

SUPREME COURT OF INDIA

Managing Director,U.P.Co-operative Union Ltd. & Anr.

Vs.

Mohan Babu Srivastava & Ors.

C.A.No.1576 of 2008

(S.B.Sinha and V.S.Sirpurkar,JJ.)

18.02.2008

ORDER

(@SLP(C) No.7917 /2006)

1. Leave granted.
2. Respondent was an employee of the appellant.
3. He was transferred to Pilibhit by an order dated 16.10.1998. He did not join the said transferred post. He was placed under suspension by an order dated 16.11.1998. A departmental proceeding was initiated against him. A large number of charges including defalcation were framed in the departmental proceeding. Attempts after attempts were made to serve the charge-sheet on him i.e. on 2.2.2001, 7.3.2001, 19.4.2001 and 28.8.2001. Even the contents of the said charge-sheet were published in the newspaper. He did not file any show-cause. The inquiry officer submitted a report thereafter. Again a second show-cause notice was issued on 18.8.2001. He even did not reply thereto. Respondent, however, filed a writ petition before the Allahabad High Court. The High Court by reason of the impugned judgment holding that the inquiry proceeding was vitiated in law as the inquiry officer did not apply his mind -1- on the materials produced before him directed his reinstatement without back wages. Mr.Jain, learned counsel appearing on behalf of the appellant would submit that keeping in view the fact that the respondent had not appeared before the inquiry officer nor filed any show-cause, the impugned judgment cannot be sustained. Mr. Mohanty, learned counsel appearing on behalf of the respondent, on the other hand would support the impugned judgment. The High Court, even if it was correct in its view on the merit of the matter, in our opinion, could not have directed reinstatement of the respondent. Even if decisions in *Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar & Ors*¹. - and in *U.P. State Co-operative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Ors*².- were to be applied, the order of reinstatement could not have been passed. Mr. Jain, learned counsel relies on a decision of this Court in *Deputy Registrar Coop. Societies and Other Vs.Bunni Lal Chaurasia*³ - where principles of natural justice were held to be not applicable having regard to the fact that despite service of notice, the respondent did not

appear. The said decision is not applicable in the instant case as from a perusal of the report submitted by the -2- inquiry officer it is evident that he had proceeded solely on the basis that as no reply has been filed by the delinquent officer, the charges must be held to have been proved. A distinction exists between a case where the delinquent officer admits his guilt and a case where he absents himself in the proceeding. In the latter event, even if he is proceeded against ex-parte evidence has to be led as the enquiry officer is required to apply his mind on the materials brought on record. In his report the inquiry officer has not referred to any document placed before him. Who produced the said document is not known. How the said documents could be used against the respondent was not deliberated upon. In this view of the matter, we are of the opinion that the interest of justice would be subserved if the matter is remitted to the inquiry officer to hold a denovo enquiry against the respondent. However, keeping in view the conduct of the respondent in so far as he had been avoiding the disciplinary proceeding from 1998 till date as also in view of the report, we direct that the respondent shall not be entitled to any subsistence allowance for the said period. Respondent shall report before the Managing Director of the appellant on 29.3.2008. The Disciplinary Authority shall immediately appoint another inquiry officer. Inquiry proceeding as against the respondent may be completed as expeditiously as possible.

4. The appeal is allowed to the aforementioned extent and with the aforementioned directions and observations.

¹(1993) 4 SCC 0727

²(1991) 1 SCC 0741

³(2005)11 SCC 0570