(2002) 10 AHC CK 0086

In the Allahabad High Court

Case No : C.M.W.P. No. 33755 of 2002

Aqueel Abbas Rizvi — APPELLANT

Vs

Mukhya Nagar Adhikari, Nagar Nigam — RESPONDENT

Date of Decision : 24-10-2002

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2003) 3 AWC 1757 : (2003) 96 FLR 101

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Rajesh Kumar Khare, for the Appellant; B.D. Mandhyan, for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition has been filed canvassing the validity of the impugned order dated 18th May, 2002, by which the order dated 7th March, 2000, passed by the respondent thereby granting regularisation on class III post, was rescinded and he was relegated to work on a class IV post in the Nagar Nigam, Gorakhpur.

2. The matrix of necessary facts as unfolded in the writ petition is that the petitioner entered the service of Nagar Nigam as Class IV employee on ad hoc basis and he came to be regularised on Class IV post by means of order dated 27.5.1993. Subsequently, on a Writ Petition being No. 20469 of 1995 filed by the petitioner, this Court by means of the judgment/order dated 9.9.1999, enjoined the respondent to consider the claim of the petitioner for regularisation on Class III post in the Health Department of Nagar Nigam, Gorakhpur within two months and this furnished foundation for passing the order dated 7th March, 2000 ; thereby, the petitioner was bestowed the designation of Tax Inspector-II grade and ever since then he has been discharging the functions in the Nagar Nigam as Tax Inspector. It would further transpire from the record that the petitioner was transferred by order dated 3.4.2000 from Health Department to Tax Department

in Circle No. 8 and at the time of passing of the impugned order relegating the petitioner to the post of Class IV cadre, he was discharging his duties as Tax Inspector in the Tax Department of the Nigam and by means of the impugned order, he was stripped of the designation of Tax Inspector and all consequential benefits which flowed from the order dated 7th March, 2000.

3. Heard Sri Rajesh Kumar Khare for the petitioner and Sri B. D. Mandhyan appearing for Mukhya Nagar Adhikari.

4. The main plank of the argument advanced by the learned counsel for the petitioner is that the petitioner was not afforded opportunity of hearing before passing the impugned order and thus the impugned order is liable to be quashed. The learned counsel for the opposite parties, in opposition contended that earlier order dated 7th March, 2000, was mistakenly passed being based on fallacious assumptions and that was why it was rightly rescinded.

5. Having heard the learned counsel for the parties, it crystallises that the fact that the impugned order has been passed sans affording opportunity of hearing to the petitioner, is not repudiated. It is also borne out from the record. The factum that the petitioner was not afforded any opportunity, finds specific mention in para 7 of the writ petition and this has not been denied by the respondent in the counter-affidavit. It brooks no dispute that an order leaning in favour of the petitioner which bestowed designation of Class III employee and as a necessary consequence of which he was given appointment as Tax Inspector Grade II in Tax Department for collection of taxes, if it is rescinded subsequently by order studded with further direction to relegate the concerned employee to a Class IV post, is fraught with the effect of adversely reflecting upon the petitioner''s status in service, more so when earlier order had been passed by authority clothed with the power of an appointing authority. Even if the argument of learned counsel for the opposite parties is taken at its face value that the earlier order was mistakenly passed sans considering the relevant record, the position is well-settled in law that even if order was passed on the basis of certain record and by sheer mistake, benefits of service are bestowed on a person, the person concerned is entitled to be afforded opportunity of hearing before reviewing/recalling/rescinding such order.

6. In the above conspectus, having regard to the fact that impugned order was passed without affording opportunity of hearing to the petitioner, it would amount to an order passed in antagonism of the rules of natural justice. In a matter like this, the authorities have to adopt a view, which would be in consonance with the spirit of Article 14 of the Constitution and philistine approach certainly detracts from the object for which Article 14 has been engrafted in the Constitution. Decisions are dime a dozen on the point and I would not like to add to the bulk by copiously citing all such precedents both of this Court and the Apex Court, in the circumstances, it would suffice to say that the impugned order militates against the canons of rules of natural justice. The impugned order in the circumstances, cannot be sustained and is liable to be

quashed.

7. As a result of foregoing discussion, the petition succeeds and is allowed. The impugned order dated 18th May, 2002 (Annexure-10 to the petition) is quashed. It needs hardly be said that it would be open to the opposite party to pass fresh order after affording due opportunity of hearing to the petitioner in accordance with law.