

Court No. - 3

Case :- WRIT - A No. - 4208 of 2025

Petitioner :- Jayant Kumar Singh

Respondent :- State Of U.P. Deptt. Of Medical And Health
Lko. Thru. Prin. Secy. And 3 Others

Counsel for Petitioner :- Aaditya Singh

Counsel for Respondent :- C.S.C.,Brijesh Kumar Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Shri Vikram Singh, learned Advocate holding brief of Shri Aaditya Singh, learned counsel for the petitioner, Shri Vivek Shukla, learned Additional Chief Standing Counsel for the State-opposite party Nos.1, 2, & 3 and Shri Vikas Srivastav Bakshi, learned counsel, who has filed Vakalatnama on behalf of the opposite party No.4, the same is taken on record.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(I) to issue a writ, order or direction in the nature of certiorari quashing the impugned termination order dated 14.02.2025 passed by the Respondent No.4, contained as Annexure No.1 to the writ petition.

(II) to issue a writ, order or direction in the nature of mandamus commanding the Respondents to reinstate the petitioner in service allowing him to perform his duties along with the back wages and all consequential benefits, while also extend the petitioner's services analogous to the other similarly situated persons."

3. The precise contention of learned counsel for the petitioner is that the impugned order dated 14.02.2025 is a stigmatic order, has been passed on the basis of one fact that one F.I.R. against the petitioner is pending, of which trial has not been concluded by the learned trial court.

4. Learned counsel for the petitioner has submitted that the law is trite on the point that if any authority passes an order levelling any allegation regarding moral turpitude etc. of the employee, at-least one opportunity of hearing should be provided to him. In the present case, no such opportunity of hearing was provided to the petitioner and only on the basis of the fact that one F.I.R. has been lodged against him, his services has been dispensed with straightaway.

5. On the last date, when the case was taken up, learned counsels for the opposite parties were orally directed to seek

instructions in the matter.

6. Today, Shri Vikas Srivastava Bakshi, learned counsel for the opposite party No.4 has submitted that he has received instructions in the matter and on the basis of such instructions he has submitted that the petitioner was untrained and temporary employee and in his appointment letter dated 11.02.2020 (Annexure No.4) it was categorically indicated that if any irregularity or complaint against the petitioner is received, his services would be dispensed immediately.

7. On being asked from learned counsel for the opposite party No.4 as to whether the Competent Authority has treated the F.I.R. as irregularity or complaint against the petitioner, he has stated that the aforesaid F.I.R. has been treated as irregularity/ complaint against the petitioner. On further being asked from Sri Vikas Srivastava Bakshi as to whether there are any service rules to dispense with the services of an employee, he has submitted that there are no service rules to dispense with the services of an employee who has been engaged on temporary basis. He has also stated that even there are no service rules relating to conduct the departmental inquiry against any erring employee even if his status is permanent in nature.

8. Learned counsel for the petitioner has drawn attention of this Court towards the dictum of Apex Court rendered in the case in re: **Basudeo Tiwary vs. Sido Kanhu University and others** reported in **(1998) 8 SCC 194** referring paras-9 & 10 thereof wherein it has been clearly mandated that in case any punishment order is passed, at least one opportunity of hearing should be provided to the employee. For convenience, paras-9 & 10 read as under:-

"9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corpn. vs. D.T.C. Mazdoor Congress.

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in any situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected

adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature. (vide *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors.* AIR 1978 SC 851) and except in case of direct legislative negation or implied exclusion. (vide *S.L. Kapoor vs. Jagmohan & Ors.*)."

9. Learned counsel for the petitioner has also drawn attention of this Court towards one judgment decided by this Court in the case in re: ***Service Single No.854 of 2020; Shasya Singh vs. State of U.P. & others*** reported in **2020 SCC OnLine All 106** referring paras-11 and 13 whereby this Court allowed the writ petition holding that before dispensing with the services of an employee, a proper inquiry should be conducted in case the impugned order is having allegations against the employee. For convenience, paras-11 & 13 are being reproduced here-in-below:-

"11. This Court in re: Faraz Hameed Ansari vs. Life Insurance Corporation Of India Thru Chairman & Others reported in 2018(36) LCD 2062 has held in para 15, while considering various decisions of the Hon'ble Apex Court, para 15 is as under :

"15. Thus, even if the impugned action terminating the services of the petitioners is in the realm of a contract, the same would not be precluded from scrutiny in exercise of its powers of judicial review by this Court available to it under Article 226 of the Constitution of India. I am of the considered opinion that every action of the Corporation, whether statutory or non-statutory or administrative in nature, has to be necessarily in consonance with the constitutional mandate and the impugned order, thus, can be tested on the touchstone of Article 14 of the Constitution of India. In case, the impugned action is found to be unreasonable, irrational, illegal, perverse or unfair, the same can be interfered with in view of the law laid down by Hon'ble Supreme Court in the case of GRIDCO1 Ltd. (supra)."

13. Be that as it may, since the appointing authority are not satisfied with the conduct of the petitioner as being reflected in the impugned orders and the instruction letter and the recital to that effect has also been given in the impugned order, therefore, a proper departmental inquiry strictly in accordance with law should have been conducted and concluded against the petitioner to that effect if it is so warranted and after providing an opportunity of hearing to the petitioner any appropriate order can be passed. Any appropriate order can be passed only by the disciplinary authority independently and such order may not be passed pursuant to the direction being passed by the superior authority."

10. Learned counsel for the petitioner has further drawn attention of this Court towards the dictum of Apex Court rendered in the case in re: ***Nar Singh Pal vs. Union of India and others*** reported in **(2000) 3 SCC 588** wherein vide paras-6, 8 & 10 the Apex Court has held that:

"The appellant, although a casual labour, had acquired temporary status,. Once an employee attains the "temporary" status, he becomes entitled to

certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault made against the appellant. The order of termination in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary inquiry and without holding a regular departmental inquiry, cannot be sustained."

11. Having tested the impugned order in the light of the aforesaid facts and circumstances and the decisions so cited above, I find that the impugned order dated 14.02.2025 is illegal, arbitrary and unwarranted inasmuch as the aforesaid punishment order has been passed in utter violation of principles of natural justice and without conducting any inquiry to that effect. Even if the reason to terminate the services of the petitioner is that one F.I.R. was lodged against him wherein he remained under judicial custody with effect from 10.01.2025 to 17.01.2025, the petitioner should have been placed under suspension pending the departmental inquiry. But terminating his services only for the aforesaid reason casts stigma upon him. Besides, if there are no service rules to conduct the departmental inquiry against erring employee, at-least the principles of natural justice must be followed before passing the impugned punishment order.

12. Therefore, there is an apparent error on the face of the impugned order dated 14.02.2025, hence, the same is hereby set aside/ quashed only on the limited ground.

13. It is always open for the Competent Authority to pass appropriate order strictly in accordance with law by affording an opportunity of hearing to the petitioner and if such order is required, the same may be passed with expedition.

14. Since the impugned order dated 14.02.2025 has been set aside/ quashed, therefore, consequential order may be passed as per law.

15. The writ petition is, therefore, ***allowed.***

16. Consequences to follow.

17. No order as to cost.

[Rajesh Singh Chauhan,J.]

Order Date :- 22.4.2025
Suresh/