

Neutral Citation No. - 2025:AHC-LKO:17496

A.F.R.

Reserved on 13.12.2024

Delivered on 28.03.2025

Case :- WRIT A No. - 6716 of 2024

Petitioner :- Raj Kishore Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Jail Administration And Reforms Deptt. U.P. Lko. And 2 Others

Counsel for Petitioner :- Vikas Singh, Akshay Kumar Singh, Mahendra Bahadur Singh, Palak Jawa, S M Singh Royekwar

Counsel for Respondent :- C.S.C., Raj Kumar Upadhyaya (R.K. Upadhyaya)

Hon'ble Neeraj Tiwari, J.

1. Heard Sri Akshay Kumar Singh, learned counsel for the petitioner, Sri Anirudh Singh, learned standing counsel for respondent Nos. 1 & 2 and Sri R.K. Upadhyaya, learned counsel for respondent no. 3.

2. Present petition has been filed with the following prayer:

“(i) Issue a writ direction or order in the nature of certiorari quashing the impugned order dated 21.06.2023.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to make payment of full pension to the petitioner without any kind of deduction.

(iii) Issue a writ direction or order in the nature of mandamus commanding the opposite parties to grant the benefit of time pay scale w.e.f 09.05.2002, first promotional pay scale w.e.f. 09.05.2008, third promotional pay scale (IIIrd ACP) with effect from 09.05.2020 and make payment of arrears of salary after re-fixation of pay of the petitioner from due dates.”

3. Brief facts of the case are that petitioner was appointed as Deputy Jailer by the U.P. Public Service Commission-respondent No. 3 and joined his services on 09.05.1994. He was promoted to the post of Jailer vide order dated 17.05.2010 and thereafter on the post of Jail Superintendent vide order dated 19.05.2016. Petitioner submitted his joining at District Etawah on 01.07.2017 as Jail Superintendent. During the service of petitioner as Jail Superintendent at Etawah, there was allegation against him that two convicted prisoners were escaped from the jail and later on an inquiry was initiated against the petitioner. Thereafter, charge sheet

was issued on 11.11.2019. The charge sheet is having only one charge. Basically petitioner was charged with allegation that he has loose control over the subordinate officers, due to which they are also reluctant in security measure required in jail, resulting into fleeing away of two prisoners. The charge sheet was duly replied by the petitioner vide reply dated 05.02.2020 denying the charges levelled against him. Inquiry report was submitted on 30.07.2020.

4. The petitioner was superannuated on 30.11.2021 and thereafter, permission was taken as mandated in Rule 351-A of Civil Service Regulation(hereinafter, referred to as 'CSR'). Vide order dated 11.01.2022 the permission for continuance of inquiry was granted under Rule 351-A of CSR. The departmental proceeding was concluded and order dated 11.01.2022 was passed for deduction of 15 per cent amount from the pension of the petitioner.

5. Along with petitioner, three officers, one Jailer and two Deputy Jailers were also charge sheeted, but they have been given minor punishment of warning/censure entry.

6. Petitioner has challenged the impugned order No. 1690A/22-1-200(12)/2019 dated 11.01.2022 by filing Writ A No. 3035 of 2022. During the pendency of the said writ petition, the State Government has withdrawn impugned order dated 11.01.2022 vide order dated 25.05.2022 and referred the matter to respondent No. 3 to take decision in light of judgment of this Court in the matter of ***Surendra Pandey Ex Deputy Jailer Vs. State of U.P. 2007(2) ADJ 531.***

7. The impugned order dated 11.01.2022 was withdrawn, therefore, petition was also allowed vide order dated 19.09.2022. As there was no time bound direction to respondent No. 3 to pass order, therefore, petitioner filed Civil Misc. Review Application Defective No. 76 of 2023, which was disposed of vide order dated 12.04.2023 with direction to respondent No. 3 to take decision within six weeks. He next submitted that thereafter, impugned order dated 21.06.2023 has been passed reducing deduction of pension from 15 per cent to 10 percent for the period of three years. Order dated 21.06.2023 was communicated petitioner along with letter dated 12.07.2023.

8. Learned counsel for the petitioner has assailed the impugned order basically on three grounds.

9. Firstly, he submitted that after joining on the post of Jail Superintendent, petitioner had written Letter No. 1242/ahda-14-2017 dated 20.07.2017 to DG Jail about the poor condition of Etawah

District Jail with regard to security, but no action has been taken in this regard. Therefore, he may not be held responsible for the alleged incident.

10. Secondly, he submitted that along with petitioner, one Jailer, namely Ram Kuber Singh and two Deputy Jailers, namely Jagdish Prasad and Sibte Hassan Jafari of District Jail, Etawah were also found guilty for the same incident, but Jailer Ram Kuber Singh was given only warning, Jagdish Prasad was given punishment of censure entry, whereas, Sibte Hassan Jafari was given warning for working more vigilantly in future. He firmly pointed out that it is a case of absolute discrimination with petitioner, as he was the in-charge of the jail and his duty was only supervisory in nature, whereas, other charged employees are directly responsible for the incident. Therefore, in case of punishment, they should have been given more severe punishment than the petitioner and in the present case other charged employees have been given very minor punishment, which may not be even said to be punishment.

11. He next submitted that as per provisions of UP Jail Manual, Jailer is Chief Exclusive Officer of the Jail. He shall also be responsible for supervision of all building operations and for looking that all jail buildings are kept in thorough state of repair. In district jails, locking and unlocking of barracks shall be carried out in the general supervision of Jailer along with Deputy Jailer, Assistant Jailer and other officers. He next submitted that it is very surprising that officers responsible under the Jail Manual have been given only minor punishment. He further submitted that the manner in which the impugned order has been passed is discriminatory in nature.

12. Lastly, he submitted that this Court vide interim order dated 27.05.2022 passed in Writ A No. No. 3035 of 2022 has directed to decide the case in light of judgment of this Court in the matter of ***Surendra Pandey(Supra)***. He firmly pointed out that case of petitioner is squarely on same facts as in ***Surendra Pandey(Supra)*** and in that case, this Court after considering provisions of law has held that lack of efficiency, foresight and indecisiveness cannot be said to be misconduct in terms of Regulation 351A of CSR and therefore, based upon that, no punishment can be awarded and accordingly set aside the impugned order.

13. Learned Standing Counsel has vehemently opposed the submission raised by learned counsel for the petitioner and submitted

that disciplinary proceeding was initiated under the Rule 7 of the U.P. Government Servants(Discipline and Appeal) Rules, 1999 against the petitioner on laxity in discharging his duty and for having loose control over sub-ordinate officers and prisoners, but could not dispute the factual submission and this fact that identical controversy has been decided by this Court in the matter of ***Surendra Pandey(Supra)***.

14. I have considered rival submissions made by learned counsel for the parties and perused the record.

15. The first argument of learned counsel for the petitioner is about the poor condition of District Jail, Etawah, for which he has written several letters from time to time and there is no denial of this fact in the counter affidavit, therefore, it is apparently clear that condition of District Jail, Etawah was not proper and further, lesser number of security officers were posted at there. The CCTV camera was also not functioning.

16. From the perusal it is also clear that even after DG, Jail being informed about the poor condition of the jail by the petitioner, no action has been taken for proper safety.

17. Therefore, petitioner cannot be held responsible for any inaction and laxity in duty coupled with this fact that he has written several letters for improvement of condition of jails, which has not been taken care of.

18. Now coming to the second argument of learned counsel for the petitioner regarding discrimination in punishment given to petitioner. I have perused the provisions of UP Jail Manual. From the perusal of the same, it is apparently clear that main role in the security of the jail is assigned to other subordinate officers and the role of Superintendent is only supervisory in nature. Other charged employees viz. Jailer and Deputy Jailer are having bigger liability for execution of orders so issued by the petitioner. Very surprisingly, in the present case they have been awarded very lesser punishment.

19. Therefore, it is also a case of absolute discrimination with the petitioner. In all eventuality, petitioner cannot be awarded higher punishment than other charged employees.

20. Now the legal issue before the Court is as to whether lack of supervision comes within the purview of misconduct or not in terms of Regulation 351-A of CSR.

21. The very same issue with the same facts was before this Court in the matter of ***Surendra Pandey(Supra)***. In that matter a prisoner fled away from the jail premises and petitioner was found guilty of having loose control over his sub-ordinate employees and as a result of which prisoner managed to flee away from the jail. Relevant paragraphs of the aforesaid judgment are being quoted hereinbelow:

“6. The order of punishment against the petitioner was passed under Regulation 351-A of the Civil Service Regulations and the relevant portion is quoted below:-

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement....."

*7. Learned counsel for the petitioner vehemently urged that the petitioner was not at all responsible for the fleeing away of the two prisoners and the only charges that had been levelled against the petitioner was that he had loose control over his subordinates which resulted in the said act. This according to him would not amount to an act of grave misconduct attracting the provisions of Article 351-A of the Civil Service Regulations and in support of his contention he placed reliance upon the decisions in ***Union of India & Ors. Vs. J. Ahmed AIR 1979 SC 1022; U.P. State Road Transport Corporation & Anr., Vs. Abdul Gafoor 2006 (3) ESC 1985 and in M.M. Malhotra Vs. Union of India & Ors., JT 2005 (9) SC 506.****

*8. The sole question, therefore, that arises for consideration in the present petition is as to whether punishment could have been imposed upon the petitioner under the provisions of Regulation 351-A of the Civil Service Regulations even if it is to be assumed that the petitioner was guilty of the charge of having loose control over his subordinates as a result of which two prisoners fled away from the District Jail Gonda. Regulation 351-A clearly provides that the Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from pension, if the pensioner is found in departmental or judicial proceedings to have been "guilty of grave misconduct" during his service. The Supreme Court in *Jamil Ahmad (supra)* observed that failure to attain the highest expectation of an Officer holding responsible post or lack of aptitude of quality of leadership would not constitute as failure to maintain devotion to duty because if it is so then every Officer rated average would be guilty of misconduct. In the said case the charges levelled against the Officer indicated lack of efficiency, lack of*

foresight and lack of indecisiveness but the Supreme Court observed that these deficiencies in personal character or personal ability would not constitute misconduct for the purposes of disciplinary proceedings.

In M.M. Malhotra (supra) the Supreme Court observed:-

"Misconduct" as stated in Batt's Law of Master and Servant (4th Edition) (at page 63) is "comprised positive acts and not mere neglects or failures". The definition of the work as given in Ballentine's Law Dictionary (148th Edition) is "A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness."

9. In Abdul Gafoor (supra) a Division Bench of this Court after noticing the aforesaid decisions observed that the allegations against the petitioner that he did not get the bus in question checked when it came to the Depot at 10:30 PM did not amount to misconduct as his inaction or failure of duty could not be the main cause for the fire in the bus. In the present case, the only allegation that has been levelled against the petitioner is that he had loose control over his subordinates as a result of which two prisoners fled away. The inquiry report does not indicate that the petitioner was directly responsible for the fleeing away of these two prisoners. The punishment under Regulation 351-A could have been imposed upon the petitioner only if he was guilty of grave misconduct. In view of the aforesaid decisions it cannot be said that the petitioner was guilty of grave misconduct. The order dated 21st June, 2003 cannot, therefore, be sustained.

10. The submissions advanced by the learned Standing Counsel that this Court should not interfere with the quantum of punishment does not arise for consideration in the present case inasmuch as for the act indicated above punishment could not have been awarded under Regulation 351-A of the Civil Service Regulations. The writ petition, therefore, succeeds and is allowed. The order dated 21st June, 2003 is quashed. The petitioner shall be paid the balance amount of pension with interest at the rate of 9% per annum from the date it was due to the date of payment."

22. In the present case too, the petitioner was charged with the allegation of having loose control over the subordinate employees resulting into fleeing away of two prisoners, which cannot be said misconduct and no punishment can be awarded under Regulation 351-A of CSR as decided by this Court in the matter of **Surendra Pandey(Supra)**.

23. Therefore, in light of facts of the case as well as ratio of law laid down by this Court in the matter of **Surendra Pandey(Supra)**, no punishment can be awarded to petitioner. Accordingly, impugned order dated 21.06.2023 cannot be sustained and is hereby set aside.

24. It is directed that petitioner shall be paid the entire deducted amount of pension along with interest @ 9 % from the due date to the date of actual payment.

25. Writ petition is **allowed** with all consequential benefits. No order as to costs.

26. So far as Prayer No. (iii) is concerned, petitioner is given liberty to file representation before respondent No. 1 within two weeks along with certified copy of this order. In case any such representation is filed, respondent No. 1 is directed to consider and decide the same in accordance with law, maximum within a period of eight weeks thereafter.

Order Date :- 28.03.2025

ADY