the said charge sheet on 14.8.2024.

3. It has been submitted that a perusal of the charge sheet would indicate that there are four charges and three of them relate to one single incident pertaining to appointment on compassionate grounds in the year 2012 while one charge is of year 2021.

4. It has also been submitted by learned counsel for petitioner that the sanction in the present case has not been granted in terms of Article 351 A CSR, inasmuch as, there is no sanction by the Hon'ble Governor and only a letter of Special Secretary, Department of Agriculture, Government of U.P. has granted the sanction, which is illegal and arbitrary and without jurisdiction. He also relies upon the information received from the Department under the Right to Information Act dated 12.12.2024 wherein it has been stated that no letter or approval of the Hon'ble Governor is available on record.

5. This Court had directed learned Standing Counsel to obtain

specific instructions with regard to the fact that as to whether sanction of the Governor has been received under Article 351A of the CSR Rules prior to initiating disciplinary proceedings against the petitioner considering the fact that petitioner had superannuated from services on 30.11.2021.

6. Learned Standing Counsel on the basis of instructions received from Principal Secretary, Government of U.P. has informed that no sanction from the Governor under Article 351A of CSR Rules has been received but power has been exercised under Article 166(2) and 166(3) of the Constitution which provides for authentication to be made on behalf of Governor.

7. In the present case, the grant of sanction is not an executive action of the Government of the State which has to be taken in the name of the Governor but the reading of Article 351A of CSR Rules itself demonstrates that Governor reserves to himself the right of liberty for withdrawing the pension or any part of it.

8. In case the intention of the legislature was that the sanction has to be given by the State then the provisions of Article 351A would have been worded differently but the language that the Governor has reserved for himself clearly indicates that the said file pertaining to sanction has to be approved by the Governor.

9. This issue was also considered by Division Bench of this Court in the case of **Z.U.Ansari Vs. State of U.P. (Writ A No. 19485 of 2012):-**

"So far as the Rules of Business, 1975 are concerned, it is admitted to the State that these rules have been framed under Article 166 of the Constitution of India. Article 166 of the Constitution of India deals with the conduct of government business and provides that all executive actions of the Government/State shall be expressed to be taken in the name of the Governor and it is with reference to these actions of the State Government that a power has been conferred upon the Governor to frame the business rules. Article 166 of the Constitution of India reads as follows :
Article 166-- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated

shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business insofar as it is not business with respect to which the /governor is by or under this Constitution required to act in his discretion.?

We are of the considered opinion that the provisions of Article 309 of the Constitution of India operate in a separate field vis-a-vis the conduct of government business under Article 166 of the Constitution of India. They are not overlapping. Therefore, if under the service rules framed under Article 309 of the Constitution of India namely the Civil Services Regulations, 1975, it has been provided that sanction of the Governor would be necessary before initiation of the departmental proceedings with the service of the charge sheet upon the retired employee then such sanction has to be that of the Governor and not of the minister with reference to the U.P. Secretariat Instructions 1982 framed under the Rules of Business, 1975. We may also record that the U.P. Secretariat Instructions 1982, Chapter VII only provide that all business allocated to a department under the Rules of Business, 1975 is to be disposed of by or under the General or special directions of the minister in charge (Reference Business Regulations 3). It is, therefore, clear that only such business as allocated to the department under the Rules of Business, 1975 can be disposed of under the general or special directions of the minister in charge.

Nothing has been demonstrated before us to lead us to accept that the power to sanction the departmental proceedings in respect of a retired government servant has been allocated as a business to be disposed of under the general or special directions of the minister concerned under the Business Regulations.

We have, therefore, no hesitation to hold that the sanction of the minister referable to the Business Regulations in the facts of the case will not amount to the sanction of the Governor as contemplated by Regulation 351-A of the Civil Services Regulations, 1975.

So far as the judgment relied upon by the counsel for the respondent in the case of State of Orissa (Supra), we may record that the same is clearly distinguishable in the facts of the case specifically with reference to the Rules of Business, 1975 of the State of U.P. referred to by us.

In absence of sanction of the Governor, no departmental proceedings can be initiated against a government servant after his retirement, the impugned charge-sheet cannot be legally sustained. Accordingly, the charge-sheet dated 27.06.2011 is hereby quashed as also the departmental proceedings initiated thereto against the petitioner. The petitioner shall be entitled to all the consequential benefits with the result of the quashing of the charge-sheet and the departmental proceedings. The State is directed to take appropriate action in that regard within two months from the date a certified copy of the order is served upon the State Government.

Writ petition is allowed subject to the observations/direction made herein above."

10. Accordingly, it is noticed that the Division Bench was of the view that where the provision has been made for sanction to be granted by the Governor then any person other than the Governor cannot grant such a sanction and where the Minister referable to the business regulations in the previous case has granted the sanction was held to be illegal, arbitrary and without jurisdiction.

11. In the present case, admittedly the sanction has not been granted by the Governor and only the authentication has been done and the order passed treating it as if the sanction has been given by the State which in any case does not have any power to grant sanction under Article 351A of the CSR Rules. In either view of the matter, the sanction not having been granted by the Governor, the entire proceedings pursuant to such sanction are vitiated.

12. In light of the above, the writ petition is **allowed**. Accordingly, the impugned orders dated 27.03.2024 and 08.05.2024 and charge-sheet dated 14.08.2024 are quashed.

13. Petitioner is at liberty to granted to the respondents to proceed against the petitioner if they so chose strictly in accordance with law.

(Alok Mathur, J.)

Order Date :- 30.1.2025

Ravi/