

(2002) 08 JH CK 0013
In the Jharkhand High Court
Case No : CWJC No. 3603 of 2000 (R)

Durga Charan Prasad

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Citation : (2002) 08 JH CK 0013

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : P.K. Mukhopadhyay, R.A. Gupta and B. Prasad, for the Appellant;
S.K. Uggal, S. Choudhary and C.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner-Durga Charan Prasad has challenged the Order No. PL-119/522/2086, dated December 28, 1999 passed by respondent No. 1, whereby and whereunder, he was dismissed from service. He has also challenged the appellate order No. PL-119/522-414, dated May 8, 2000, where the appeal against the order of dismissal was rejected.

2. The case of the petitioner is that he applied in pursuance of advertisement dated December 15, 1975 for the posts of teachers which were reserved for S.C. and S.T. The petitioner along with application offering candidature enclosed certificate issued by the Deputy Magistrate and Deputy Collector showing him a Scheduled Caste (Nonia). Thereafter, he having selected in pursuance of interview held on March 25, 1976 was appointed as a Teacher on temporary basis, vide order dated April 9, 1976. Subsequently, he was confirmed as a teacher w.e.f. April 27, 1976.

3. The petitioner was proceeded departmentally, vide charge- sheet dated September 10, 1997 i.e. after about 21 years of his service, on allegation that he committed breach of D.V.C. Service (Conduct) Regulation by producing a false caste certificate at the time of appointment. The petitioner submitted a show

cause on September 18, 1997 denying the allegation. He took plea that his ancestors may be "Nonia" of Bihar, he and his parents being resident of West Bengal and caste "Nonia" being Scheduled Caste of West Bengal, he was rightly provided with a caste certificate, which he submitted.

4. The Enquiry Officer taking into consideration the application submitted by the petitioner and the petitioner being a permanent residents of Bihar, "Nonia" in Bihar being a Backward Class, held the charge proved. In this background, the disciplinary authority dismissed the petitioner, vide order dated December 28, 1999 as was affirmed by the appellate authority, vide order dated May 8, 2000.

5. The counsel for the petitioner relied on Supreme Court's decision in Union of India and Others Vs. Dudh Nath Prasad, That was a case wherein the appellant was a "Nonia" by caste of Bihar. His parents resided at Howrah for more than thirty years. The Supreme Court taking into consideration that the appellant born and studied in Bihar, as because the parents were residing in Howrah for more than thirty years, held that the appellant would be deemed to be a resident of West Bengal for the purpose of UPSC Examination for All India Services and further held that such a person belonging to a caste declared as a Scheduled Caste in West Bengal was rightly appointed against a post reserved for Scheduled Caste even though such caste is not a Scheduled Caste in Bihar.

6. The counsel for the D.V.C. tried to distinguish the case of petitioner by referring certain enclosures. It was shown that in the application (Annexure 2), the petitioner shown his permanent address of village-Nepa, District-Gaya (Bihar). It was also shown that the petitioner passed Higher Secondary Examination from Madhya Pradesh.

In fact, the aforesaid evidences were taking into consideration by the Enquiry Officer to show that the petitioner is a "Nonia" by caste from Bihar and not of West Bengal.

7. The petitioner, brought on record, relevant evidences to suggest that his parents were resident of West Bengal where petitioner studied upto Matriculation and for all purposes, the petitioner would be deemed to be a resident of West Bengal.

8. In the original application for appointment dated 14th January, 1976, the petitioner shown his present address as 26/2, Nava Kumar Nandi Lane, Howrah. Interview letter and letter of appointment were sent to the said address at Howrah. The Deputy Magistrate-cum-Deputy Collector issued certificate, as back as, on 4th May, 1962 i.e. more than 15 (fifteen) years prior to appointment showing petitioner a resident of 26/2, Nava Kumar Nandi Lane, Howrah.

From the Admit Card issued by the Board of Secondary Education, West Bengal in the year 1958, it is evident that his address shown as 26/2, Nava Kumar Nandi Lane, Howrah. He appeared in the Matriculation Examination from West Bengal, but from the duplicate mark sheet submitted by the Board of Secondary

Education, West Bengal, it appears that he having failed, subsequently appeared in the Higher Secondary Examination from Madhya Pradesh. The certified copy of the voters list of the area of the year 1966, 1971 and 1976, shows that the petitioner-Durga Charan Prasad, son of Ram Khelawan Prasad is a voter of Howrah district. The Ward Commissioner, Howrah, the MLA of the area has also given the certificate that the petitioner is a resident of Howrah.

9. In fact, the issue as to whether the parents of the petitioner are the resident of Bihar or West Bengal has not been determined by the Enquiry Officer. As merely, the petitioner shown his permanent address of Bihar in the application, he was treated as a resident of Bihar and being "Nonia" by caste was treated a Backward Caste of Bihar and not a Scheduled Caste of West Bengal.

10. On the basis of evidences on record, at least it is clear that the petitioner resided much more than 30 (thirty) years in West Bengal being a student of a school of West Bengal and having attempted to appear in Matriculation Examination from the Board of Secondary Education, West Bengal in 1958, even though he has shown that he is a permanent resident of Bihar and finally passed the Higher Secondary Examination from Madhya Pradesh, will be deemed to be a resident of West Bengal for any All India Service.

11. It is not in dispute that the service in D.V.C. is an All India Service, as persons are appointed not for the State of Bihar (including Jharkhand, as on date), but also for West Bengal.

12. Thus, the case of the petitioner is fully covered by the decision of Supreme Court in Dudhnath Prasad (supra) "Noma caste" having declared as a Scheduled Caste in West Bengal, he was rightly appointed against the quota of Scheduled Caste, even though such caste is not a Scheduled Caste in Bihar.

13. In the aforesaid background and proper issue relating to resident of petitioner having not framed, nor decided by the Enquiry Officer, the order of dismissal dated December 28, 1999 and appellate order dated May 8, 2000 cannot be upheld. They are, accordingly, set aside. The petitioner stands reinstated with all consequential benefits.

14. The writ petition is allowed.