
(2010) 08 AHC CK 0239

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51448 of 2010

Hitendra Singh Recruit Constable 45 Bn.P.A.C.Aligarh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0239

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner, who was appointed as a Constable in the U.P. Police, has sought the quashing of the order dated 7th September, 2007 of passed by the Commandant, 45th Bn. P.A.C. Aligarh by which his selection has been set aside on the ground that he had furnished a forged High School Marksheet and, accordingly, his name has also been struck off from the rolls.

2. The impugned order mentions that while seeking appointment, the petitioner had submitted the High School marksheet of the year 2000 with Roll No. 0838447 in which he was shown to have passed with second division and 15th December, 1984 as his date of birth. On verification of the said marksheet, the Deputy Secretary of Madhyamik Shiksha Parishad, Bareilly, which Board had conducted the High School Examination, in his report dated 31st August, 2007 informed the Department that the date of birth of the petitioner entered in the records of the Board is actually 15th December, 1986 and not 15th December, 1984 and that the petitioner had also passed the Intermediate Examination in 2002 and the date of birth of the petitioner was also recorded as 15th December, 1986 in the College records. The order further mentions that the petitioner would only be 17 years and 16 days at the time of selection according to the actual date of birth, i.e., 15th December, 1986, and even if two years relaxation for OBC candidates is provided to the petitioner, then too he would not be between 18 years and 22 years at the time of selection which was the age requirement for this category. The order further mentions that only in order to secure employment, the

petitioner filed a forged High School marksheet to show that his date of birth is 15th December, 1984. The selection of the petitioner has, therefore, been found to be void abinitio and, accordingly, it has been cancelled and his name has been struck off from the rolls of the Police.

3. The sole contention advanced by Sri Sanjay Kumar, learned Counsel for the petitioner is that the impugned order dated 7th September, 2007 should be set aside for the reason that it was passed without giving any opportunity to the petitioner and in support of his contention he has placed reliance upon the decision of this Court in *Rajbeer Singh (Constable 618/946) v. State of U.P. and others*, reported in 2010 (6) ADJ 161.

4. Learned Standing Counsel appearing for the respondents, however, submitted that in the facts and circumstances of the case, when it is admitted to the petitioner that his correct date of birth is 15th December, 1986 and the petitioner has not controverted the statement made in the impugned order that while securing employment the High School marksheet with date of birth recorded as 15th December, 1984 was submitted by him, it was not necessary to give any opportunity to the petitioner.

5. I have carefully considered the submissions advanced by the learned Counsel for the parties.

6. The sole submission of learned Counsel for the petitioner is that it was obligatory for the authorities to have given opportunity to the petitioner to place his version before cancelling his selection and deleting his name from the rolls.

7. It cannot be doubted that the principles of natural justice cannot be put into a straitjacket formula and that its application will depend upon the fact situation obtaining therein. The said principles cannot also be applied in vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in *K.L. Tripathi v. State Bank of India and others*, AIR 1984 SC 273; *N.K. Prasad v. Government of India and others*, (2004) 6 SCC 299; *State of Punjab v. Jagir Singh*, (2004) 8 SCC 129; *Karnataka SRTC v. S.G. Kotturappa*, (2005) 3 SCC 409 and in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd.*, (2005) 5 SCC 337.

8. In *S.L. Kapoor v. Jagmohan*, AIR 1981 SC 136, the Supreme Court laid the exception that "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it will not be necessary to quash an order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

9. The Constitution Bench of the Supreme Court in *Managing Director ECIL, Hyderabad v. B. Karunakar*, AIR 1994 SC 1074 after making reference to the two of its earlier decisions also observed:

"In *A.K. Kraipak v. Union of India*, AIR 1970 SC 150 it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasijudicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasijudicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in goodfaith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

In *Chairman, Board of Mining Examination v. Ramjee*, AIR 1977 SC 965 the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cureall. If fairness is shown by the decisionmaker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures." (emphasis supplied)

10. In *Aligarh Muslim University and others v. Mansoor Ali Khan*, AIR 2000 SC 2783, the Supreme Court considered whether on the facts of the case the employee can invoke the principle of natural justice and whether it was a case where, even if notice had been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference and observed.

"It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan a to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in *S.L. Kapoor v. Jagmohan*, AIR 1981 SC 136, namely, that on the admitted or

indisputable facts only one view is r possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued."

11. The Supreme Court in Mohd. Sartaj and another v. State of U.P. and others, 2006 AIR SCW 399, after considering a number of its earlier decisions made the following observations with regard to the requirement of giving notice :

"..... Applying this principle, it could very well be seen that discontinuation of the service of the appellants in the present case was not a punitive measure but they were discontinued for the reason that they were not qualified and did not possess the requisite qualifications for appointment.

.....In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and, therefore, no hearing was required before the cancellation of their services. In the present case, the cancellation order has been issued within a very short span of time giving no probability for any legitimate expectation to the appellants regarding continuation of their service." (emphasis supplied)

12. It is clear from the aforesaid decisions of the Supreme Court that the application of the principles of natural justice depend upon the relevant facts and circumstances of the case and whenever a complaint is made about its violation, the Court has to decide whether the observance of that Rule was necessary for a just decision on the facts of the case. It has also been observed that there can be a situation where an order need not be aside even if it is passed in violation of natural justice like where no prejudice is caused to the person concerned and in such a case interference under Article 226 of the Constitution is not necessary. The decisions also hold that where facts are admitted, an enquiry will be an empty formality.

13. It is in the light of the aforesaid observations of the Supreme Court that the facts of the present case have to be examined. The impugned order specifically mentions that at the time of securing employment the petitioner had submitted a High School marksheet in which his date of birth was entered as 15th December, 1984. There is no denial in the writ petition that such a marksheet was not submitted by the petitioner and on the other hand the petitioner has admitted in the writ petition that his date of birth is 15th December, 1986. The impugned order further mentions that if 15th December, 1986 is the actual date of birth of the petitioner, then he could not have been selected since he was not between 18 years and 22 years at the relevant time which was the age requirement. It is therefore, clear that in order to make himself eligible, the petitioner filed a forged marksheet in which his date of birth was entered as 15th December, 1984. The issue, therefore, that needs to be decided is whether in such a situation, when there is no denial by the petitioner about filing of the marksheet at the time of seeking employment which mentioned his date of birth as 15th

December, 1984, any opportunity was required to be given to the petitioner.

14. The petitioner has placed reliance upon the judgment of this Court in *Rajbeer Singh* (supra) in which the following observations have been made:

".....It appears that on the basis of some complaint regarding various persons who have obtained the appointment, claiming themselves to be dependent of the employees working in the Department under the Dying in Harness Rules, some investigation was made without any notice to the petitioner and it was found as alleged by the respondent that in the certificate submitted by the petitioner of the High School the date of birth of the petitioner is entered as 15.11.1965. Though in the certificate which has been submitted by the petitioner, the date of birth is recorded as 15.11.1969.

I have considered the submissions made on behalf of the parties and perused the record. From the averments made by the parties in the writ petition as well as in the counter affidavit, it does not transpire that petitioner was ever given a notice and opportunity before passing the order impugned. Admittedly, the petitioner's appointment was of 1989. In case some inquiry as submitted by the respondent was made and a conclusion was arrived upon that petitioner only to get an appointment has filed a forged certificate claiming that his date of birth is 15.11.1969. Petitioner's case is that he has passed the High School in the year 1983 and certificate issued by the Board was submitted mentioning therein that the date of birth of the petitioner is 15th November 1969. The respondents have not disclosed the fact that from where they have enquired into the matter and what are the documents to show thereunder that the certificate submitted by the petitioner was forged. Therefore, in my opinion, it was incumbent on the part of the respondents to have a proceeding against the petitioner as provided under the Rules....."

15. The said decision does not help the petitioner. The petitioner *Rajbeer Singh* at the time of securing employment had filed a marksheet which mentioned his date of birth as 15th November, 1969. The petitioner maintained that his date of birth was 15th November, 1969, while the case of the respondents was that the actual date of birth of the petitioner was 15th November, 1965. It is in such circumstances when the date of birth was disputed that the Court observed that opportunity was required to be given as the respondents had not disclosed from where they had made the enquiries and what were the documents to show that the certificate submitted by the petitioner was forged.

16. In the present case, as noticed hereinabove, the case of the respondent is that the actual date of birth of the petitioner is 15th December, 1986 and this fact is admitted to the petitioner. It is not his case that his date of birth is 15th December, 1984. The further case of the respondents is that while seeking employment the petitioner had submitted a forged marksheet which mentioned his date of birth as 15th December, 1984. The petitioner has not denied in the entire petition that such a marksheet was not submitted by him the entire thrust

of the writ petition and the contention advanced by the learned Counsel for the petitioner is that it was absolutely necessary for the respondents to hold an enquiry before cancelling his selection. In view of the decisions of the Supreme Court referred to above and when the facts are admitted, it cannot be said that prejudice has been caused to the petitioner. It will, therefore, not be appropriate to quash the impugned order dated 7th September, 2007 only on the ground that opportunity had not been given to the petitioner.

17. This apart, the petitioner was not even eligible to be considered for appointment as he was less than 18 years of age at the time of selection. The Supreme Court in Mohd. Sartaj (supra) has held that when a candidate does not possess the requisite qualification, he cannot be continued and no hearing is required. In paragraph 21 of the writ petition it is stated that the petitioner started receiving salary from September 2006 as a permanent Constable. The impugned order was passed on 7th September, 2007. It cannot, therefore, be urged by the petitioner that there was delay in passing the impugned order. It is also seen that the impugned order has been challenged by the petitioner after a period of more than three years without giving any satisfactory explanation for the delay.

18. Thus, for all the reasons stated above, the writ petition deserves to be dismissed and is, accordingly, dismissed. Petition dismissed.