Reserved

Court No. - 58

Case :- WRIT - A No. - 8345 of 2011

Petitioner :- Chandra Kant Yadav
Respondent :- State Of U.P. And Others
Counsel for Petitioner :- Siddharth Singh,Ajay Kumar Singh,Ashutosh Diljun,Nisheeth Yadav,Siddharth
Counsel for Respondent :- C. S. C.,Tripathi B.G. Bhai

Hon'ble Suneet Kumar,J.

The petitioner was appointed Tax Collector in Zila Panchayat on 2.9.1975, thereafter was promoted as Tax Superintendent in 1995. The service conditions of the petitioner is governed by the Zila Panchayat Employees Service Regulations, 1970. After the creation of District Sant Kabir Nagar, petitioner's services was transferred to Zila Panchayat, Sant Kabir Nagar in 1997.

For the year 2003-04 and 2004-05 the Auditor General submitted audit objection dated 1.6.2006 that the Zila Panchayat incurred loss of Rs. 8.93 lacs in the financial year 1998-99 for reason of irregularities in assessment of tax by the then official. Pursuant to the audit report, the petitioner was placed under suspension on 20.6.2008 and a charge-sheet dated 11.2.2009 was issued to the petitioner comprising of three charges. The main charge against the petitioner was charge no. 1 and the other two charges are not relevant being trivial in nature. The arguments were advanced by the parties pertaining to charge no. 1 only.

The allegations of charge no. 1 is that while the petitioner was working on the post of revenue inspector the Senior Deputy Auditor General, Local Bodies vide letter dated 1.6.2006 incorporated audit para for causing loss of Rs. 8.93 lacs to Zila Panchayat, thus, the petitioner was responsible for the irregularities in tax assessment, in support of the charge the copy of the audit objection communicated by letter dated 1.5.2006 was supplied.

The petitioner in his reply denied the allegations of charge no. 1, stating that assessment of tax is provided under the Uttar Pradesh Zila Panchayats (Imposition, Assessment and Calculation of Circumstances and Property Tax) Rules 1994, the Mukhya Adhikari/Upper Mukhya Adhikari is the competent authority for assessment of tax and since there was no official available with the Zila Panchayat as Karya Adhikari, thus, vide order dated 29.01.2011, passed by the Chairman, petitioner was assigned the work as Tax Inspector, thus, the petitioner was not working unauthorizedly or illegally and as regards audit objection for the year 1998-99, the procedure prescribed for assessment of tax as per 1994 Rules was strictly complied with, the assessee were put to notice and after considering their reply the assessment was carried out. The audit objection was made after perusing the list contained in the survey register whereas, the actual documents pertaining to survey was not perused, thus, the audit objection that 158 assessees on assessment were not imposed tax, is wrong, as they were exempted, under various categories, from payment of tax.

In 2002-03, 1627 assessees were there, in the subsequent financial year 2003-04 and 2004-05 the assessees came down to 1447. These facts was ignored by the audit team, the survey list was prepared, in respect of the wards, as proposed by the Zila Panchayat. The assessees can always increase or decrease. There was no illegality or irregularity in assessing the assessees for tax, further in spite of the presence of Upper Mukhya Adhikari, the work of tax officer was taken from the petitioner, which is within the jurisdiction of the higher officials, for which the petitioner has no say or interference. The Enquiry Officer submitted the enquiry report on 4.9.2010.

Pursuant to the enquiry report, the President Zila Panchayat, Sant Kabir Nagar, by the impugned order, dated 31.12.2010 dismissed the petitioner and directed recovery of the loss, from the petitioner, as arrears of land revenue.

The submission of learned counsel for the petitioner is that there is violation of Rule 36, 37 and 75 of the Zila Panchayat Rules, 1970, further the Enquiry Officer has not proved the allegations as contained in the charge sheet, but has proceeded to enquire into allegations in respect of which the petitioner was not charged with. The burden and onus was shifted upon the petitioner to show, as to how, the petitioner was working as a Tax Assessing Officer in 1998-99, as there was no order authorizing the petitioner to work as such. He further contended that there is no allegation in the charge sheet to that effect. The only allegation is the audit objection which states that due to irregularities in the tax assessment, Zila Panchayat lost Rs. 8.93 lacs in financial year 1998-99.

In rebuttal Sri Tripathi B.G. Bhai submits that under Rule 40 of the Zila Panchayat Rules, 1970 appeal lies against the impugned order thus, the petitioner has an alternative remedy of preferring appeal. On merits Sri Tripathi would submit that petitioner was posted as Tax Officer but worked unauthorizedly on the post of Revenue

Superintendent, without there being order to that effect, further, the petitioner failed to produce any documentary evidence to that effect, since the petitioner failed to produce any document the allegations against the petitioner stood substantiated. Thus, the Upper Mukhya Adhikari has passed the order dated 6.8.2014 for realization of Rs. 7,09,717/- which has been brought on record by the respondents.

Rival submissions fall for consideration.

On the pleadings and submission advanced by the parties, the questions for determination is as to whether the onus can be shifted upon the delinquent employee to prove that he is innocent, without the employer prima facie proving the charges, secondly, whether the Disciplinary Authority can proceed on allegations which was not part of the charge or the delinquent employee was not charged for?

The facts are not in dispute, the writ petition is pending since 2011, the plea of alternative remedy at this stage cannot be accepted, more so since the petitioner has superannuated, and the petition can be decided on the basis of the material available on record.

The enquiry officer in its findings concluded that under Section 237 of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, the tax assessment is to be done by the Karya Nirdharan Adhikari, if such official is not available then the Zila Panchayat can assign the work to any other person, but, the petitioner was never assigned the work of Tax Assessment, no such document is available on record to show that in the financial year 1998-99 the petitioner was assigned the work of Tax Assessment Officer, vide letter dated 15th November, 2002, the petitioner was assigned the work, thus, the enquiry officer came to the conclusion that there was no authorization in favour of the petitioner to work as Tax Assessment Officer. However, the Enquiry Officer agreed that the number of assessees can increase or decrease in subsequent financial years, further in the opinion of the Enquiry Officer, the audit objections can be removed after perusing the documents/registers by the auditor, the Enquiry Officer was also of the opinion that the responsibility of Upper Mukhya Adhikari cannot be ignored in the backdrop of the facts and was also responsible, but, opined that the allegations against the petitioner will remain proved as long as the audit objections stand and are not removed.

Thus, till the audit objection remain, the petitioner will be guilty of the charges, but no reasons was assigned as to how, the audit objections was correct and as to whether petitioner was responsible, further, explanation submitted by the petitioner, in his reply, was neither considered nor discussed, so as to come to a finding that the reply and defence raised by the petitioner was devoid of merit, rather, the plea of the petitioner was accepted, that the assessees in various financial years can increase and decrease. No evidence, documentary or oral was led on behalf of the Zila Panchayat to substantiate the allegation in the charge, only document referred is the audit objection.

Even prior to the submission of enquiry report, Executive Officer submitted an explanation on 25.8.2010, to the audit objections, which clearly states that the petitioner is not guilty of any dereliction of duty nor there has been any irregularity in assessment of tax, rather, it is a case of deficit recovery to be recovered in subsequent financial year, thus, there was no loss caused to the Zila Panchayat.

It is settled principle of law that in disciplinary proceedings, the charges have to be specific, clear and not vague. The basis of the charge was audit report, it was pointed out by the Auditor that for irregularities committed in assessment of tax, the Zila Panchayat, is alleged to have incurred loss of Rs. 8.73 lacs. Admittedly, in the financial year 1998-99, the petitioner was working as a Tax Officer/Superintendent, though the charge does not say so. The Enquiry Officer and the Disciplinary Authority held the charge proved, solely on the ground that there was no order appointing the petitioner as a Tax Officer for the financial year 1998-99, it was only after receiving the orders from the Government on 28.10.2002 vide order dated 14.11.2002, petitioner was assigned the work of Tax Officer. Thus, the allegations of causing loss was proved merely on the ground that there was no order appointing the petitioner as Tax Officer, hence petitioner worked unauthorizedly.. Neither the Enquiry Officer nor the Disciplinary Authority have considered the explanation/reply given by the petitioner and as to how, the said explanation was without any basis or lacks merit. Enquiry Officer and Disciplinary Authority have accepted that the number of assessees may increase or decrees in different financial years. The other documents that have been brought on record, are documents issued by the respondent-Zila Panchayat which has not been rebutted or refuted in the counter affidavit.

The petitioner vide order dated 27.1.1999, issued by the Chairman Zila Panchayat, was appointed as Tax Officer. The letter states that since there was no Tax Officer available in Zila Panchayat, petitioner was being appointed Tax Officer, by temporarily promoting him on the post and would continue till further orders but salary for the post of Tax Officer shall be paid after approval is received from the State Government. The State Government vide letter dated 14th November, 2002 addressed to the Chairman, Zila Panchayat granted approval, to the appointment, of the petitioner on the vacant post of Tax Officer which was to continue till the appointment of the regular officer.

It is relevant to state that the interim arrangement was made for the reason that Sant Kabir Nagar, was carved out, as a new District and no officer was posted as Tax Officer, as a result, the Upper Mukhya Adhikari, vide letter dated 28.10.2002, requested the Secretary Panchayati Raj to appoint the petitioner being the Senior Tax Inspector as Tax Officer. The letter clearly states that the work of Tax Officer is being taken by the Zila Panchayat from the petitioner. Pursuant thereof, the State Government appointed the petitioner as Tax Officer. Thus, after creation of the District, petitioner performed the duties of Tax Officer on lawful order of the Chairman which was subsequently approved by the Government.

The documents brought on record are documents, belonging to the respondents, they do not substantiate the findings of the Enquiry Officer or the Disciplinary Authority that the petitioner was working without authority on the post of Tax Officer.

The Disciplinary Authority, as well as the Enquiry Officer, proved the allegations against the petitioner only for the reason that the petitioner was working without any authority or sanction on the post of Tax Officer. As pointed out earlier, this was not the charge against the petitioner, the petitioner was charged for causing loss of Rs. 8.73 lacs to the Zila Panchayat for irregularities committed during tax assessment.

The Enquiry Officer and the Disciplinary Authority do not refute or find any infirmity with the explanation submitted by the petitioner, which is substantiated by the objections filed by the Upper Mukhya Adhikari on 25.8.2010 to the audit report that no loss of Rs. 8.93 lacs was caused to the Zila Panchayat, but it was the deficit amount which the Zila Panchayat would recover in the subsequent financial year. The respondents have not stated that the audit objections have been removed after the objection filed by the Upper Mukhya Adhikari on 25.8.2010 i.e. prior to the submission of enquiry report. Thus, it is evident that the findings of Enquiry Officer and the Disciplinary Authority is not only prese perverse, but have read something more into the charge which was not a part of the allegations, that is, the petitioner was working unauthorizedly without sanction on the post of Tax Officer; Regarding causing loss to the Zila Panchayat, the Disciplinary Authority and the Enquiry Officer concur with the explanation that in every likelihood, the number of assesses are bound to decrease in subsequent financial years, but at the same time held that the guilt of the petitioner shall continue until the audit objection is not removed. Thus, Enquiry Officer proceeded on allegations that was not part of the charge. Supreme Court in **M.V.**

Bijlani vs. Union of India and others[1] held that enquiry into allegations in respect of which the delinquent officer had not been charged with, held, was not proper. Inferences drawn by enquiry officer regarding misutilization/misappropriation of telegraph copper wire by the appellate delinquent Engineer though no specific charge was framed in respect thereof. Charges framed related only to non-maintenance of register showing acquisition and utilization of copper wire and failure to supervise work.

The impugned order and the enquiry report is devoid of reason. The only reason assigned is that as long as the audit objection is not removed, petitioner would continue to be guilty of the charge of causing loss.

The Supreme Court in ***Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others***[2] ***held:***

> *It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.*
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> *40.* ***Reason is the heartbeat of every conclusion.***

1 (2006) 5 SCC 88

2 (2010) 3 SCC 732

It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. *Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum.*

Supreme Court in the case of ***S.R. Tewari vs. Union of India and another***[3] observed as follows:-

> "*30. The* ***findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/ inadmissible material****. The finding may also be said to be perverse if it is against the weight of evidence, or* ***if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse****. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: Rajinder Kumar Kindra v. Delhi Administration, AIR 1984 SC 1805; Kuldeep Singh v. Commissioner of Police & Ors., AIR 1999 SC 677; Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary, AIR 2010 SC 589; and Babu v. State of Kerala, (2010) 9 SCC 189).*
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> *31.Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible.*"

The Enquiry Officer reached the conclusion by shifting the burden of proof of negative circumstances upon the petitioner. The onus was always upon the Enquiry Officer to prove that the petitioner was

3. [(2013) 6 SCC 602]

responsible for wrong assessment and for loss caused. Supreme Court in ***Nirmala J. Jhala vs. State of Gujarat and another***[4] held that the Enquiry Officer cannot shift the onus of proving various negative circumstances upon the petitioner who was delinquent in the enquiry. The onus lies on the department to prove the charge.

For the facts and reasons stated herein above, the impugned order dated 31.12.2010 and consequential order dated 6.8.2014 is set aside and quashed.

The writ petition is **allowed** with all consequential benefits**.**

Order Date :- 05.11.2014
S.Prakash

4. (2013) 4 SCC 301)