

Court No. - 2

Case :- SPECIAL APPEAL No. - 132 of 2024

Appellant :- Sanjay Kumar Singh

Respondent :- State Of U.P. Thru. The Addl. Chief Secy. /Prin. Secy. Deptt. Of Revenue ,Lko And 3 Others

Counsel for Appellant :- Prem Shankar, Mahendra Kumar Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

Memo of Appeal

Heard.

This is an appeal against the judgment and order dated 29.04.2024 passed in Writ A No. 3258 of 2024.

Vide our earlier order we had summoned the records which have been placed before us. First and foremost, the records have been given to the Standing Counsel today itself in the Court by Shri Amrit Lal, Naib Tehsildar, Maharajganj, Raebareli, therefore, obviously the Standing Counsel who has already been conducting so many cases since morning would not be in a position to go through the records during course of the Court proceedings. We have passed several orders in several writ petitions that when the records are summoned, then the concerned officer should take the records to the office of the Standing Counsel who has been assigned the case, a day prior to the date on which the matter has been fixed in Court, only then the Standing Counsel would be in a position to go through the record and assist the Court on the next date. But, we find that very often, this is not done and the Officer's or employees who have been assigned the duty of producing the records, produce it in the Court itself straight away without any opportunity / occasion for the Standing Counsel to go through the records, on account of which proper assistance cannot be provided. The lapse is not on the part of the Standing Counsel but on the part of the Officer's who do not give clear instructions as to when the records are to be taken.

We thus make it clear once again that when the records are summoned by the Court, the relevant records should be shown to the Standing Counsel a day prior to the date on which the

case is listed so that the Standing Counsel may go through the records and then assist the Court on the next date, as, it is quite possible that after going through the records, the Standing Counsel may himself have some queries to make to the Officer who has brought the records so as to clarify the factual position. This will help when the case is listed before the Court and time will not be wasted, therefore, we accordingly direct the Legal Remembrancer, State of U.P. to take cognizance of this aspect and issue necessary directions / orders to all concerned departments to comply with what has been stated hereinabove.

The records have been perused by us. The note sheet pertaining to it reveals that charge sheet was served upon the delinquent employee asking for his reply which was submitted on 27.12.2022 along with evidence. On 06.01.2023, an order was passed by the Inquiry Officer that one more opportunity is given to him to submit his evidence / statement and if he does not want to avail the opportunity then he should give an affidavit in this regard. We fail to understand as to how it has been observed that one more opportunity is being given. As prior to 06.01.2023, no time was granted for evidence. The reply had already been submitted on 27.12.2022 along with evidence. Nevertheless, the delinquent employee who is the appellant before us, gave an affidavit on 17.01.2023 that he does not want to produce any further evidence in the matter. Thereafter, we do not find any date having been fixed for holding the inquiry. The charge was based on documentary evidence i.e. the report of the Tehsildar, Bachhrawa dated 10.02.2009 and the report of another revenue official dated 10.02.2009, however, neither of the said authorities who had prepared the said report were examined in the inquiry proceedings. The proceedings cannot be said to have been conducted in accordance with the principles of natural justice nor Rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999. Apparently, there was violation of both the principles of natural justice and the Rules. Therefore, this aspect should have been seen by the writ Court while dismissing the petition on the first day itself, as, no counter affidavit was filed by the State before the writ Court nor has it been filed here, therefore, we do not propose to decide the writ petition itself finally along with this appeal, instead making the observations herein above, subject however to further proceedings before the writ Court, we set aside the judgment of the writ Court and restore the writ petition to its original number which shall now be listed before the Single Judge Bench on 10.09.2024 as fresh.

On the said date, the records which have been produced before us shall again be produced before the writ Court.

Counter affidavit, if any, shall be filed by the State before the said date and the writ Court shall hear and decide the same at the earliest, if possible, on the date fixed.

The observations made herein above are for the purposes of this appeal.

This appeal is **allowed** in the aforesaid terms.

All pleas are open for being raised before the writ Court and for being considered.

C.M. Application No. NIL of 2024

This is an application for recall of the order dated 01.08.2024 by which cost of Rs. 2200/- was imposed for non-production of the records, supported with an affidavit.

While the cause shown in the accompanying affidavit is sufficient but considering the manner in which the records have been produced here which has wasted much time of the Court and also caused anguish to the Standing Counsel who has argued the matter, although, we recall the earlier order, we impose a cost of Rs. 1100/- for the said conduct which shall be paid to the appellant before the listing of the matter, before the writ Court.

The application for recall of the order dated 01.08.2024 is **allowed** in aforesaid terms.

Order Date :- 14.8.2024

Lokesh Kumar

[Om Prakash Shukla, J.] [Rajan Roy, J.]