

CASE NO.:
Appeal (civil) 3218 of 2007

PETITIONER:
U.P. Cooperative Federation Ltd. & Ors

RESPONDENT:
L.P. Rai

DATE OF JUDGMENT: 24/07/2007

BENCH:
G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3218 OF 2007
(@ Special Leave Petition (Civil) No.21963 of 2003)
WITH
CIVIL APPEAL NO. 3222 OF 2007
(@ SLP (C) No.21964 of 2003)

G.P. Mathur, J.

Leave granted.

2. These appeals, by special leave, have been preferred against the judgment and order dated 1.4.2003 of Lucknow Bench of Allahabad High Court, by which two writ petitions filed by the respondent L.P. Rai were disposed of.

3. The respondent L.P. Rai was posted as Senior Manager, VINCO, in July 1989. He was issued a charge sheet on 2.11.1989 containing 8 charges. He submitted a reply to the charges levelled against him. The enquiry officer, after consideration of the material on record, submitted his report to the disciplinary authority. A show cause notice was then issued to the respondent on 7.12.1990. The disciplinary authority by his order dated 8.2.1991 held the respondent guilty of certain charges and imposed punishment of recovery of Rs. 42,214.57 from his salary, stoppage of one increment with cumulative effect and an adverse entry in his character roll. It was further directed that during the period of his suspension, the respondent would only be entitled to the suspension allowance which had already been paid to him.

4. The respondent filed Writ Petitions No.2748 (SB) of 1993 challenging the order of punishment. He had also filed Writ Petition No.4517 (SB) of 1998 seeking his promotion. The writ petitions were contested by the appellant herein, U.P. Cooperative Federation Ltd. The High Court after consideration of the material on record came to the conclusion that no opportunity of hearing was given to the respondent during the course of enquiry inasmuch as he was not given any opportunity to cross-examine the witnesses who were examined on behalf of the employer nor was he given any opportunity to lead evidence in his defence. On these findings, it was held that as no proper enquiry was held, the charges levelled against the respondent cannot be said to have been proved. The order of punishment dated 8.2.1991 was accordingly set aside. The operative portion of the order passed by the High Court reads as under :-
"As a consequence of quashing of the punishment

orders, the petitioner shall also be entitled to all the monetary and such other consequential benefits to which he would have been entitled in case the aforesaid punishment orders had not been passed. The petitioner, thus, would be given all such benefits, within a period of three months from the date a certified copy of this order is produced before the authority concerned.

Both the writ petitions thus, disposed of finally."

5. Ms. Rachana Srivastava, learned counsel for the appellant, has submitted that the High Court having come to a finding that no proper enquiry was held as the respondent was not given opportunity to defend himself and the enquiry suffered from procedural irregularities, should have given liberty to the appellant to hold a fresh enquiry against the respondent in accordance with law. However, by the impugned order, the right of the appellant to hold a fresh enquiry has been foreclosed. Learned counsel for the respondent has submitted that L.P. Rai (respondent) has since retired from service and it will not be proper at this stage to hold a fresh enquiry against him. Having considered the submissions made by learned counsel for the parties, we are of the opinion that the charges levelled against the employee are not of a minor or trivial nature and, therefore, it will not be proper to foreclose the right of the employer to hold a fresh enquiry only on the ground that the employee has since retired from service. In this view of the matter, the order passed by the High Court requires to be modified. It is accordingly clarified that it will be open to the appellant-employer to hold a fresh enquiry against L.P. Rai (respondent) in accordance with rules. Having regard to the fact that the respondent has already retired from service, it is directed that if the appellant chooses to hold a fresh enquiry, it must do so expeditiously, preferably within a period of four months from the date on which a certified copy of this judgment is issued by the office. A decision on the question of promotion of the respondent employee shall be taken after the conclusion of the enquiry.

6. The appeals are accordingly disposed of. The parties to bear their own costs.