
(2015) 08 AHC CK 0061
In the Allahabad High Court
Case No : Service Single No. 241 of 2015

Alka Rastogi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 AHC CK 0061

Hon'ble Judges : D.K. Upadhyay, J

Bench : Single Bench

Advocate : Ashok Kumar Verma, for the Appellant

Final Decision : Allowed

Judgement

D.K. Upadhyay, J—Heard Sri A.K. Verma, learned counsel for the petitioner and learned Additional Chief Standing Counsel representing the State-respondents.

2. Impeaching the order dated 15.01.2015, passed by the Superintending Engineer, Investigation & Planning, Circle-5 Annexe, Sichai Bhawan, Lucknow, this petition has been filed by the petitioner under Article 226 of the Constitution of India.

3. The facts of the case as culled out from the pleadings available on record, in brief, are that the petitioner has been working as apprentice in the irrigation department since 1991. On 03.08.2007, an advertisement was issued for filling up two posts of Junior Clerk in the department by the respondents; one post was reserved for the candidates belonging to category of Other Backward Classes and other for the candidates belonging to category of Scheduled Caste. The petitioner being an Other Backward Class category candidate, submitted her application form pursuant to the advertisement dated 03.08.2007 and having been subjected to a selection, she was declared successful and by means of order dated 02.11.2007, she was appointed against the post of Junior Clerk in the Other Backward Class category. At the time of submission of her joining pursuant

to the appointment letter dated 02.11.2007, the petitioner submitted a certificate dated 30.10.2003 certifying that she belongs to the category of Other Backward Class, purportedly issued by the office of Tehsildar, Sadar, Lucknow.

4. It appears that the petitioner, however, subsequent to her joining, noticed that when she applied for certificate for her son as belonging to Other Backward Class for the purpose of getting him admitted in Class IX in a School, then the institution concerned required her to get the said certificate verified which was issued in the year 2003 and submit it again and at that time she took steps to get the said certificate. On enquiry it was revealed to her that said certificate was not issued from the office of Tehsildar, Sadar, Lucknow and that fresh certificate would be issued only after completing the enquiry. The Tehsildar, Sadar, Lucknow completed the said enquiry and issued another certificate on 11.03.2008. The said certificate dated 11.03.2008 was obtained by the petitioner for the purpose of getting her ward admitted in a School. However, since the earlier certificate issued in the year 2003 was not verified by the office of Tehsildar, Sadar, Lucknow, she very fairly and in bonafide manner informed the appointing authority by means of an application dated 13.03.2008, of the aforesaid facts and along with the said application submitted new certificate issued by the Tehsildar, Sadar, Lucknow dated 11.03.2008. On coming to know about the information, the appointing authority issued a show cause notice dated 19.03.2008, requiring the petitioner to submit her explanation as to how and under what circumstances, she submitted her joining on the basis of certificate dated 30.10.2003 which is allegedly forged, and has, thus, infringed Clause 11 of the terms of the appointment letter dated 02.11.2007.

5. In the meantime, on enquiry made by the Superintendent Engineer, the District Magistrate, Lucknow informed him by means of his letter dated 31.03.2008, that as per the report submitted by Tehsildar, Sadar, Lucknow, the certificate issued on 11.03.2008 is genuine and has been found to be recorded in the records maintained in the office of Tehsildar, Sadar, Lucknow. Along with his letter dated 31.03.2008, the enquiry report submitted by the Tehsildar, Sadar, Lucknow to the District Magistrate, Lucknow was also annexed. The Superintendent Engineer by means of his letter dated 01.04.2008 again required the petitioner to submit her explanation stating therein that she has contravened Clause 11 of the appointment letter dated 02.11.2007 and further that without there being any justification or occasion, she had submitted certificate dated 11.03.2008 to be taken on record. The petitioner submitted her detailed reply on 04.04.2008 stating therein all the aforesaid facts and submitted further that it is not in dispute from any corner that the petitioner belongs to Other Backward Class.

6. The appointing authority, thereafter, by means of letter dated 10.04.2008 sought certain information from the petitioner, such as (1) her father's name, (2) permanent and local address of her father, (3) caste which the petitioner's father belongs to, and also (4) as to whether the petitioner's father belongs to

Other Backward Class.

7. The petitioner immediately submitted her reply to the said letter dated 10.04.2008 on 16.04.2008, mentioning clearly therein the name of her father, residential address and caste to which her father belongs to as "Sonar (Hindu)". Petitioner also stated in the said reply dated 16.04.2008 that her father belongs to Other Backward Class and also submitted the caste certificate dated 11.04.2008 issued by the Tehsildar, Sadar, Lucknow certifying that her father belongs to Other Backward Class being "Sonar" by caste.

8. Thereafter, the Superintending Engineer on 17.06.2008 passed an order whereby appointment of the petitioner was cancelled and her services were terminated w.e.f. 17.06.2008. In the said order, it has been stated that along with application for joining, the petitioner had submitted caste certificate dated 30.10.2003 and had further declared that all the information submitted by her in the application were correct and if any information furnished along with the application form is found to be incorrect or false at any point of time, her appointment/candidature may be cancelled. Taking clue from Clause 11 of the appointment order dated 02.11.2007, the Superintending Engineer passed the order dated 17.06.2008 on the ground that the petitioner had submitted incorrect information by annexing copy of the false caste certificate dated 30.10.2003.

9. The petitioner filed a Writ Petition No. 3523 (SS) of 2008 before this Court wherein she challenged the order dated 17.06.2008. This Court while entertaining the said writ petition initially passed an interim order on 03.07.2008 providing therein that till further orders of this Court, the operation and implementation of the impugned order dated 17.06.2008 shall remain stayed.

10. The said writ petition was finally allowed and the impugned order dated 17.06.2008 was quashed by this Court by means of judgment and order dated 20.11.2014. However, while allowing the said writ petition, this Court remanded the matter back to the authority concerned with a direction to decide the matter afresh after taking into consideration the reply submitted by the petitioner which was already on record. It was further provided that in addition to the reply submitted by the petitioner, she would be permitted to file a fresh reply in response to the show cause notice within a period of three weeks. It was also provided that the decision would be taken by the appropriate authority within a period of eight weeks from the date of receipt of reply and further for the period of eight weeks or till the decision was taken by the appropriate authority, whichever was earlier, the petitioner would be entitled to the benefit as given by this Court by means of order dated 03.07.2008 (wrongly mentioned in the order as 03.07.2007).

11. It is in compliance of the said judgment and order dated 20.11.2014 that the order dated 15.01.2015, which is under challenge in this writ petition, has been passed.

12. While reconsidering the entire matter as mandated by this Court by means of judgment and order dated 20.11.2014, the Superintending Engineer has again relied upon the same Clause-11 of the appointment order dated 02.11.2007 and has concluded that since the caste certificate dated 30.10.2003 submitted by the petitioner has been found to be forged, as such in view of Clause-11 of the terms of appointment order, her appointment is liable to be cancelled and the services are liable to be terminated. Another ground taken by the Superintending Engineer while cancelling the appointment of the petitioner by means of impugned order is that the caste certificate dated 11.03.2008 submitted by the petitioner, is not on the format as provided under the Government Order dated 22.10.2002 and, thus, the same cannot be accepted.

13. It is not in dispute that the petitioner's father belongs to Other Backward Class category. For the said purpose, when the petitioner was required to furnish certain information, she intimated the authorities that her father belongs to "Sonar caste" which comes within the category of Other Backward Class and along with the said information she also submitted the certificate issued by the Tehsildar, Sadar, Lucknow on 11.04.2008. It is also not in dispute that along with her application seeking appointment, the petitioner had submitted the certificate dated 30.10.2003 which has not been found to be recorded in the records maintained by the office of Tehsildar, Sadar, Lucknow.

14. However, at this juncture, what is noticeable and most significant for the purpose of arriving at the correct conclusion in the case is that it is the petitioner herself who apprised the authorities of the department by moving an application on 13.03.2008 that certificate dated 30.10.2003 was not verified by the office of the Tehsildar, Sadar, Lucknow, as such after getting a fresh certificate which was issued by the Tehsildar, Sadar, Lucknow dated 11.03.2008, she was submitting the same. There was no complaint against the petitioner that she had applied on the basis of the some forged document, neither was it detected by the authorities of the department that the petitioner had applied on the basis of said certificate dated 30.10.2003 which was not found recorded in the office of the Tehsildar, Sadar, Lucknow. The petitioner on getting the said information that the certificate dated 30.10.2003 was not found recorded in the records of the Tehsildar, Sadar, Lucknow at the time when she sought certificate for the purpose of getting her son admitted in a School, informed the authorities and as such so far as the bonafides of the petitioner are concerned, the same cannot be doubted on any count. The certificate dated 11.03.2008 has been got verified by the authorities of the department and the District Magistrate, on a query made by the departmental authorities, had categorically informed by means of his letter dated 31.03.2008 itself that the petitioner belongs to "Sonar caste" which comes within the category of Other Backward Class. The said information has been sent from the office of the District Magistrate, Lucknow on the basis of enquiry report submitted by the Tehsildar, Sadar, Lucknow. Thus, the fact that the petitioner belongs to Other Backward Class category is not at all in dispute.

15. The only reason indicated in the impugned order is that the petitioner's appointment is liable to be cancelled in terms of the provision of Class-11 of the appointment order, according to which, appointment is liable to be cancelled, in case the informations furnished in the application form are found to be false subsequently at any stage. The factum of the petitioner belonging to Other Backward Class not being in dispute, it cannot be said that the petitioner had any occasion to have obtained the forged/false certificate. At the most, since the certificate dated 30.10.2003 has not been found recorded in the office of the Tehsildar, Sadar, Lucknow, it can only be said that the said certificate is not a valid certificate.

16. To arrive at the conclusion that the petitioner furnished any wrong information at the time of filling up her application form, in these circumstances, cannot be inferred for the reason that indisputedly the petitioner does belong to Other Backward Class. As regards the validity of the caste certificate dated 30.10.2003, since it has not been found to be recorded from where it was allegedly issued, it can only be said that the same is not valid. However, the caste certificate submitted by the petitioner dated 11.03.2008 has been found to be genuine on a query made by the departmental authorities themselves from the District Magistrate, Lucknow. It is also worth mentioning that the information furnished by the petitioner regarding category to which her father belongs is also not in dispute. In these circumstances, the conclusion arrived at by the authority concerned for cancelling the appointment of the petitioner in terms of the provision contained in Clause 11 of the appointment order does not appear to be sound.

17. This Court in the case of Kamlesh Kumar Vs. Union of India and Others, (2011) 8 ADJ 757 , while dealing with a similar controversy, as is engaging attention of this Court in this case, has concluded that unless and until the person claiming to belong to Other Backward Class category is actually not found belonging to the Other Backward Class category, it cannot be said that the person concerned is guilty of deliberately submitting a false/fake certificate to mislead the authorities. The facts of the said case have been dealt with in para-4 of the said judgment which is quoted below:-

4. On receipt of the aforesaid show cause notice the petitioner has submitted his reply to the respondent No. 3, contained in Annexure No. 2 of the writ petition, stating therein that prior to the recruitment in question he approached Shri Bikrama Yadav, Advocate practising at Sadar Jaunpur for obtaining OBC certificate from the office of D.M., Jaunpur in the year 2001. The said Advocate had asked him to give a sum of Rs. 300/- for furnishing the OBC certificate. Accordingly, the petitioner paid the aforesaid amount of Rs. 300/- to Shri Bikrama Yadav, Advocate in pursuant thereto he handed over OBC certificate duly signed by authorities containing seal of District Magistrate Janpur, and Tehsildar, Sadar, Jaunpur, dated 3.7.2002 (Annexure No. 1 of rejoinder affidavit). In the year 2005 the petitioner was selected to the post of Constable CT (GD) in

SSB against OBC quota on producing aforesaid OBC certificate furnished by Shri Bikrama Yadav, Advocate. In the said reply the petitioner has stated that in fact he belongs to Ahir caste and comes under OBC category. Besides this, after receiving show cause notice he again approached office of D.M., Jaunpur and got prepared his fresh OBC certificate of Ahir Caste from the office of D.M., Jaunpur and aforesaid fresh OBC certificate in original was enclosed alongwith aforesaid reply of show cause notice and it was prayed through the aforesaid reply that a fresh OBC certificate submitted by the petitioner may be verified from the office of D.M., Jaunpur and in case it is found to be fake/false then his services will be terminated. The aforesaid fresh OBC certificate No. 5631 issued from the office of D.M., Jaunpur on 11.1.2008 is on record as Annexure No. 3 of the writ petition. Not only this but Sri Vikrama Yadav, Advocate has also stated on affidavit that the OBC Certificate No. 5941 dated 3.7.2002 furnished by him to the petitioner was genuine certificate. However, it was possible that while making entry in register some clerical mistake would have been done in the office of D.M. Jaunpur. It is further stated that without verifying the aforesaid fresh OBC certificate dated 11.1.2008 submitted by the petitioner alongwith the reply of show cause notice, the respondent No. 3 has passed a impugned order dated 11.3.2008 terminating his services w.e.f. 6.3.2008 on the ground of production of fake OBC certificate for securing the selection and appointment on the post in question. The copy of impugned order dated 11.3.2008 passed by respondent No. 3 is on record as Annexure No. 4 of the writ petition. The appeal preferred by the petitioner has also been dismissed by the respondent No. 2 vide impugned order dated 24.6.2008 hence this petition.

18. This Court in the aforesaid case of Kamlesh Kumar (supra) has concluded that in a situation like this, the person concerned cannot be said to have misled the authorities. Para-12, 13 and 14 of the said judgment rendered by this Court in the case of Kamlesh Kumar (supra) are quoted below:-

"12. In given facts and circumstances of the case I am of the considered opinion that unless aforesaid fresh O.B.C. Certificate No. 2341 dated 11.1.2008 (Annexure-3 of the writ petition) submitted by the petitioner is verified from the office of District Magistrate, Jaunpur and on such verification unless it is found that petitioner does not belong to Ahir caste falling within the category of O.B.C. candidate, it is very difficult to hold that he had deliberately submitted false/fake O.B.C. certificate to deceive the respondents and thereby misled the respondents and thus played fraud upon the respondents for seeking employment in question. In this manner, unless it is established that while seeking selection and appointment on the post in question the petitioner has played fraud upon the respondents, it is very difficult for this Court to agree with the view taken by the respondents terminating the services of the petitioner on the alleged ground of fraud.

13. It is to be noted that it is common knowledge that the candidates belonging to the reserved category while seeking admission in educational courses or

employment are required to furnish various certificates issued by the prescribed authorities. For said purpose they use to contact advocates and other intermediaries and after obtaining such certificate and believing it to be true and genuine if the candidate concerned submits the same before the authorities concerned for seeking employment or admission in educational courses and after verification if it is found to be forged/fake certificate, the matter ought to be inquired by the authorities concerned as to whether false/forged certificate has been submitted by the concerned candidate deliberately knowing it be untrue or false in order to deceive the authorities concerned or it is because of the reason that such certificate is furnished by the intermediary to such candidate who believing it to be true and genuine submits the same before the authorities concerned. Unless an inquiry is done and the candidate concerned is given opportunity of submitting fresh genuine certificate and unless the fact that he belongs to such reserved category is verified by the authority concerned, it would cause grave injury and irreparable loss without there being his fault. Therefore, this Court cannot ignore such phenomenon and state of affairs while dealing with the cases of such nature under Article 226 of the Constitution. In my view, in such situation the authorities concerned can remedy the grievances of candidates by permitting the candidate to demonstrate his bonafide by producing fresh certificate and by verifying its genuineness from the office of competent authority.

14. In view of the foregoing discussion, in given facts and circumstances of the case, the view taken by the respondents cannot be sustained. Accordingly the impugned orders passed 11.3.2008 and 24.6.2008 passed by respondents are hereby quashed and the petitioner is reinstated in service for limited purpose of holding fresh inquiry in the matter."

19. Similar views have been taken by this Court in two other judgments reported in *Kumari Rehana Begum Ansari Vs. State of U.P. and Another* , *Vinod Kumar Yadav Vs. State of U.P. and Others*, (2011) 7 ADJ 524 , *Vinod Kumar Yadav Vs. State of U.P. through Home Secretary, U.P., Lucknow and others*.

20. Learned Additional Chief Standing Counsel while attempting to defend the impugned order has also drawn attention of this Court to the other reason indicated by the Superintending Engineer while passing the impugned order which is to the effect that even the certificate dated 11.03.2008 is not acceptable for the reason that the same has not been issued in terms of the Government Orders dated 05.01.1996 and 22.10.2002.

21. The aforesaid reason and the reliance placed thereon by the learned Additional Chief Standing Counsel merits rejection in the background of the fact that it is the District Magistrate himself who has verified the genuineness of the certificate dated 11.03.2008 based on complete enquiry conducted by the Tehsildar concerned. Thus, for the reasons indicated above, I am of the considered opinion that the impugned order dated 15.01.2015 cannot be permitted to be sustained.

22. In the result, the writ petition is allowed. The impugned order dated 15.01.2015, passed by the Superintending Engineer, Investigation & Planning, Circle-5 Annexe, as is contained in Annexure No. 1 to the writ petition is hereby quashed. The petitioner shall be reinstated in service forthwith, say, within a period of two weeks from the date of production of certified copy of this judgment and order. The petitioner shall also be entitled to the full benefits regarding salary, perks and other allowances for the period she has been out of employment pursuant to the impugned order dated 15.01.2015.

23. In the facts of the case, however, there will be no order as to costs.