

A.F.R.

Neutral Citation No. - 2025:AHC:121988

Court No. - 52

Case :- WRIT - A No. - 9632 of 2025

Petitioner :- Dharvendra Pal Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Prabhakar Awasthi,Rohit Upadhyay

Counsel for Respondent :- Bhanu Pratap Singh Kachhawah,C.S.C.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Prabhakar Awasthi, learned Counsel assisted by Mr. Rohit Upadhyay, learned counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General assisted by Mr. Hare Ram, learned counsel for the State-respondents and Mr. Bhanu Pratap Singh Kachhawah, learned counsel for the respondent-BSA.

2. The instant writ petition has been filed with the prayer to quash the impugned order dated 28.05.2025 passed by respondent no.2 - District Basic Education Officer, Etah, vide which, one increment of the petitioner has been stopped and he has been transferred from Upper Primary School, Kangarpur, Etah to Composite Institution, Nawar, in District Etah.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Assistant Teacher and was posted at Junior Primary School, Milawali, Sheetalpur, District- Etah, through appointment letter dated 19.05.2007. There was no complaint against him as he continued to discharge his duties to the utmost satisfaction of the authorities concerned.

4. Learned counsel for the petitioner further submits that the petitioner under the State Government policy was transferred from the post of Head Teacher, Junior Primary School, Block- Jaithra, District- Etah to his position as Assistant Teacher in Upper Primary School, Khangarpur, Block- Marhera, District- Etah, by order dated 18.09.2013.

5. The Block Education Officer, Marhera, District- Etah under the directions issued by the District Basic Education, Officer, Etah, made an inspection in the institution on 27.08.2024 at 1:50 P.M., wherein the petitioner was found absent and the inspection report dated 27.08.2024 was prepared to the aforesaid effect. On the basis of the said report, the petitioner was placed under suspension vide order dated 30.08.2024, contemplating an inquiry.

6. Aggrieved by the aforesaid order, the petitioner filed Writ A No.18500 of 2024 (Dharvendra Pal Singh vs. State of UP and 3 Others), which was disposed of by the co-ordinate Bench of this Court, vide order dated 25.11.2024, directing the respondent authorities to conclude the enquiry proceedings within a period of three months from the date of receipt of certified copy of the order. The Court also did not interfere in the suspension order dated 30.08.2024. After conclusion of the inquiry, the charge sheet dated 04.11.2024 was served upon the petitioner on 25.11.2024 and reply to the same was submitted on 26.11.2024 before the inquiry officer, about which the petitioner came to know on 25.11.2024 as informed by the learned counsel for the respondent while appearing in Writ A No.18500 of 2024, thus, the orders accordingly were passed to conclude the inquiry.

7. It appears that on 19.11.2024, some letter was issued by respondent no.2 District Basic Education Officer to the respondent no.4-Block Education Officer/Inquiry Officer, directing him to complete the inquiry within 15 days. Another letter dated 20.11.2024 was issued by the respondent no.4 to the petitioner, directing him to submit his reply within two days. On 21.11.2024, petitioner sent a letter to the Inquiry Officer requesting him for a week's time to submit his reply, which was turned down by the respondent no.4/Inquiry Officer by letter dated 23.11.2024 and on the same day, respondent no.4 gave a letter to the petitioner, which was in the form of threat stating that if he

failed to submit a reply to the charge sheet, the matter would proceed *ex-parte*. It appears that an *ex-parte* inquiry report dated 28.12.2024 was submitted by the respondent no.4/Inquiry Officer, which was not provided to the petitioner.

8. On 07.01.2025, the respondent no.2-District Basic Education Officer, issued a second show cause notice to the petitioner, mentioning about the charge sheet dated 28.12.2024 and required him to be present in person in his office on 10.01.2025 to submit his reply.

9. On 10.01.2025, the petitioner represented before respondent no.4/Inquiry Officer, requesting him to supply a copy of Inquiry Report. The petitioner sent another letter dated 20.03.2025 to the District Basic Education Officer, demanding a copy of the inquiry report.

10. Instead of providing the inquiry report, the respondent no.4/Inquiry Officer, submitted a letter to the respondent no.2, dated 02.05.2025 referring about some letter dated 26.04.2025, vide which the respondent no.2 had directed for conducting an inquiry again as some objection was raised by the petitioner. In his letter, the respondent no.4 has mentioned that the inquiry report dated 28.12.2024 had already been submitted before respondent no.2, therefore, in case of dissatisfaction on the part of petitioner, direction may be issued to get the inquiry conducted by some other agency.

11. Learned counsel for the petitioner submits that the impugned order dated 28.05.2025 has been passed in violation of the principles of natural justice, as the inquiry report was never served upon the petitioner. Pointing out the procedural defects under Rule 4 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, “in short ‘Rules of 1999’”, in consonance of which the inquiry was conducted, learned counsel for the petitioners submits that the order impugned has been passed in an arbitrary manner without adhering to

the procedure as prescribed under Rule 7 of Rules of 1999. He further submits that once the inquiry has been started under Rule 4 of the Rules of 1999 and the petitioner has been placed under suspension, the inquiry was to be conducted under Rule 7 and, accordingly, the report was to be submitted under Rule 8 of Rules of 1999 and after submission of the inquiry report, the action was to be taken on the inquiry report as per procedure prescribed under Rule 9 of the Rules of 1999. According to which, in the case of the petitioner, as per Rule 9(4) of the aforesaid Rules, if the Disciplinary Authority, having regard to its finding on all or any of the charges, is of the opinion that any of the penalties specified in Rule 3 of the 1999 Rules should be imposed on the charged Government servant, he shall furnish a copy of the inquiry report, if he disagrees with the finding of the Inquiry Officer on any of the charges, after recording his finding thereon for reasons to be recorded and shall require the charged Government servant to submit his representation, if he so desires, within a reasonable specified time. After receiving the representation of the charged Government servant, a reasoned order has to be passed imposing one or more penalties mentioned in Rule 3 of Rules of 1999 and the same has to be communicated to the charged Government servant.

12. In the present case, the charge sheet has been submitted on 04.11.2024, which was never served upon the petitioner, however, information was given by the concerned about the aforesaid before the Writ Court on 25.11.2024, and reply to the same was submitted on 26.11.2024. Without discussing about the same, the order impugned has been passed, which is the violation of principles of natural justice.

13. The order should have been passed taking recourse to Rule 10(2) of Rules of 1999 as the same provides the procedure applicable for imposing minor penalties for which the Government servant has to be informed by giving a notice mentioning the substance of the

imputations against him and calling upon him to submit a reply within a reasonable time. Due to the aforesaid procedural defects, the order impugned cannot be sustained.

14. The order impugned speaks about some circular dated 20.08.2022, considering which, the petitioner has been shifted from his assumption of duties as Assistant Teacher from Upper Primary School, Kangarpur, Marhera, District-Etah to Composite Institution, Nawar, Block- Aliganj, District Etah, which is approximately 70 kilometres away. However, perusal of the aforesaid does not mention about any such posting to be done after any inquiry being conducted against the petitioner.

15. Learned counsel for the petitioner further contends that despite repeated requests, the inquiry report was not provided to the petitioner. He has also tried to draw the attention of the Court to the communication letter dated 02.05.2025 whereby respondent no.4 has refused to make any further inquiry and has also informed the respondent no.2 that in case any further inquiry is required, some other inquiry officer be appointed.

16. Learned counsel for the petitioner has also placed reliance upon the order passed in Special Appeal No.208 of 2025 (Smt. Tripti Tripathi Vs. State of U.P. and Others) wherein the effect and operation of the order impugned therein i.e. dated 27.01.2025 has been kept in abeyance and the petitioner, Smt. Tripti Tripathi has been allowed to continue at the place where she was previously working. Therefore, the petitioner is also entitled for the same relief.

17. Learned Standing Counsel as well as learned counsel for the respondent-BSA, on the other hand, submit that there is no illegality or infirmity in the order impugned. All the procedure as required under law has been followed. The petitioner has been served with the charge sheet as well as inquiry report and the punishment order has also been

served upon the petitioner on 29.05.2025 about which he was informed when he filed Writ A No.7813 of 2025 (Dharvendra Pal Singh Vs. State of U.P. and 3 Others).

18. It is evident from the records that from the representation dated 10.01.2025 submitted before respondent no.2 requesting for the inquiry report and subsequently the letter dated 02.05.2025 by respondent no.4 addressed to the respondent no.2, wherein it has been mentioned by the BSA in his letter dated 26.04.2025 that some objection to the inquiry report is there from the side of petitioner, therefore, inquiry may be conducted again. The aforesaid letter has not been denied by the petitioner which means that he was provided with the copy of the inquiry report.

19. Learned counsel for the State as well as learned counsel for respondent-BSA, submit that no procedural defect occurred and the Rules of 1999 were followed, wherein after following the procedure under Rule 7, may be with some flaws the inquiry report has been submitted under Rule 8 and punishment order has been passed under Rule 9(4), which says that after the inquiry report is given to the petitioner, representation is submitted, the order imposing penalty as mentioned in Rule 3 (major or minor) is to be imposed upon the charged government servant, which has been done in the present case. The concerned authority after revoking the suspension order has imposed the penalty by the impugned order by stopping one increment and posting the petitioner at some other place. Thus there was no occasion to take recourse to Rule 10(2) of Rules 1999 for passing the order impugned.

20. As regards the circular dated 20.08.2022, considering which the petitioner has been transferred from his place of posting to some other place, in case it is considered as a transfer order, no interference is

required as per settled positing of law, which have been discussed in the following judgements:-

(1). The Supreme Court in the case of **State of U.P. and another v. Johri Mal, AIR 2004 SC 3800**, has held that even if there is wrong order the Court is not bound to interfere under Article 226 of Constitution of India unless the order is in violation of the Statutes or it causes some miscarriage of justice. Relevant part of the order in **Johri Mal (supra)** reads as under:-

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Ellinois*, 1876 (94) US (Supreme Reports) 113)."

(2). The Supreme Court in the case of **Public Services Tribunal Bar Association Vs. State of U.P. and another, (2003) 4 SCC 104**, has held

that ordinarily the High Court should not stay suspension, transfer and termination orders.

(3). Param Singh and 4 Others vs. State of UP and 5 Ors., 2018 SCC OnLine ALL 5677.

(4). Kul Bhushan Mishra and Another Vs. State of UP and 4 Others, 2023 SCC OnLine ALL 286.

21. Learned counsel for the State as well as learned counsel for respondent-BSA, submit that if the same is considered as posting, it is in view of the judgement as discussed in the circular dated 20.08.2022, which has not been placed on record by the petitioner. The order has been passed in terms of Uttar Pradesh Government Servants (Discipline and Appeal) Rules of 1973 read with Rules 1999, wherein the procedure as required under law has been followed, therefore, there is no illegality or infirmity in the order impugned.

22. The communication letter dated 02.05.2025, whereby respondent no.4 has refused to make any further inquiry, has been wrongly understood by learned counsel for the petitioner as the same mentions that as the petitioner is not satisfied by the inquiry report, the same can be conducted by some other agency as he has already submitted the inquiry report on 28.12.2024 before BSA. Even otherwise, there is provision of filing an appeal against the punishment order wherein minor penalty of stopping one increment has been passed, which should have been availed by the petitioner prior to approaching this Court.

23. Learned counsel for the State has placed the order passed in Special Appeal No.790 of 2024 (Secretary Basic Education Board And Another Vs. Smt. Suman (In-charge) and Another) wherein the Division Bench of this Court vide interim order dated 05.03.2025 has

directed the petitioner therein to join the institution where she has been transferred/posted.

24. Learned counsel for the State further submits that the Government order dated 20.08.2022 refers about the order dated 14.09.2021 passed in Special Appeal No.274 of 2020 (Amit Sekhar Bhardwaj Vs. State of UP and 2 Others), according to which random allotment has to be done while posting or transferring any Assistant Teacher. Accordingly, the Government order dated 17.01.2023 has been issued, taking into consideration the posting of the petitioner has been done. He further submits that once the petitioner was placed under suspension, he/she is attached to some other place and on suspension being revoked the attachment order also ceases to operate, accordingly, the person concerned has to be posted to the place where a vacancy exists and this is as per the Government order dated 17.01.2023, which has been done in the present case. He further submits that the order impugned has been passed taking into consideration the Rules of 1973 read with Rules of 1999, therefore, there is no illegality or infirmity in the order impugned.

25. Heard learned counsel for the parties.

26. It has been brought to the notice of this Court that certain objections have been raised pertaining to the absence of specific dates and ancillary procedural references in the order impugned. The learned counsel has contended that such omissions vitiate the impugned order hence the same is liable to be set aside.

27. The Court is referring some relevant judgements passed by Hon'ble Apex Court, which are as follows:-

1. In the case of **State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772**, the Supreme Court has held that a disciplinary authority must provide reasons and discuss the reply to the show cause

notice, but a punishment order is not vitiated merely due to absence of detailed reproduction if it reflects application of mind.

2. The Constitution Bench in the case of **Union of India v. Tulsiram Patel, (1985) 3 SCC 398**, has emphasized that minor procedural lapses that do not cause prejudice to the delinquent employee or violate the principles of natural justice would not invalidate the order.

3. The Hon'ble Supreme Court in the case of **Chairman, LIC v. A. Masilamani, (2013) 6 SCC 530**, it was held that non-mentioning of every document or minor procedural lapses cannot by themselves be grounds to invalidate a disciplinary order unless it causes demonstrable prejudice.

4. The Apex Court in **State of Orissa v. Bidyabhushan Mohapatra, AIR 1963 SC 779**, held that substance must prevail over form; non-mentioning of certain procedural steps would not vitiate the order if the essence of natural justice is maintained.

5. While dealing with disciplinary proceedings, the Apex Court in the case of **Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727**, reiterated that procedural fairness is essential, but a disciplinary order will not be set aside unless the procedural irregularity has caused prejudice.

28. It is imperative to underscore that the solemn purpose of any order is not the pedantic perfection of form, but the faithful administration of justice by adhering to principles of natural justice and application of mind. The adjudicatory process is guided by the substance of justice rather than the superficialities of procedure.

29. The essence of any order lies in its ability to address the core legal and factual controversies, to apply the law with judicious reasoning, and to render an equitable resolution. In the instant matter, the punishment order has comprehensively dealt with the determinative

issues, examined the evidence on record, and applied the governing legal principles with due care and deliberation.

30. Mere clerical or peripheral omissions such as inadvertent exclusion of dates or formal particulars do not, in any measure, impinge upon the legitimacy or efficacy of the order impugned, unless it is demonstrated that such omissions have caused prejudice or miscarriage of justice. No such prejudice has been pleaded or established before this Court.

31. Courts are not expected to exhibit technical exactitude in form to the exclusion of justice. The doctrine of substantial compliance applies with full vigour in such circumstances. As long as any order fulfils its constitutional and legal mandate namely, the fair discussion of facts with application of mind incidental lacunae in presentation or form cannot be permitted to defeat the ends of justice. It would be appropriate to mention that “justice is not a slave to format, but a servant of truth.”

32. This Court is of the opinion that a punishment order cannot be held invalid merely on the ground that it does not specifically mention the details of the show cause notice or the written reply submitted by the petitioner, if the substance of both is duly considered and discussed in the order. Unless there is a manifest procedural irregularity or a clear illegality apparent on the face of the record, such minor omissions would not render the order unsustainable in the eyes of law.

33. In view of above, no interference is called for and the writ petition is **dismissed** accordingly.

Order Date :- 24.7.2025

Rahul.