
(2006) 03 AHC CK 0037
In the Allahabad High Court
Case No : Special Appeal No. 235 of 2006

Avatar Singh Chhabra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Citation : (2006) 2 AWC 1666

Hon'ble Judges : Ajoy Nath Ray, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : S.K. Yadav, for the Appellant; Ravindra Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the appellant and Shri Ravindra. Singh appearing for the respondents.
2. This is an appeal against judgment and order dated 15.2.2006 by which the writ petition filed; by the appellant was disposed of.
3. Brief facts necessary for deciding the appeal are: the appellant has been working as a Seasonal Clerk in the Cane Cooperative Society, since 4.1.1971. The appellant filed a writ petition being Writ Petition No. 11981 of 2002 before this Court praying for appointment in regular establishment with regard to 50% quota on regular vacancies. The said writ petition was disposed of by this Court on 18.11.2003 directing the respondents to finalise the seniority list and determine the vacancy and 50% of the regular vacancy shall be filled by seasonal staff under Regulation 40 of U. P. Cane Cooperative Service Regulations, 1975. Against the said order special appeal was filed by the Deputy Cane Commissioner in which appeal the order of learned single Judge was not interfered with. The said order was passed on 23.7.2005. Subsequently, with regard to categorisation of seasonal employee one Gajendra Singh, who was working as Secretary in the Cane Cooperative Society, has recommended categorisation of the appellant in

category B. Prior to the said letter recommending categorisation in B, there was an incident involving Gajendra Singh, the appellant and three other employees in June, 2005 in which cross first information report was lodged. The District Cane Officer wrote to the Secretary on 8.11.2005 that although categorisation of appellant has been shown in category-B but no evidence has been given in support thereof. The secretary was asked to give evidence within three days. The Secretary after the said letter vide his letter dated 12.11.2005 stated that the categorisation as given was with regard to period 1.11.2004 to 29.3.2005 for which period there was no indiscipline or any incident. The Secretary reported that categorisation is not with regard to the said period. He said that he is not agreeable to the categorisation as proposed by Gajendra Singh. After the said letter an order has been passed by the District Cane Service Authority approving category-B of the appellant and subsequently by another order dated 4.1.2006, the service of the appellant has been terminated.

4. The counsel for the appellant contended that the termination order was passed without any notice and opportunity to the appellant even when the Secretary himself has disagreed with proposed categorisation of the appellant. He further contended that categorisation as proposed by Gajendra Singh was accepted who himself was the Secretary, who had lodged first information report against the appellant. The counsel for the appellant further contended that the termination was in violation of Regulations 21 and 22 of 1975 of the Regulations. He submitted that learned single Judge committed error in dismissing the writ petition on the ground of alternate remedy. The order has been passed without opportunity and notice. The writ petition ought to have been entertained.

5. The learned Counsel for the respondents submitted that there was an alternate remedy of appeal and learned single Judge has rightly not entertained the writ petition as the appellant has remedy to file an appeal.

6. We have considered the submissions of the counsel for the parties and perused the record.

7. In so far as the question of availability of remedy of appeal is concerned, there is no dispute that against the order impugned, the appellant had right of appeal. However, the allegation of the appellant in the writ petition was that the order of termination was passed in violation of principles of natural justice since he was not given any opportunity.

8. The learned Counsel for the appellant contends that learned single Judge has rightly disposed of Writ Petition No. 11981 of 2002 filed by the appellant vide order dated 18.11.2003, directing for consideration of the appellant for regular appointment which order was affirmed by the Division Bench of this Court. He further contended that the respondents have not yet complied with the said order and rather has terminated the appellant without notice.

9. We are satisfied that this was a case in which alternate remedy was not a bar in entertaining the writ petition. It is well settled that normally alternate remedy

as provided under the statute has to be availed but there are some exceptions to the said principles. The alternate remedy is not a bar when the order impugned is without jurisdiction or when it is passed in violation of principles of natural justice or the provisions under which the said order is passed itself is ultra vires to the Constitution or any other statutory provision. Those principles have been laid down in *Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co.*, The appellant has thus made out a case for entertaining the writ petition by this Court and the alternate remedy was not a bar.

10. We now proceed to consider the claim of the appellant on merits. There is no dispute that appellant has been working as Seasonal Clerk in the Cane Cooperative Society Milak since 4.1.1971. In a writ petition filed by the appellant this Court on 18.11.2003 has already directed for consideration of case of the appellant for appointment as regular Clerk under 50% quota fixed for seasonal employees. The respondents obtained an order dated 29.4.2004, extending the period for consideration upto 15.7.2004. In the same writ petition respondents filed another application expressing their inability to comply the order of this Court dated 18.11.2003. The said application was rejected on 30.7.2004. The special appeal was filed by the respondents against the aforesaid three orders before the Division Bench. The Division Bench vide its order dated 23.7.2005, refused to interfere with the order's passed by learned single Judge dated 18.11.2003 and dated 30.7.2004. The appellant's case is that the claim of the appellant for consideration as regular clerk has still not been made by the respondents.

11. One Gajendra has been working as Secretary of the Cane Secretary Milak in the year 2004-2005. An incident is said to have taken place on 7.6.2005 in Cane Cooperative Society, Milak. Cross first information report has been lodged of the incident by Gajendra against the appellant and two other persons namely Ashok Kumar Pandey and Rajendra Prasad, the other first information report was lodged by the appellant against Gajendra Singh. Allegations in both the reports were regarding beating. On 10.10.2005, the District Cane Officer wrote to Gajendra Singh for substituting categorisation of Seasonal Clerk for the year 2004-2005. After the letter dated 10.10.2005, Gajendra Singh sent the list categorising the appellant, Ashok Kumar Pandey and Rajendra Singh in "Category-B". The District Cane Officer, Rampur again wrote a letter dated 8.11.2005 to Secretary of the Society that although the categorisation of appellant has been recommended in B Category but in support of which no evidence has been given. The District Cane Officer asked the Secretary of Cane Society to submit evidence within three days. The Secretary of the Cooperative Cane Development Society vide its letter dated 10.11.2005 wrote to the District Cane Service Authority that he is not agreeable to B categorisation of the appellant. Secretary wrote in the letter that for the relevant period, i.e., crushing season 2004-2005 (1.11.2004 to 29.3.2005) the categorisation should be done on the basis of assessment of work in the above period. The secretary wrote that the categorisation B was proposed on the ground of "indiscipline and maarpit"

which is not of the said relevant period. Secretary also wrote that Gajendra Singh has not asked for any explanation from the appellant during the said period, the letter dated 12.11.2005, has been filed as Annexure-13 to the writ petition. The appellant has also brought on the record an order dated 18.11.2005 of Zonal Cane Service authority by which order the categorisation of Ashok Kumar Pandey and Rajendra Singh proposed by Gajendra Singh was disapproved and both those persons were approved as in category-A. The order Annexure-14 records that Gajendra who had proposed the said categorisation is directly involved in the incident dated 7.6.2005 and the categorisation-B was proposed due to his personal bias. By order dated 30.1.2006 District Cane Service authority approved the categorisation B of the appellant and thereafter his services were terminated by order dated 4.1.2006.

12. Appellant has placed reliance on Regulations 21 and 22 of the 1975 Regulations. Regulations 21 and 22 are quoted below:

21. Categorisation.--At the end of each crushing season the Secretary of the Cane Union shall classify the entire seasonal staff into "A" and "B" categories on the basis of their work on a worth during the season. Such persons of unquestionable integrity and who have discharged their duties efficiently during the crushing season shall be placed in "A" category and the rest in category "B". When seasonal employee is placed in a category "B" he will be informed of the same together with the grounds for his categorisation and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceedings shall be of summary nature and shall be conducted by the Secretary of the Union concerned.

22. The Secretary shall put that category-wise lists of the seasonal staff before the Committee of Management of the Union for approval. In case of the list of the category "B" staff he shall also put up the charges, explanation of the employees concerned and in his findings thereon for consideration of the Committee of Management. If in any case the committee disagrees with the findings of the Secretary it may in that case alter the category from "B" to "A". Thereafter the original lists including the alteration if any, ordered by the Committee of Management shall be declared final and posted on the notice board of the union duly signed by the Chairman of the meeting and the Secretary.

13. From perusal of the above regulations, it is clear that before a seasonal employee is categorised in either A or B category: it is incumbent on the Secretary of the Union to give opportunity to the employee to explain the charges and deficiency.

14. In the present case, Gajendra Singh the Secretary who was Secretary at the relevant time sent a list categorising the appellant in category-B after receipt of the letter dated 10.10.2005, without asking any explanation and giving opportunity to the appellant and when by letter dated 8.11.2005 the evidence in support of categorisation of the appellant in B category was asked for from the

Secretary of the Union, the Secretary of Union submitted a reply on 12.11.2005, disagreeing with categorisation given by Gajendra Singh, to appellant. The said letter also mentions that on 10.11.2005, explanation of appellant was called for. From above, it is clear that the categorisation of the appellant was made by Gajendra Singh in category-B without asking for any explanation. According to Regulation 21 the categorisation has to be made after opportunity to the appellant and in the present case categorisation having been made without calling for any explanation, the same is clearly contrary to Regulation 21 and is in violation of principles of natural justice.

15. Gajendra Singh categorised all the three employees namely Ashok Kumar Pandey, Rajendra Prasad Verma and the appellant on the ground of alleged marpit dated 7.6.2005 in category-B. With regard to Ashok Kumar Pandey, Rajendra Prasad Verma, Cane Service Authority has disapproved their categorisation in B category and they were approved for in Category-A. It has been held in the order dated 18.11.2005, Annexure-14 of paper book that Gajendra Singh was directly involved in the incident of marpit and had given category-B due to personal bias. For above same reasons, categorisation of appellant into B category was also liable to be disapproved. The categorisation was made by Gajendra Singh after 10.10.2005, i.e., subsequent to incident dated 7.6.2005, due to personal bias. The said incident dated 7.6.2006 was not of the relevant period of crushing season 2004-2005. In any event the said categorisation having been made by Gajendra Singh without opportunity and notice to the appellant ought not have been relied upon.

16. In view of the foregoing discussion, the order dated 30.1.2006 of District Cane Service Authority approving the categorisation of appellant in category-B cannot be sustained and is hereby set aside. The termination dated 4.2.2006 has been passed in consequence of order dated 30.1.2006 categorising the appellant in category- B. The order dated 4.2.2006 automatically falls on the ground.

17. The submissions raised by the counsel for the respondents that appeal has been filed by the appellant also needs consideration. The judgment of learned single Judge is in two parts. Firstly the learned single Judge took the view that the writ petition cannot be entertained and secondly that no case has been made out for interference. While disposing of the writ petition, the learned single Judge has granted two weeks time to the appellant to file an appeal. The appellant is appealing against the entire judgment of the learned single Judge and has contended that in the facts of the case the writ petition ought to have been entertained and heard on merits.

18. We have held that this was a case which ought to have been entertained and the alternate remedy was not a bar in the facts of the present case and we have proceeded to decide the writ petition on merits. In view of the aforesaid the appeal filed by the appellant has become infructuous which needs no further prosecution.

19. In view of the above, the appeal is allowed. The judgment of learned single Judge dated 15.2.2006 as well as the orders dated 4.2.2005 and dated 30.1.2006 are set aside.

20. Parties shall bear their own costs.