(2011) 02 AHC CK 0335

In the Allahabad High Court

Case No : Service Single No. 1225 of 1995

Hardwari Lal APPELLANT

Vs

State of U.P. thr. Sec. Sugar Industries and Another RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2011) 02 AHC CK 0335

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard learned Counsel for the Petitioner and Mr. P.K. Sinha, learned Counsel appearing for the Respondents.

2. The Petitioner, a former Watchman of U.P. State Sugar Corporation Limited, has approached this Court under Article 226 of the Constitution of India against the impugned order of termination dated 25/26.11.1994(Annexure-11).

3. While assailing the termination order, it has been submitted by the Petitioner''s counsel that the order of termination has been passed on the ground that the Petitioner cannot see from left eye and right eye has been impaired. The impugned order also reveals that the Petitioner cannot move freely without assistance of other person. Accordingly, a finding has been recorded that being a blind person, he cannot discharge duties of Watchman. In consequence thereof, the services have been terminated.

4. The Petitioner''s counsel submits that the Petitioner was appointed on 1.12.1973 on the post of Watchman at its unit situated at Maholi and since then, he has been continuously discharging duty. It is also submitted that the order of termination has been passed in utter disregard to principle of natural justice without serving a show cause notice or opportunity of hearing. Attention of this Court has been invited to the certificate issued by the Regional Institute of

Ophthalmology, Sitapur, according to which, the Petitioner is suffering from Glaucoma in right eye but he is fit to discharge duty.

5. On the other hand, Mr. P.K. Sinha, learned Counsel for the Respondents submits that Maholi unit of U.P. State Sugar Corporation has been wind up from 8.9.1998, hence all those employees whose services have been retrenched on account of closure of unit have been paid ex gratia amount. Some of the persons who were retrenched have been paid compensation and some of them have been given voluntary retirement.

6. Attention of this Court has been invited by the Petitioner''s counsel to a case reported in Narendra Kumar Chandla Vs. State of Haryana and others, where Hon''ble Supreme Court held that being right to livelihood as an integral facet of right to life, the employees suffering from physical infirmity should not be deprived from his or her livelihood. He or she should be accommodated at appropriate place. Relevant portion from the judgment of Narendra Kumar (supra) is reproduced as under:

7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C. For L.D.C., part from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the Respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C. we direct the Respondent to appoint him to the post of L.D.C. Protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

7. Apart from above, under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act No. 1 of 1996), provision has been made for reservation of job to the extent of 3% to the physically disabled persons. Accordingly, in view of the said Act, right of the Petitioner is protected not only by Part-III of the Constitution of India but under the statutory provisions also.

8. It is evident at the face of record that while passing the impugned order, no prior notice or opportunity of hearing was provided. The General Manager has passed the impugned order without serving any show cause notice on the Petitioner. The averments contained in para 4 of the writ petition have not been denied. Accordingly, the certificate issued by the Regional Institute of Ophthalmology, Sitapur, contained in Annexure No. 2 to the writ petition may not

be doubted. Undisputedly, the Regional Institute of Ophthalmology of Sitapur is a renowned institution exclusively dealing with eye disease. The certificate granted by such institution cannot be thrown out lightly. The Respondents should have given opportunity before passing the impugned order while terminating the Petitioner''s services, more so when the Petitioner has served for about 20 years.

9. In view of above, the impugned order suffers from arbitrary exercise of power and does not seem to be sustainable. In case the impugned order would not have been passed, the Petitioner would have continued in service up to the age of superannuation, i.e. 2005 as admitted by the parties'' counsel. However, since the industry in question has been closed down in the year 1998, the Petitioner could have also given voluntary retirement like other employees or could have been paid compensation. The learned Counsel for the Respondents submits that it may be left open for the Respondents to pay compensation or entertain the Petitioner''s prayer for voluntary retirement since the unit has now been closed. The Petitioner is aged about 70 years and in case any decision is taken to shift the burden on the Respondents'' shoulder, it may take some more time on the part of the Respondents or may create a ground for further litigation. Accordingly, it shall be appropriate that some amount in lump sum be paid to the Petitioner which is assessed to Rs. 2,50,000/-which shall include arrears of salary, compensation, mental pain and agony, cost of litigation etc. which the Petitioner suffered because of impugned order.

10. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 25/26.11.1994 (Annexure-11) with all consequential benefits. The consequential benefit is confined to payment of ex gratia amount in lump sum to the tune of Rs. 2,50,000/-(Two Lacs fifty thousand only) which shall be paid to the Petitioner within a period of three months from today. In the event of failure in payment of compensation within three months, the Petitioner shall be entitled for payment of interest at the rate of 8% with effect from November 1994. The amount shall be paid through cross bank draft.

11. The writ petition is allowed accordingly.

12. Mr. P.K. Sinha, learned Counsel for the Petitioner shall inform the corporation accordingly.

