

**Court No. - 40**

**Case :-** SPECIAL APPEAL No. - 298 of 2024

**Appellant :-** Vk Mishra

**Respondent :-** State Of U.P. Through Its Principal Secretary/ Additional Cheif Secretary, Industrial Development Department, Civil Secretariate And 4 Others

**Counsel for Appellant :-** Ravi Pratap Singh

**Counsel for Respondent :-** C.S.C.,Dhananjay Awasthi

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Anish Kumar Gupta,J.**

1. Heard Shri Ravi Pratap Singh, learned counsel for the petitioner-appellant; Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Manoj Kumar Mishra, learned Standing Counsel for the State respondent nos.1 to 4 and Sri Dhananjay Awasthi, learned counsel for the respondent no.5.

2. Present Special Appeal under Chapter VIII Rule 5 of Allahabad High Court Rules 1952 is preferred against the impugned judgement and order dated 13.3.2024 in Writ A No.1259 of 2024 (V.K. Mishra vs. State of UP and 4 others) by which learned Single Judge has dismissed the writ petition as premature.

3. It appears from the record that the petitioner-appellant retired from the post of Secretary/General Manager, U.P. Cooperative Spinning Mills Limited, Kanpur on 30.06.2016. After his retirement, the respondent no.3 engaged him on contract basis upto June, 2022. One Jai Ram Babu made a complaint before the Joint Commissioner, Sales Tax Kanpur against M/s Hind Security Force (respondent no.5), alleging that they are not depositing G.S.T. to the Sales Tax Department. Consequently, the Sales Tax Department initiated proceedings to recover the amount of GST against the respondent no.5. Finally, the respondent no.5 paid the amount, which was agreed between the concerned mills and the respondent no.5 from 2012 to 2022 but it did not pay GST to the Sales Tax Department from 2017 to 2020. Thereafter, the respondent no.5 made a complaint dated 28.09.2022/02.09.2022 before the Superintendent of Police (Vigilance) U.P. Lucknow against the petitioner and other employees of the mills. On the said complaint, a preliminary enquiry was conducted and the enquiry officer had submitted the ex-parte preliminary enquiry report dated 21.12.2023. After receipt of the report, the respondent no.2 vide letter dated 24.01.2024 had directed the Director General of Police, Economic Offence Research Sangthan, U.P. Lucknow for conducting an enquiry against the petitioner and submit a report within three months. Aggrieved with the said order, the petitioner

had filed the aforesaid writ petition, which was dismissed by learned Single Judge on 13.03.2024. Being unsatisfied with the said order, the petitioner-appellant has preferred the present appeal.

4. Learned counsel for the appellant-petitioner vehemently submits that the order impugned passed by learned Single Judge is per se unsustainable as the Authority had proceeded ex-parte against the appellant-petitioner and held the preliminary enquiry on 21.12.2023. Thereafter, the matter was referred to the Director General of Police, Economic Offence, Lucknow. He submits that the entire proceedings were drawn behind the back of the appellant-petitioner only on the behest and dictate of the complainant-respondent no.5. Even though the department was conscious that the petitioner had already superannuated way back in the year 2016, the ex-parte complaint was entertained. He submits that during his tenure, no departmental enquiry had ever been initiated/ conducted against him. Even though in case against superannuated employee, the State is inclined to hold an enquiry, due permission is required under Regulation 351A of Civil Services Regulations but no such permission was taken. Therefore, it is not in dispute that the department has not proceeded against the petitioner-appellant. He submits that the said action is also hit by principle of natural justice as no opportunity or even comment has been asked for. The learned Single Judge has proceeded to non-suit the relief merely on the statement of Mr. M.C. Chaturvedi, learned Addl. Advocate General that the matter is premature as the department has not proceeded against the petitioner-appellant. He submits that once the action of the respondents was prejudicial to the interest of the petitioner, which also entails civil consequence, an opportunity had to be afforded. He submits that learned Single Judge has erred in law in dismissing the writ petition merely on the statement of learned Addl. Advocate General on the ground that the relief is premature.

5. Per contra, Shri M.C. Chaturvedi, learned Additional Advocate General has vehemently opposed the appeal and submits that the petitioner-appellant has approached this Court by filing the instant appeal raising a new ground. An order impugned in a writ petition has to fail or succeed for the reasons contained in the said order and that the same cannot be supported by way of raising a new ground in the appeal. As such, the Special Appeal is liable to be dismissed.

6. We have occasion to peruse the record in question as well as the order passed by learned Single Judge and we find that the respondents had raised a preliminary objection before the Court on

the maintainability of the writ petition filed by the petitioner-appellant, who had retired from the post of Secretary/General Manager of the mill in the year 2016. Finally, learned Single Judge has upheld the preliminary objection raised by the respondents and dismissed the writ petition vide order dated 13.3.2024 as premature with following observations:-

"1. Supplementary affidavit filed today be taken on record.

2. Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Ravi Pratap Singh, learned counsel for the petitioner, Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Manoj Kumar Mishra, learned Standing Counsel for the State-respondents and Sri Dhananjay Awasthi, learned counsel for the respondent nos. 3 & 4.

3. At the very outset, Sri M.C. Chaturvedi, learned Additional Advocate General has raised preliminary objection and submitted that only report of preliminary inquiry is under challenge before this Court in which certain recommendations have been made and till date no order has been passed against the petitioner, therefore, writ petition is bad and not maintainable.

4. Sri R.K. Ojha, learned Senior Advocate submitted that petitioner was retired from the post of Secretary/General Manager of U.P. Cooperative Sahkari Katai Mills Sangh, Kanpur on 30.6.2016 and thereafter, given re-employment. He firmly submitted that after retirement, no departmental proceedings may be initiated against the petitioner as it is not covered with Regulation 351-A of Civil Service Regulation.

5. Sri M.C. Chaturvedi, learned Additional Advocate General reiterated that as on date only preliminary inquiry has been conducted and further respondent no.2 has referred the matter to Director General of Police Economic Offence Research Sangthan, U.P. Lucknow for investigation vide order dated 24.1.2024, therefore, petition is premature and liable to be dismissed.

6. Sri R.K. Ojha, learned Senior Advocate appearing on behalf of petitioner could not dispute the aforesaid facts.

7. Accordingly, the writ petition is dismissed as premature with liberty to petitioner to file fresh petition in case any adverse order has been passed against the him."

7. It is not in dispute that the appellant-petitioner had already retired in the year 2016 and during his service tenure, no departmental proceeding was initiated against him. After more than six years, the respondent authority had proceeded against the appellant and held the preliminary enquiry on 21.12.2023 that to an ex-parte even without taking any comment from a retired employee. In administrative action, which also entails civil consequences for a person, the principles of natural justice should be adhered to. Admittedly, no opportunity was given to the appellant before holding the preliminary enquiry and such a decision taken in violation of the principle of natural justice would be void.

8. Hon'ble the Supreme Court in the case of **Automotive Tyre Manufacturers Association Vs. Designated Authority** (2011) 2 SCC 258 held about the natural justice in following terms:

"It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute,

particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application."

9. On due consideration to the submission advanced and perusal of the record, we are of the considered opinion that in the interest of justice, the matter is to be heard on merit before learned Single Judge and accordingly, the order impugned dated 13.3.2024 is set aside. The matter is relegated to the learned Single Judge to consider the matter on merits.

10. The Special Appeal stands partly allowed.

**Order Date :-** 23.4.2024

RKP