

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.149 OF 2017****STATE OF UP AND OTHERS****...Appellants****VERSUS****VINOD KUMAR KATHERIA****...Respondent****J U D G M E N T****R. BANUMATHI, J.**

1. This appeal arises out of the judgment dated 06.05.2016 passed by the High Court of Judicature at Allahabad in Special Appeal Defective No.347 of 2016 in and by which the High Court has allowed the appeal filed by the respondent setting aside the dismissal order passed against the respondent.

2. Brief facts which led to filing of this appeal are as under:-

The respondent-employee was working as Lekhpal in the Revenue Department of the Government of U.P. since the date of his appointment with effect from 16.01.1990. During the respondent's posting as Lekhpal in District Mainpuri, the respondent was suspended vide order dated 17.05.2008 by the

Sub-Divisional Magistrate, Mainpuri District. A charge sheet dated 01.07.2008 was issued by the appellant against the respondent wherein seven specific charges of irregularities and illegalities committed by the respondent by misusing his position were framed against him. It is alleged that in order to save himself from the charges, during the course of disciplinary proceedings, the respondent is alleged to have removed number of pages of the Zild Bandobast from the official records pertaining to the village Sansarpur, District Mainpuri and a supplementary charge sheet dated 18.08.2008 was also issued containing three charges. The Enquiry Officer, Tehsil-Karhal, District Mainpuri, conducted enquiry and submitted his enquiry report on 09.12.2008 to the Disciplinary Authority/Sub-Divisional Magistrate, Karhal, District Mainpuri holding that all the ten charges framed against the respondent were proved. The Disciplinary Authority issued a notice dated 17.12.2008 to the respondent directing the respondent to show cause as to why he should not be dismissed from service. In response to the said show cause notice dated 17.12.2008, the respondent personally appeared before the Disciplinary Authority and made oral submissions and requested time up to 15.01.2009 for submitting the necessary reply and the documents. Despite the time having been granted to the respondent, it is alleged that the respondent failed to

substantiate his arguments and reply. The appellant alleges that instead of appearing before the Disciplinary Authority, the respondent started pressurizing the authorities by making complaints to Scheduled Castes/Scheduled Tribes Commission. The Disciplinary Authority passed an order of dismissal dated 07.02.2009 dismissing the respondent from service.

3. Aggrieved by his dismissal, the respondent preferred appeal before the Appellate Authority/District Magistrate, Mainpuri and his appeal was dismissed by order dated 15.01.2010 confirming the order of dismissal passed by the Disciplinary Authority. Aggrieved, the respondent filed writ petition in WP No.20492 of 2010 before the High Court. The said writ petition was dismissed vide order dated 16.04.2010 observing that the respondent has alternative remedy to file the revision before the Revisional Authority/Principal Secretary (Revenue), Government of UP. Thereafter, the respondent preferred the revision before the aforesaid authority which also came to be dismissed vide order dated 20.06.2011.

4. Being aggrieved, the respondent filed WP No.38583 of 2011 before the High Court challenging the order of dismissal passed by the Disciplinary Authority and the order dismissing his appeal as well as the revision. The learned Single Judge vide order dated 19.02.2016 dismissed the writ petition

holding that the respondent has committed serious illegalities and irregularities while he was in service. The learned Single Judge held that the respondent is alleged to have issued false certificates and have made false entries in the revenue records in the name of various persons and he was also alleged to have illegally mutated some lands which were recorded in the name of Gram Smaj in the name of his family members.

5. Aggrieved by the dismissal of the writ petition, the respondent filed the special appeal before the High Court. The Division Bench held that the entire disciplinary proceedings initiated against the respondent and the order of the dismissal passed against him is vitiated on account of non-affording opportunity to the respondent by the Enquiry Officer. After referring to the judgment of the Supreme Court in *State of Uttaranchal and others v. Kharak Singh (2008) 8 SCC 236* and *Associated Cement Co. Ltd. v. The Workmen and another AIR 1964 SC 914*, the Division Bench held that for proving the misconduct of a workman, it is desirable that enquiry should be held with a view to determine whether charge framed against the respondent-delinquent is proved or not and care must be taken to see that these enquiries do not become empty formalities. Pointing out that the entire proceedings initiated is perverse since enquiry officer has not afforded

opportunity to the respondent-delinquent and unilaterally submitted the enquiry report. Being aggrieved, the State of UP has preferred this appeal.

6. We have heard Mr. Tanmaya Agarwal, learned counsel appearing for the appellants and Mr. Deepak Anand, learned counsel appearing for the respondent and perused the impugned judgment and other materials on record.

7. We have called for the records pertaining to the enquiry and the subsequent proceedings and perused the same. By perusal of the file, it is noticed that no full-fledged enquiry was held by the Enquiry Officer and, in our view, the order of removal of the respondent was rightly set aside by the High Court. In order to give an opportunity to the respondent-delinquent and to meet the ends of justice, the matter is remanded back to the authorities for de-nova inquiry from the stage of conducting enquiry, if the authorities so desire to continue the enquiry.

8. The impugned judgment is affirmed and the order of dismissal passed by the Disciplinary Authority dated 07.02.2009 affirmed by the Appellate Authority dated 15.01.2010 and the order of Revisional Authority dated 20.06.2011 are set aside.

9. In the result, the appeal is disposed of with the following observations and directions:-

(i) The order of dismissal is set aside and consequently the appellant is directed to reinstate the respondent within a period of four weeks. However, it is made clear that the respondent shall not be entitled to arrears of salary from the date of termination till the date of reinstatement which will be subject to the order passed by the concerned authority. However, from the date of reinstatement, the respondent shall be entitled to the salary in the same pay scale as on the date of his removal from the service.

(ii) The authorities shall take a decision whether to continue the enquiry proceedings or not. If they so desire to continue the proceedings, if the earlier enquiry officer is available, the Disciplinary Authority shall direct him to continue the enquiry or in case, if the enquiry officer is not available, the Disciplinary Authority shall appoint another enquiry officer to conduct the enquiry against the respondent.

(iii) Witnesses, if any, already examined by the Department shall be recalled for fresh examination and for cross-examination by the respondent. The enquiry officer shall afford opportunity to the respondent to examine himself or his own witnesses if the respondent chooses to examine any witnesses.

(iv) Subject to the outcome of the enquiry proceedings, the Disciplinary Authority shall pass appropriate orders for

the interregnum period that is from the date of termination till the date of his reinstatement which shall be subject to the outcome of the proceedings of the enquiry.

(v) It is for the concerned authority to take a decision whether to proceed against the respondent with the enquiry or not. If the authority proceeds with the enquiry, the enquiry officer shall complete the enquiry proceedings within a period of six months from the date of reinstatement of the respondent. The respondent shall render all cooperation for completion of the enquiry within the stipulated time of six months.

.....J.
[R. BANUMATHI]

.....J.
[A.S. BOPANNA]

**New Delhi;
September 23, 2019**