(2025) 3 ILRA 191
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.03.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 11524 of 2024

Jagmohan ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Arvind Kumar, Bansh Narayan Vishwakarma, Sharda Vishwakarma

Counsel for the Respondents:
C.S.C.

(A) Service Law - Disciplinary proceedings challenged and imposition of major penalty - Invalid Inquiry - Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 - Rule 7,13 - Failure to hold oral inquiry and prove charges by evidence -U.P. Civil Services Regulations - Article 351-A - post-retirement disciplinary action - against a government servant - U.P. Public Services Tribunal Act, 1976 - Section 4 - remedy before Tribunal - In all major penalty matters, charges have to be proved by production of evidence in the first instance by the employer - Inquiry Officer cannot return findings by merely reading the charge-sheet and the reply of the charge-sheeted employee; evidence, both oral and documentary, must be produced by the establishment and witnesses cross-examined - Departmental inquiry must strictly follow the procedure laid down in Rule 7; failure to do so vitiates the entire proceedings - Non-consideration of Article 351-A renders denial of emoluments legally vulnerable. (Para -2,10,13,35)

Petitioner challenged disciplinary proceedings initiated against him - earlier remanded for de novo inquiry by Tribunal – Inquiry Officer failed to fix date, time, and place for inquiry – No oral evidence was led by establishment – No opportunity given to petitioner to cross-examine witnesses – Inquiry Officer erroneously assumed that charges stood proved based on documents and petitioner's reply alone – Inquiry Officer was bound to require establishment to prove charges by leading oral and documentary evidence – Breach of Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 – Violated salutary principles of natural justice – Disciplinary authority passed order of reduction to basic pay - later amended to denial of salary for dismissal period as petitioner retired during pendency of proceedings.(Paras 24 to 32)

HELD: - After retirement, only the Governor had the authority to impose punishment under Article 351-A of the Civil Service Regulations. Punishment imposed was not permissible either under Rule 3 of Rules of 1999 or under Article 351-A. Respondents were held incompetent to pass any punitive order based on a flawed inquiry report. Fresh inquiry could be held only in accordance with Rule 7 and salutary principles. Any punishment, if warranted, could only be imposed by the Governor under Article 351-A. impugned orders were quashed. **(Para -33 to 37)**

Petition allowed. (E-7)

List of Cases cited:

1. St. of U.P. Vs Saroj Kumar Sinha, (2010) 2 SCC 772

2. Radhey Kant Khare Vs U.P.Corp. Sugar Factories Federation Ltd., 2003(21) LCD 610

3. Roop Singh Negi Vs P.N.B., (2009) 2 SCC 570

4. St. of Uttaranchal Vs Kharak Singh, (2008) 8 SCC 236

5. Satyendra Singh Vs St. of U.P., 2024 SCC OnLine SC 3325

6. St. of U.P. Vs Kishori Lal, 2018 (9) ADJ 397 (DB)

7. Smt. Karuna Jaiswal Vs St. of U.P., 2018 (9) ADJ 107 (DB)

8. St. of U.P. Vs Aditya Prasad Srivastava, 2017 (2) ADJ 554 (DB)

9. Gaya Prasad Yadav Vs St. of U.P., 2022 SCC OnLine All 685

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against the order of the Sub-Divisional Officer, Koraon, District Prayagraj dated 16.04.2024, punishing the petitioner, a *Lekhpal*, after holding disciplinary proceedings and the further order of the Sub-Divisional Officer, Koraon, Prayagraj dated 30.04.2024, modifying the last mentioned order. By the order dated 16.04.2024, disciplinary proceedings initiated against the petitioner were concluded, punishing the petitioner by reducing him to his basic pay. In addition, it was directed that the petitioner would not be entitled to any emoluments during the period that he remained out of service on account of dismissal from service earlier ordered and since set aside by the State Public Services Tribunal (for short, 'the Tribunal') with liberty to hold a fresh inquiry. The modification of the order dated 16.04.2024 came, because pending proceedings the employee has superannuated.

2. The facts, giving rise to this petition, make a sordid reading and convinces this Court that come what may, the Disciplinary Authorities in various departments of the Government, who are Administrative Officers, cannot appreciate the essentials of valid procedure to hold a departmental inquiry on a charge against an employee, which may lead to the imposition of a major penalty. They would not understand what Rule 7 of the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999') requires of the establishment in proving charges against a delinquent/ charge-sheeted employee, facing charges, that may lead to the imposition of a major penalty. This we say because the law in this regard has been laid down authoritatively across more than two decades, which holds that in all major penalty matters charges have to be proved by production of evidence in the first instance by the employer, which would include both oral and documentary evidence. The Inquiry Officer cannot return findings by merely reading the charge-sheet and the charge-sheeted employee's reply. Documentary evidence has to be led by the establishment, together with the production of witnesses to prove the charges in the first instance. It is not that the charge-sheeted employee is to be presumed guilty of the charges and after perusing his reply, which is not found satisfactory, sans evidence by the establishment, held guilty. The guilt can be proved upon following the procedure of holding an inquiry, consistent with Rule 7 of the Rules of 1999, where the Inquiry Officer sits as a Tribunal and the establishment bear the burden of proving the charges in the first instance by producing documentary evidence and witnesses with opportunity to the charge-sheeted employee to cross-examine such witnesses. That is the salutary procedure for any valid inquiry to be held in a major penalty matter.

3. We would presently refer to authority on the point. Howsoever high and consistent authority may there be, excluding any other possible course of action, experience dictates that Administrative Authorities, acting as

Disciplinary Authorities, would not give up the practice of presuming a charge-sheeted employee guilty by reading the charge-sheet, where the charges are regarded true, and then, look into the reply to find out if a plausible explanation, consistent with the charge-sheeted employee's innocence, has come forth. This is the approach which Disciplinary Authorities across the State in various establishments, including the Government, adopt and we are convinced that they would not give it up. When we refer to authority on the point, its age and consistency, it would leave no one in doubt that the principles there are consistently observed in breach. In this case, as in almost all others, a mere reference to the authority, followed by a quashing of the order on that ground, may not suffice. Something more would have to be done to compel Disciplinary Authorities in various establishments of the State to ensure that the procedural law, regarding the holding of a valid inquiry, in accordance with Rule 7 of the Rules of 1999 or salutary procedure in regard to such inquiries, involving the imposition of a major penalty, is followed. Enforcement of the settled law in this regard would spare unnecessary harassment to the employees facing inquiry and avoidable expenditure to the State. How and why this Court has remarked in the terms indicated above, would be apparent from the facts of this case, that would be presently referred to.

4. The petitioner was a *Lekhpal* in the District of Allahabad (now Prayagraj). He was appointed and initially posted at Tehsil Handia vide order dated 20.10.1982, where he worked up to the year 2001. He was transferred to Tehsil Meja and stayed there until 11.05.2010. The petitioner was suspended pending inquiry on charges of misconduct, vide order dated 12.05.2010. This happened in the circumstances that while posted as a *Lekhpal* in Bari, Tehsil Meja, District Prayagraj, in the months of April and May, 2010, an order of mutation was passed regarding Khata Nos. 39, 198 and 120 in error by the Revenue Inspector. The order was passed on the basis of a report made by the petitioner, which led to an irregular succession being recorded.

5. A charge-sheet was served upon the petitioner on 19.07.2010, carrying four charges. These read:

"आरोप 1 :- अपचारी कमचारी के ऊपर प्रथम आरोप यह है कि वह ग्राम बरी खाता संख्या - 198, 39 पर दर्ज खातेदार सितावी देवी पत्नी रामराज निवासी बेदौली को मृत दर्शाकर उसके स्थान पर धर्मराज पुत्र ठाकुर प्रसाद नि0 ग्राम बेदौली का नाम हितबद्ध होकर दर्ज करा दिया गया, जबकि सितावी देवी पत्नी रामराज अभी जीवित है। इस आरोप के जवाब में अपचारी कर्मचारी द्वारा कहा गया है कि धर्मराज पुत्र ठाकुर प्रसाद ने उसको बताया कि सितावी देवी हमारी भाभी है तथा मृतक हो चुकी है और उनके कोई संतान नहीं है, वारिस हमी है, तब मैने सितावी देवी के स्थान पर धर्मराज पुत्र ठाकर प्रसाद (देवर) के नाम दिनांक 20.04.2010 को वरासत करा दिया। अपचारी कर्मचारी के कथन से ही स्पष्ट है कि उसने हितबद्ध व्यक्ति के अतिरिक्त किसी अन्य व्यक्ति से सितावी देवी के बारे में कोई जॉच नहीं की और उससे मिलकर गलत ढ़ंग से जीवित व्यक्ति को मृतक दिखाकर वरासत दर्ज कर दिया। अपचारी कर्मचारी का जवाब संतोषजनक नहीं है। आरोप संख्या-1 उसके ऊपर पूर्णतया सिद्ध होता है ।

आरोप 2:- अपचारी कर्मचारी के ऊपर द्वितीय आरोप यह है कि उसने ग्राम बरी के खाता सेख्या - 120 पर दर्ज खातेदार रामबरन पुत्र रामलाल के स्थान पर उसके जायज वारिसान सभाजीत पुत्र रामबरन व विनय कुमार पुत्र कमेशचन्द्र का नाम न दर्ज करके अन्य व्यक्ति रमेश पुत्र जयनारायण निवासी बेदौली का नाम दिनांक 20.04.2010. को वरासतन दर्ज कर दिया। जवाब में अपचारी कर्मचारी द्वारा कहा गया है कि रमेश पुत्र जयनारायण ने उनसे कहा कि रामबरन उसके बाबा है, उसके मरे 10 वर्ष हो गये और अभी तक मेरे नाम उनकी वरासत नहीं हुई है। अपचारी कर्मचारी ने कहा है कि विश्वास में आकर गलत वरासत दर्ज कर दिया। अपचारी कर्मचारी के जवाब से स्पष्ट है कि वरासत दर्ज करने से पहले उसके द्वारा समुचित जॉच पड़ताल नहीं कि गई और गलत ढंग से वरासत दर्ज कर दी गई। आरोपी कर्मचारी का जवाब

संतोषजनक नहीं है और आरोप संख्या-2 उसके ऊपर पूर्णतया सिद्ध है।

आरोप 3 :- अपचारी कर्मचारी के ऊपर तीसरा आरोप यह है कि उसने पदेन दायित्वों का निर्वहन न करके स्वेच्छाचारितापूर्वक हितबद्ध होकर अनुचित रूप से दूसरे व्यक्ति के नाम वरासत दर्ज कर लाभ पहुँचाने का दोषि है। इस आरोप का जवाब भी संतोषजनक नहीं है और यह आरोप भी अपचारी कर्मचारी पर सिद्ध होता है।

आरोप 4: - अपचारी कर्मचारी के ऊपर चौथा आरोप यह है कि वह एक लापरवाह कर्मचारी है और भूमाफियों से सॉठ-गाँठ करके उन्हे लाभ पहुँचाने का दोषी है। जवाब में अपचारी कमचारी द्वारा कहा गया है कि वह सत्यनिष्ठा पूर्वक कार्य करने वाला कर्मचारी है और उसके साथ विश्वासघात करके कार्य कराया गया तथा उसने कर्मचारी आचार संहिता का उल्लंघन नहीं किया है। हो सकता है हितबद्ध व्यक्ति भू-माफियों न हो, लकिन वरासत दर्ज करने में आरोपी कर्मचारी द्वारा अत्यधिक लापरवाही बरती गयी है। दो-दो प्रकरणों में एक साथ ऐसी वरासत दर्ज हो जाना संयोग की बात नहीं हो सकती है। इसलिए आरोप संख्या - 4 भी अपचारी कर्मचारी पर सिद्ध होता है।"

6. The petitioner filed his reply to the charge-sheet on 04.08.2010, denying the charges and raising pleas in defence.

7. As regards the first charge, the petitioner's defence was that Dharmraj son of Thakur Prasad, described as a *Pahi Kastkar* in Village Bari, had told the petitioner that Sitabi Devi wife of Ramraj, who was his sister-in-law is no more and that he is entitled to be mutated in her place. The petitioner made a report in this regard before the Revenue Inspector, proposing a mutation in good faith. A mutation order dated 20.04.2010 was passed on its basis. The petitioner came to know that the intimation given by Dharmraj was incorrect. He, therefore, immediately approached the *Naib Tehsildar* with a report, as a result whereof the flawed mutation, directed by the Revenue Inspector on 20.04.2010, was set aside by the *Naib Tehsildar* vide order dated 04.05.2010. Sitabi Devi's name was restored.

8. About the second charge, the petitioner says that one Ramesh Chandra son of Jay Ram had informed him that Ram Baran son of Ram Lal, being a *Pahi Kastkar* in Village Bari, who was his grandfather, is dead. Ramesh Chandra represented himself to be Ram Baran's heir and legal representative entitled to inherit. The petitioner in good faith, believing the aforesaid state of things to be correct, made a mutation report to the Revenue Inspector, who passed a mutation order dated 20.04.2010 on its basis. Again, as soon as the petitioner came to know that the intimation given by Ramesh Chandra was incorrect, he immediately approached the *Naib Tehsildar* with a report, on the basis of which the mutation granted by the Revenue Inspector was set aside on 04.05.2010.

9. About the third and fourth charges, the petitioner said in his defence that he had taken immediate steps for cancellation of the wrong mutations, without any complaint from the affected parties or a direction by any higher Authority in this regard. He, therefore, said that he is entitled for protection of his actions earlier done on ground of good faith and a mere error during the course of duties, discharged *bona fide.*

10. It is the petitioner's case that the Inquiry Officer failed to adhere to the procedure of holding an inquiry in accordance with Rule 7 of the Rules of 1999. He did not fix any date, time and venue of inquiry, where the establishment would be called upon to produce their evidence, in particular, witnesses in order to prove the charges. The inquiry report dated 31.08.2010 was submitted by the Inquiry Officer, after going through the charge-sheet and the petitioner's reply with

no inquiry being held. All the charges were held proved by the Inquiry Officer. The petitioner submitted a detailed reply to the inquiry report, apparently, in answer to a show cause served along with a copy of the inquiry report dated 31.08.2010. The petitioner's reply is one dated 15.09.2010. The Sub-Divisional Officer, Meja, Prayagraj, the Disciplinary Authority, by an order dated 09.12.2010 dismissed the petitioner from service.

11. Aggrieved by the order of punishment, the petitioner preferred a statutory appeal on 10.01.2011 to the Appellate Authority, the District Magistrate of Prayagraj. Upon a writ petition filed, being Writ-A No.18116 of 2011, the relief sought wherein is not clear at all, this Court directed the Appellate Authority to ensure that the petitioner's pending appeal was decided in accordance with law within two months next from the date of receipt a certified copy of the order passed in the aforesaid writ petition. This order was passed by this Court on 29.03.2011. The Prayagraj District Magistrate, the Appellate Authority, dismissed the petitioner's appeal vide order dated 30.04.2011. The petitioner then put to challenge both these orders vide Writ-A No.40747 of 2011. In the said writ petition, the learned Standing Counsel raised an objection that against the appellate order, the petitioner still had an alternative remedy by way of revision before the State Government under Rule 13 of the Rules of 1999. This Court, sustaining the challenge and trusting the efficacy of the alternative remedy urged by the learned Standing Counsel, dismissed the writ petition on that ground, relegating the petitioner vide order dated 22.07.2011.

12. The petitioner lodged a revision before the State Government on 04.08.2011, addressing it to the Principal Secretary, Department of Revenue, Government of U.P. The said revision came to be dismissed by the Principal Secretary, Department of Revenue, acting for the State Government, exercising their powers under Rule 13 and saying no more than this for a reasoning:

"7- उपर्युक्त तथ्यों के परिप्रेक्ष्य में श्री जगमोहन, लेखपाल, क्षेत्र बरी, तहसील मेजा, जनपद इलाहाबाद द्वारा प्रस्तुत पुनरीक्षण अभ्यावेदन जिलाधिकारी की आख्या तथा पत्रावली में उपलब्ध अन्य अभिलेखों का भलीभाँति परीक्षण किया गया और यह पाया गया कि श्री जगमोहन, लेखपाल के पुनरीक्षित अभ्यावेदन दिनांक 04-08-2011 में उल्लिखित तथ्यों में कोई बल नहीं है। अतः वर्णित स्थिति में श्री जगमोहन, लेखपाल, (पदच्युत) क्षेत्र बरी, तहसील मेजा, जनपद इलाहाबाद का पुनरीक्षण अभ्यावेदन दिनॉक 04-08-2011 आधारहीन एवं तथ्यों से परे होने के कारण एतद्द्वारा निरस्त करते हुए निस्तारित किया जाता है।"

13. Again, the petitioner came back to this Court a third time, challenging all the orders, to wit, the order of the Disciplinary Authority, the appellate order and the revisional order, by means of Writ-A No.40170 of 2013. This time, this Court dismissed the writ petition on ground that the petitioner had a statutory alternative remedy under Section 4 of the Uttar Pradesh Public Services Tribunal Act, 1976 (for short, 'the Act of 1976'). Until this time, the petitioner was not heard by this Court on merits. The petitioner instituted Claim Petition No.258 of 2014, questioning all the three orders passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority, dispensing with his services. The Tribunal allowed the claim petition vide order dated 06.02.2015 and quashed all the three orders. Liberty was granted to the respondents to proceed with the departmental inquiry against the petitioner afresh from the stage of recording evidence

in his presence and, after providing opportunity to him, to cross-examine witnesses as well as opportunity to adduce evidence in his defence. The inquiry was directed to be concluded within a period of four months from the date of receipt of a certified copy of the Tribunal's judgment. Why this relief was granted to the petitioner, would be pellucid from the following remarks of the Tribunal, carried in their judgment dated 06.02.2015, which say:

"6. The impugned order of dismissal has been assailed mainly on the ground that the inquiry officer has not examined any witness in support of the charges and the petitioner has not been provided an opportunity of cross-examination and no date, time and place was fixed for conducting the inquiry as such the inquiry was not conducted as per provisions of rule 7 of U.P. Government Servants (Discipline and Appeal) Rules, 1999, which is violative of principles of natural justice.

7. In this regard, we have gone-through Rule 7(vii) of U.P. Government Servants(Discipline and Punishment) Rules, 1999 reads as under:-

Where the charged government servant denies the charges the in inquiry officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charges Government servant desired in his written statement to be produced in his defence."

8. Perusal of record shows that the petitioner was placed under suspension in contemplation of departmental inquiry vide order dated 12.5.2010 and a charge-sheet dated 19.7.2010 was issued to the petitioner containing four charges. The main charges levelled against the petitioner relates to wrong and illegal mutation, which was made by the petitioner. We have also gone-through the inquiry report dated 31.8.2010, which reveals that the inquiry officer has not fixed any date, time and place for conducting the inquiry and no witness was examined to prove the charges. The petitioner was also not provided any opportunity of cross-examination of witnesses and the inquiry officer has only considered the reply to the charge sheet and submitted the inquiry report on 31.8.2010 proving the charges levelled against him. Perusal of charge sheet clearly shows that the report of Tehesildar, Meza dated 07.5.2010 was cited as evidence, but the inquiry officer has not examined the Tehsildar, Meza for proving the charges.

9. From the perusal of above rule, It is clear that when the petitioner denies the charges levelled against him, it is obligatory on the part of the inquiry officer to fix date, time and place for recording the oral evidence of the witnesses, in support of charges, in presence of the petitioner, but in the present case, no oral inquiry was ever held and no witness was examined either in his presence or in his absence, so, the inquiry has not been conducted as per provisions of aforesaid rules. The Petitioner was also not afforded an opportunity to cross-examine the witnesses. It was obligatory on the part of the inquiry officer to have provided an opportunity to cross-examine the witnesses, whether the petitioner requests for it or not. No opportunity for adducing defence evidence was provided to petitioner. Thus, it is established beyond any doubt that the inquiry has not been conducted as per provisions of rules and the petitioner was

denied reasonable opportunity of defence also. Therefore, the inquiry report is vitiated and on the basis of vitiated inquiry report, no punishment can be inflicted on incumbent.

10. The Hon'ble Supreme Court has also held in a case reported in **2010(2) Supreme Court Cases 772 State of U.P.& others vs. Sąroj Kumar Sinha** as under:

An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid. procedure has not been observed. Since no oral evidence has been. examined, the documents have not been proved and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

11. In view of above position of case law, it is clear that departmental inquiry conducted against the petitioner was not according to prescribed rules. No oral evidence has been recorded. No witness was examined either in presence of the petitioner or in his absence. Opportunity of cross-examination of witnesses was not provided to the petitioner, so, the on the basis of irregular inquiry cannot be said to be legal and is liable to be quashed. The appellate authority and Revisional authority have also not considered these points before passing the order dated 30.4.2011 and 22.4.2013, so, they are also liable to be quashed. Thus, on this technical ground, the impugned order is not sustainable in eye of law and liable to be quashed.

12. In the instant case, no oral inquiry was held and no date, time and place was fixed under intimation to the petitioner, so, the whole inquiry is vitiated and on the basis of vitiated inquiry, no punishment could be awarded to the petitioner.

In **2003(21) LCD 610 Radhey Kant Khare Vs. U.P. Coop. Sugar Factories Federation Ltd.** The division bench of Hon'ble High Court Allahabad (Lucknow Bench) while dealing with the procedure of enquiry before imposing major punishment has held as follows:

"After a charge sheet is given to the employee an oral enquiry is a must, whether the employee requests for it or not. Hence a notice should be issued to him indicating him the date, time and place of the enquiry.""

14. In compliance with the order dated 06.02.2015 passed by the Tribunal, the Sub-Divisional Officer, Meja, Prayagraj passed an order dated 27.04.2015, reinstating the petitioner in service and suspended him pending inquiry in the same breath. The inquiry from stage of the charge-sheet was proposed to be held again, acting on the directions of the Tribunal. The petitioner challenged the part of the order that had directed his suspension from service by means of Writ-A No.23323 of 2015. This Court issued a notice of motion on 19.05.2015 and stayed the order of suspension, leaving it open to the respondents not to assign any work to the petitioner. It is pointed by the learned Counsel for the petitioner that the Disciplinary Authority went beyond the judgment of the Tribunal and issued a fresh charge-sheet dated 02.06.2015 to the petitioner, to which he filed a reply dated 08.06.2015. The four charges, that were then laid against the petitioner vide charge-sheet dated 02.06.2015, read:

"प्रथन आरोप- आपके विरूद्ध प्रथम आरोप यह है कि ग्राम बरी के खाता सं0 198, 39 पर दर्ज सितावी देवी पत्नी रामराज की मृत दिखाकर धर्मराज पुत्र ठाकुर प्रसाद नि0 बेदौली प0 क0 11 क पर आदेश 20.04.2010 द्वारा वरासतन दर्ज करा दिया है जब कि मूल खातेदार सितावी देवी पत्नी रामराज अभी जीवित है। इस प्रकार जीवित को मृतक दिखाकर उसके स्थान पर दूसरे व्यक्ति के नाम वरासत दर्ज कराकर हितवद्ध होकर लाभ पहुचाने के दोषी है।

साक्ष्य में तहसीलदार मेजा की आख्या दिनांक 07.05.2010 पठनीय है।

द्वितीय आरोप- आपके विरूद्ध दूसरा आरोप यह है कि ग्राम बरी के खाता संख्या 120 पर दर्ज खातेदार राम बरन पुत्र राम लाल के मृत होने पर उनके वारिसान सभाजीत पुत्र रामबरन व विनय कुमार पुत्र कमलेश चन्द्र का नाम वरासतन दर्ज न कराकर अन्य ब्यक्ति रमेश चन्द्र पुत्र जयनरायन नि0 बेदौली का नाम वजरिए वरासत दिनांक 20.04.2010 को आदेश पारित कराकर दर्ज करा दिया । इस प्रकार अवैधानिक कार्य करके आवंछित ब्यक्ति को अनुचित लाभ पहुचाने के दोषी है।

साक्ष्य में तहसीलदार मेजा की आख्या दिनांक 07.05.2010 पठनीय है।

तृतीय आरोप- आपके विरूद्ध तीसरा आरोप यह है कि आपने अपने पदेन दायित्वों का निर्वहन नहीं किया और स्वेच्छा चारिता पूर्वक हितबद्ध होकर अनुचित रूप से दूसरे व्यक्तियों के नाम वरासत दर्ज कराकर लाभ पहुचाने के दोषी है।

चौथा आरोप- आपके विरूद्ध चौथा आरोप यह है कि आप एक लापरवाह कर्मचारी है और भूमाफियों से सांठ- गाठ करके उन्हे लाभ पहुचाने के दोषी है और आप द्वारा कर्मचारी आचार संहिता का उल्लघन किया है। आपके इस कृत्य से आप सरकारी सेवा में रहने योग्य नहीं है।"

15. It is the petitioner's case pleaded in paragraph No.25 of the writ petition that in the inquiry held de novo under the judgment of the Tribunal, the establishment did not produce witnesses in support of the charges or afford opportunity to the petitioner to cross-examine them. An inquiry report dated 06.02.2016 was submitted, holding the first and the second charge proved, but the third and the fourth not proved. The Sub-Divisional Officer, on occasion, did not serve the petitioner with a show cause notice along with a copy of the inquiry report to enable the petitioner to reply. Instead, considering the inquiry report without the petitioner's answer to it, the Sub-Divisional Officer proceeded to punish the petitioner vide order dated 30.04.2024 in the following terms:

(1) the petitioner would not receive any emolument for the period of his suspension;

(2) the punishment earlier awarded to the petitioner would remain the same; and,

(3) a censure was awarded to the petitioner in the terms set forth in the order.

16. Later on, vide order dated 04.05.2016, the order of punishment dated 30.04.2016 was amended to clarify that in the ninth line of paragraph No.8, the direction to deprive the petitioner of his emoluments for the period of his suspension from service, had been incorrectly mentioned, which ought be read as the period of removal from service.

17. The petitioner, aggrieved by the orders dated 30.04.2016 and 04.05.2016, preferred a statutory appeal to the District Magistrate, Prayagraj on 28.06.2016. He raised his grievance about the establishment not proving their case by leading evidence at the inquiry, besides other contentions. The appeal remained pending with the District Magistrate for more than three years. The petitioner then instituted Writ-A No.4728 of 2019, complaining of delay in the decision of his statutory appeal by the District Magistrate. This Court, accordingly, disposed of Writ-A No.4728 of 2019 with a direction to the District Magistrate *'that subject to verification of all facts, the pending statutory appeal of the petitioner shall be*

attended to and disposed of in accordance with law, preferably within a period of two months from the date of presentation of a certified copy of this order.'

18. In compliance with the last mentioned order passed by this Court, the District Magistrate, Prayagraj decided the petitioner's appeal vide order dated 02.03.2021, setting aside the punishment order dated 30.04.2016, including the one correcting it dated 04.05.2016, with a direction to the Sub-Divisional Officer, Koraon to pass appropriate orders afresh after examination of records in accordance with law. The Sub-Divisional Officer did not comply with the order dated 02.03.2021 passed by the District Magistrate, Prayagraj for about six months, leading the petitioner to institute Writ-A No.17166 of 2021 before this Court, praying that a *mandamus* be issued to the Sub-Divisional Officer to pass appropriate orders in accordance with the order dated 02.03.2021 passed by the District Magistrate. This petition was disposed of vide order dated 07.12.2021 with a direction to the Sub-Divisional Officer, Koraon, Prayagraj to comply with the order dated 02.03.2021 passed by the District Magistrate, Prayagraj and to pass fresh orders in accordance with law, preferably within a period of three months of the date of service of a certified copy of the order passed in the last mentioned writ petition. The order dated 07.12.2021 passed by this Court in Writ-A No.17166 of 2021 was not complied with by the Sub-Divisional Officer, Koraon or the order of the District Magistrate, which was enforced by a *mandamus* of this Court. The Sub-Divisional Officer kept the matter pending with him for a few more months until 28.02.2022, when the petitioner retired from service upon attaining the age of superannuation.

19. The petitioner, after retirement, approached the Sub-Divisional Officer, Koraon and also sent reminders to enforce the District Magistrate's order, but all in vain. He did not carry out the order dated 02.03.2021 passed by the District Magistrate. Aggrieved by continued inaction by the Sub-Divisional Officer, the petitioner moved Contempt Application (Civil) No.6545 of 2023 against Avinash Yadav, the then Sub-Divisional Officer, Koraon, Prayagraj. The said contempt application was disposed of vide order dated 12.09.2023, granting the contemnor-opposite party to that application three months' further time to comply with the order dated 07.12.2021 passed by this Court on the writ side. The Sub-Divisional Officer did not avail that opportunity and the petitioner would say that he deliberately and knowingly disobeyed the orders dated 07.12.2021 passed by this Court on the writ side and in the contempt application, compelling the petitioner to move Contempt Application (Civil) No.775 of 2024 against Avinash Yadav, Sub-Divisional Officer, Koraon, a second time. This Court in the last mentioned contempt application, made the following order on 06.03.2024:

"1. Instant contempt application has been filed owing to willfully disobedient of the order dated 07.12.2021 passed by this Court in Writ-A No.17166 of 2021, at the part of the opposite party who has deliberately not reconsidered the case of the applicant till date.

2. Learned Standing Counsel has filed copy of the instruction dated 05.03.2024 duly signed by the Sub Divisional Magistrate, Koraon, District Prayagraj today in Court, which is taken on record. Copy of the aforesaid instructions has been served upon learned counsel for the applicant.

3. Learned Standing Counsel, on the basis of instructions, states that legal advise has been sought for from the D.G.C. (Civil) as to whether order passed by this Court could be complied with or not. It is very sorry state of affairs at the part of the officer concerned who has given instructions that the order of this Court could be complied with only after taking legal advise from D.G.C. (Civil). It appears that the authority concerned is preventing himself superior to this Court. It amounts second contempt in the matter in hand. Conduct shown by the opposite party is highly condemnatory.

4. As a last opportunity, in the interest of justice, one month and no more time is granted to the opposite party, either to comply with the order passed by this Court or show cause as to why contempt proceeding should not be drawn against him.

5. Put up this matter on 22.04.2024 in the additional cause list."

20. The petitioner's case is that upon receipt of the aforesaid order, in haste and without application of mind, the Sub-Divisional Officer, Koraon passed an order dated 16.04.2024, reinstating the petitioner, reducing him to his initial pay-scale. In addition, the salary for the period that the petitioner remained out of service was denied. A censure was also awarded. This order was amended by the Sub-Divisional Officer on 30.04.2024, realizing that the petitioner had retired from service and could no longer be reinstated. The amended order of punishment reads:

"अपचारी कर्मचारी श्री जगमोहन लेखपाल के विभागीय कार्यवाही में जिलाधिकारी महोदय, प्रयागराज के पंत्राक - 459 / भूलेख सात 2020-21 दिनांक 02 मार्च 2021 के अनुपालन में अधोहस्ताक्षरी के कार्यालय पत्रांक- 2914 / एस0टी0कोरांव - 2024 दिनांक 16. 04.2024 से निर्गत आदेश के पृष्ठसंख्या - 02 के पैरा संख्या-02 में आंशिक संशोधन करते हुए उसके स्थान पर निम्न आदेश पारित किया जाता है.

"मेरे द्वारा जांच अधिकारी की जांच आख्या व अपचारी कर्मचारी के उत्तर / जवाब व पत्रावली में संलग्न साक्ष्यों के अनुशीलन करने के उपरान्त मैं इस निष्कर्ष पर पहुँचता हूँ कि अपचारी कर्मचारी ने जानबूझकर जीवित खातेदार को मृतक दिखाकर वरासत दर्ज किया है, जिसके लिए अपचारी कर्मचारी पूर्ण रूपेण दोषी है। अपचारी कर्मचारी का यह कृत्य कर्मचारी आचरण नियमावली के विपरीत है। अपचारी कर्मचारी दिनांक 28.02.2022 को सेवानिवृत्त हो चुके हैं। अपचारी कर्मचारी को पृथक काल का वेतन अदेय करते हुए विभागीय कार्यवाही समाप्त की जाती है।"

21. Aggrieved by the order dated 16.04.2024, as amended on 30.04.2024, passed by the Sub-Divisional Officer, Koraon, Prayagraj, the petitioner has instituted the present writ petition under Article 226 of the Constitution.

22. Notice of motion was issued by this Court on 09.08.2024 and a counter affidavit on behalf of respondent Nos.3 and 4 filed in Court on 05.09.2024. The learned Counsel for the petitioner waived her right to file a rejoinder. The petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

23. Heard Ms. Sharda Vishwakarma, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel, appearing on behalf of the State.

24. Upon a careful consideration of the matter, what this Court finds is that it is true, as remarked in the opening paragraphs of this judgment, that the Inquiry Officer, after the Tribunal remanded the matter for a de novo inquiry, did not follow the salutary procedure governing a departmental inquiry, where there was likelihood of the imposition of a major penalty. It is also a

case where breach of Rule 7 of the Rules of 1999 is there for the same flaw as that which violates salutary principles governing such inquiries.

25. In paragraph Nos.43 and 44 of the writ petition, there is a categorical case that the Inquiry Officer did not fix a date, time and place for holding the inquiry, nor did he require the establishment to lead oral evidence or examine witnesses to prove the charges. In the counter affidavit filed on behalf of the respondents, the assertions in paragraph Nos. 43 and 44 have neither been effectively denied nor has it been shown that the procedure necessary to hold a valid departmental inquiry in a major penalty matter was adhered to.

26. It is imperative in a case involving an inquiry, where a major penalty may result that a date, time and place be fixed for holding the inquiry, with intimation both to the delinquent and the establishment. The hearing before the Inquiry Officer, that is to be held on the appointed date, time and venue, is hearing the establishment's evidence to prove the charges in the first instance. The Inquiry Officer, in doing this, must convene himself as a formal Inquiry Tribunal, distancing himself from the establishment, which he may otherwise be a part of. He must require the establishment through their Presenting Officer to produce evidence, both documentary and oral, that is to say, witnesses to prove the charges against the delinquent. After evidence in support of the charges has been led by the establishment, the witnesses have to be made over to the delinquent to cross-examine them. It is in the next stage that the delinquent may be called upon to produce his evidence in defence, which, again, can be both documentary and oral. If the delinquent examines witnesses, they would be available for cross-examination by the establishment in the same fashion. If the delinquent does not produce any evidence, the Inquiry Officer cannot relieve the establishment of the burden of producing evidence in support of the charges.

27. The Inquiry Officer cannot infer upon a reading of the charge-sheet and the written statement, together with the papers annexed, that the charge-sheeted employee is guilty. The Inquiry Officer has to require the establishment to prove the charges, as already remarked, through evidence both documentary and oral. In the present case, as the record would show, despite specific remarks by the Tribunal in the judgment of remand dated 06.02.2015 about this breach of salutary procedure done by the Inquiry Officer, which is contrary to Rule 7 of the Rules 1999 as well, in the de novo inquiry undertaken, the Inquiry Officer did not require the establishment to produce evidence, including witnesses at the appointed date, time and place. Hearing at the inquiry would mean hearing the establishment's witnesses and their evidence. Here, what seems is that the Inquiry Officer thought that the charges are proof of themselves and the petitioner by his reply has not been able to dispel the charges. No evidence at all was heard by the Inquiry Officer in the manner mandatory, both by salutary principle and the provisions of Rule 7 of the Rules of 1999.

28. The position of the law, as regards the salutary procedure to be adhered to by the Inquiry Officer in holding an inquiry, which may lead to the imposition of a major penalty, is well settled in view of the law laid down by the

Supreme Court in **State of Uttar Pradesh and others v. Saroj Kumar Sinha, (2010) 2 SCC 772, Roop Singh Negi v. Punjab National Bank and others, (2009) 2 SCC 570, State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236** and the Bench decisions of this Court **in State of U.P. and another v. Kishori Lal and another, 2018 (9) ADJ 397 (DB) (LB), Smt. Karuna Jaiswal v. State of U.P., 2018 (9) ADJ 107 (DB) (LB) and State of U.P. v. Aditya Prasad Srivastava and another, 2017 (2) ADJ 554 (DB) (LB).**

29. The position of the law in this regard that has withstood the test of time has been recently endorsed by the Supreme Court in **Satyendra Singh v. State of U.P. and another, 2024 SCC OnLine SC 3325**, where it has been held:

"12. Learned counsel for the State was ad idem to the submissions of the appellant's counsel that no witness whatsoever was examined during the course of the inquiry proceedings. On a minute appraisal of the Inquiry Report, it is evident that other than referring to the documents pursuant to the so-called irregular transactions constituting the basis of the inquiry, the Inquiry Officer failed to record the evidence of even a single witness in order to establish the charges against the appellant.

13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to *Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 and Nirmala J. Jhala v. State of Gujarat,* (2013) 4 SCC 301.

30. If the petitioner were in service, this would be a case of a second remand for a de novo inquiry on the same charge-sheet, awarding costs against the respondents, this time for repeatedly following a flawed procedure in holding the inquiry. But, the position in this case has undergone a generic change. This change has come by on account of the petitioner's retirement pending disciplinary proceedings. An order that can be passed by a Disciplinary Authority against an employee, who retires pending disciplinary proceedings is governed by Article 351-A of the Civil Service Regulations (for short, 'the CSR'). In case of government servants, like the petitioner, serving the Government of U.P., there is no bar in continuing pending disciplinary proceedings after retirement without a sanction by the Governor. However, the punishments that can be awarded to a retired government servant are limited to those postulated under Article 351-A of the CSR. The power under Article 351-A can exclusively be exercised by the Governor and not the Disciplinary Authority. Punishment that can be inflicted is limited to the withholding or withdrawing of pension or any part of it, besides the right to recover from the employee's pension any loss caused to the State. This power can be exercised if the misconduct of the employee is found to be grave or one that has resulted in pecuniary loss to the Government. Whatever may be the gravity of the misconduct, punishments that can be imposed against an employee while in service under the Rules of 1999 cannot be awarded. While the employee is in service, the punishments that could be awarded are spelt out by Rule 3 of the Rules of 1999. These are broadly subdivided into 'minor' and 'major' penalties. Rule 3 of the Rules of 1999 reads:

"3. Penalties.–

The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants :

Minor Penalties:

(i) Censure;

(ii) Withholding of increments for a specified period;

(iii) Stoppage at an efficiency bar;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

(v) Fine in case of persons holding Group 'D' posts : provided that the amount of such fine shall in no case exceed twenty five per cent of the month's pay in which the fine is imposed.

Major Penalties:

(i) Withholding of increments with cumulative effect;

(ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;

(iii) Removal from the service which does not disqualify from future employment;

(iv) Dismissal from the service which disqualifies from future employment.

Explanation.- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government servant for failure to pass a departmental examination or for failure to fulfil any other condition in accordance with the rules or orders governing the service;

(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficient bar;

(iii) Reversion of a person appointed on probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;

(iv) Termination of the service of a person appointed on probation during or at end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation."

31. Even if the petitioner were in service, the punishment that has been awarded after the amended order dated 30.04.2024, that is to say, denial of salary for the period that the petitioner was out of service in consequence of the order of dismissal, could not be validly made. The reason is that this is not one of the punishments contemplated under Rule 3 of the Rules of 1999. This could have been the order made regarding emoluments payable to the petitioner for the period that he was out of service on account of the dismissal order, since set aside with a remand, if the petitioner were reinstated in service before his superannuation.

32. As matters stand, the petitioner is a retired employee and what punishment can be awarded to a retired government servant, can well be understood from the remarks of the Division Bench of this Court in **Gaya Prasad Yadav v. State of U.P. through Principal Secretary and another, 2022 SCC OnLine All 685. In Gaya Prasad Yadav** *(supra),* which was a case relating to a Constable of the Armed Police, this Court held:

"31. The question, therefore, in this case to be considered as to whether any such rule, as discussed in the case of *Rabindranath Choubey* (supra) by the Hon'ble Supreme Court exists in the Conduct, Discipline and Appeal Rules governing the appellant-petitioner.

32. The State Government in exercise of its powers vested in it under the

Police Act, 1861 has framed "The U.P. Police Officers of the Subordinate Ranks(Punishment and Appeal) Rules, 1991". The Rules are statutory in nature. Two types of punishment are provided in Rule 4, according to which major penalties include (i) dismissal from service, (ii) removal from service and, (iii) reduction in rank including reduction to a lower-scale or to a lower stage in a time scale whereas minor penalties include (i) withholding of promotion, (ii) fine not exceeding one month's pay, (iii) withholding of increment, including stoppage at an efficiency bar and, (iv) Censure. The procedure for award of punishment is provided in Rule 14.

33. Rule 14(1) provides for the procedure for major penalty, according to which the proceedings are to be conducted in accordance with the procedure laid down in appendix-I appended to the Rules. Rule 14(2) states that minor penalty may be imposed after informing the Police Officer in writing of the action to be proposed to be taken against him and what imputation of the act or omission on which action is proposed to be taken after giving him reasonable opportunity of making representation.

34. In U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 there is no provision akin to the provision of 34.2 of the Discipline and Appeal Rules, as discussed in the case of *Rabindranath Choubey* (supra). Even the Civil Service Regulations does not contain any such rule or provision which may permit passing of order of dismissal or for that matter any other penalty in case the employee has retired. Learned State Counsel has also not been able to place any such rule before us.

35. In absence of any rule, which permits imposition of punishment of dismissal after retirement or which deems the employee-employer relationship to be continued even after retirement for the purposes of disciplinary proceedings, in our opinion, the judgment of Hon'ble Supreme Court in the case of *Rabindranath Choubey* (supra) does not have any application in this case. Accordingly the reliance placed by the learned State Counsel on the said judgment is misplaced. As already observed above, Hon'ble Supreme Court in the case of *Prabhakar Sadashiv Karvade* (supra) has clearly held that penalty of dismissal cannot be imposed on an officer/employee after his retirement after attaining the age of superannuation unless there exists a specific rule in that behalf. If the disciplinary enquiry is instituted prior to retirement of the employee concerned, the same will continue by operation of Article 351A of Civil Service Regulations as held by Hon'ble Supreme Court in the case of Harihar Bholenath (supra). However, in such a case if the employee is found to be guilty of grave misconduct of or is found to have caused pecuniary loss to the Government, it is the Governor who can take action as provided in Article 351-A of the Civil Service Regulations."

33. The only question that survives for consideration is, if the respondents could deprive the petitioner of all his emoluments for the period he remained out of service on account of the order of dismissal, since set aside by the Appellate Authority with a remand to the Disciplinary Authority. It could perhaps be considered how much of the emoluments for the period of time that the petitioner remained out of employment ought be given, depending on the gravity of the charge, its proof etc., if it were a case of reinstatement. The respondents here have lost the power to reinstate the petitioner, who has retired from service, leading to a severance of the

employer – employee relationship. Therefore, there is no scope for the respondents to deny the petitioner his emoluments for the period that he remained out of employment on account of the dismissal order. The dismissal order being set aside by the Tribunal with remand for a *de novo* inquiry and no further order in the respondents' disciplinary jurisdiction being passed while the petitioner was in service, the only order that could now be made against the petitioner is one in terms of Article 351-A of the CSR, which can exclusively be done by the Governor.

34. The issue that still survives for consideration is, if the respondents can be asked to take recourse to the provisions of Article 351-A of the CSR, if they so elect, on the basis of findings recorded against the petitioner by the Inquiry Officer. We do not think so. As matters stand, the inquiry report by the Inquiry Officer shows that after liberty by the Tribunal to hold an inquiry de novo in accordance with the salutary procedure and Rule 7 of the Rules of 1999, the Inquiry Officer has again faltered. He has submitted an inquiry report, which does not conform to the law governing salutary procedure for the holding of a departmental inquiry, where a major penalty may be imposed. The fact that punishment of reduction to the basic pay was awarded after remand by the Tribunal based on the inquiry report, shows that a major penalty was intended to be awarded and was indeed awarded under Rule 3(ii) of the Rules of 1999 vide the order impugned dated 16.04.2024. The inference is imperative that this was a major penalty matter. The fact that this order was amended by the other order impugned dated 30.04.2024 is the result of a fortuitous circumstance that pending proceedings, the petitioner superannuated. That would not derogate from the nature of the disciplinary proceedings as one involving a major penalty. Therefore, the salutary procedure, governing departmental inquiries in a major penalty matter, had to be followed by the respondents. Rule 7 of the Rules of 1999 would also require the same course of action. The result would be that the inquiry report, on the foot of which the order of punishment has been passed, is the result of flawed procedure.

35. In the event, the respondents wish to proceed against the petitioner and pass an order, as the law would now countenance, they would have to hold a fresh inquiry, which would be a third instance of it, in order to determine if the petitioner is guilty. If the respondents elect to pursue fresh proceedings against the petitioner, they must hold an inquiry in accordance with the procedure salutary and Rule 7 of the Rules of 1999, where the Inquiry Officer would require the establishment to prove their case by producing oral evidence after fixing a date, time and place for holding the inquiry. The other remarks in this regard carried in this judgment as also the settled position of the law, shall be borne in mind. If the respondents do not elect to hold fresh proceedings, no order of any kind of punishment, whether by resort to Article 351-A or otherwise can be passed against the petitioner on the basis of an inquiry report, which is the product of an inherently flawed procedure. In case the respondents elect to pursue fresh proceedings in accordance with the procedure mandated by law, the order of punishment, that can be passed, is not within the province of the respondents any more. They would have to take resort to the provisions of Article 351-A of the CSR, where appropriate orders of the Governor

would be required in the event the petitioner is found guilty again, on an inquiry held, in accordance with law.

36. In the result, this petition succeeds and is **allowed.** The impugned order dated 16.04.2024 and the amended order dated 30.04.2024, both passed by the Sub-Divisional Officer, Koraon, Prayagraj are hereby **quashed.** It will be open to the respondents, if they so elect, to hold a departmental inquiry de novo from the stage of the charge-sheet, taking into account the petitioner's reply to the charge-sheet dated 02.06.2015. The inquiry, if held, would be undertaken strictly bearing in mind the remarks carried in this judgment about the procedure to be followed in the inquiry. In the event the petitioner is found guilty, the respondents will proceed in accordance with Article 351-A of the CSR, submitting the matter for the Governor's orders, but will not pass any order of punishment themselves. In the event a *de novo* inquiry is not elected to be undertaken, the petitioner would be entitled to all consequential benefits, including emoluments for the period he has remained out of employment.

37. There shall be no order as to costs.

38. Let a copy of this order be communicated to the Chief Secretary, Government of U.P., Lucknow by the Registrar (Compliance) with a direction to ensure adherence with the settled law, in all departments of the State Government, regarding the salutary procedure relating to conduct of departmental inquiries in matters involving the imposition of major penalties.

(2025) 3 ILRA 206

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 26967 of 2008
With other connected cases

Ram Narain Ram & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Arvind Upadhyay, Ashok Kumar Singh, I. Raj Singh, Suresh Chandra Varma

Counsel for the Respondents:
C.S.C., S.K. Singh, S.R. Singh, V.K. Singh

A. Service Law – Payment of salary – Long term appointment – Principle of equity – Application – Appointment made against 14 sanctioned post out of 25 claimed posts – One set of petitioners were found to be working and there is also interim order in their favour – Long term appointment made against sanctioned posts, how far liable to be protected – Held, considering that these writ petitions are pending for last more than 17 years and first set of petitioners, i.e., Ram Narain Ram & ors., have served and now must have attained age of superannuation, therefore, taking note of principle of equity, their services if now disturbed, it would be an inhuman approach of this Court and that should be avoided – Such long appointment even if irregular be protected – *Radhey Shyam Yadav's case* relied upon. (Para 17 and 19)

One set of writ petitions allowed & anr.set of writ petitions dismissed. (E-1)

List of Cases cited: