

Court No. - 33

Case :- WRIT - A No. - 6886 of 2022

Petitioner :- Ram Kailash Mishra

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arpan Srivastava, Abhishek Bhushan, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Anil Bhushan, learned Senior Advocate assisted by Mr. Abhishek Bhushan, learned counsel for the petitioner and the learned Standing Counsel for the State-respondents.

By means of the present writ petition, the petitioner has made following relief:

"(I). a writ order or direction in the nature of certiorari quashing the order dated 23.04.2022 passed by the Sub Divisional Magistrate, Sadar Prayagraj/Respondent No. 3 (Annexure No. 1 to the Writ Petition);

(II) a writ order or direction in the nature of mandamus commanding and directing the respondents not to interfere in the working of the petitioner as Lekhpal, Medauri Uparhar, Tehsil Sadar, District Prayagraj.

...."

It is the case of the petitioner that the petitioner was appointed on the post of Lekhpal on 21st December, 1989 and the first posting was given to him as Lekhpal in Tehsil Meza, District Prayagraj. From time to time, the petitioner has been transferred from one place to another and the last posting was given to the petitioner in Tehsil Sadar and the area which was allotted to him was Medauri Uparhar in November, 2020. Suddenly, the petitioner has been placed under suspension by the order impugned dated 22nd April, 2020 without giving any show cause notice to him, in the matter of certain illegal constructions made in his area, which has been detailed in the order impugned.

Learned counsel for the petitioner submits that the order impugned has been passed on baseless allegations. In the report submitted by the Tehsildar on 11th April, 2022, who has conducted the preliminary enquiry and made spot inspection, it has been sepcifcially recorded that there is no new construction over the plots mentioned in the suspension order and the said report has also been forwarded to the Sub-Divisional Magistrate and Chief Revenue Officer, Prayagraj. The Chief Revenue Officer, Prayagraj has forwarded the said report of the Tehsildar to the District Magistrate stating therein that nothing has been found against the

petitioner. Learned counsel for the petitioner further submits that suspension should not be resorted to unless or until the allegations against the government servant are so serious that in the event of his being established may ordinarily warrant major penalty. In the present case, the allegations are not serious in nature and are vague, therefore, in view of the Proviso to Rule 4 (1) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, the impugned order of suspension cannot be legally sustained and is liable to be quashed. Apart from the above, learned counsel for the petitioner submits that the preliminary enquiry is necessary while suspending the petitioner and in the present case the preliminary enquiry was conducted by the Tehsildar and nothing was found against the petitioner, hence there was no occasion for the Sub-Divisional Magistrate to suspend the petitioner.

On the cumulative strength of the aforesaid, learned counsel for the petitioner submits that order impugned is per se illegal and liable to be quashed.

On the other-hand, the learned Standing Counsel could not dispute the aforesaid submissions made by the learned counsel or the petitioner.

I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present writ petition. This Court finds substance in the submissions made by the learned counsel for the petitioner. The order impugned is, hereby, quashed. However, it is provided that the departmental inquiry be initiated against the petitioner and brought to its logical end, strictly in accordance with law, at the earliest possible preferably within a period of three months from the date of production of a certified copy of this order before the disciplinary authority.

The present writ petition is allowed subject to the observations made above.

(Manju Rani Chauhan, J.)

Order Date :- 7.5.2022

Sushil/-