

(2014) 03 AHC CK 0238

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 53763 of 2010

Irfan Ansari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 ADJ 437 : (2014) 104 ALR 864 : (2014) 143 FLR 162 :
(2014) 3 UPLBEC 1928

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : A.S. Diwakar and Arvind Srivastava, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner for seeking the following reliefs :

(I) Issue a writ, order or direction in the nature of mandamus commanding respondents to provide his appointment when his other batch mates were appointed i.e. 20.5.1998 with all consequential benefits including fixation of pay, length of active services and arrears of pay with interest thereon 18% p.a. and seniority.

(II) Issue a writ, order or direction in the nature of mandamus commanding respondents to fix the responsibility and punish the erring officials.

(III) Issue any other and further writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(IV) Award costs of the petitioner.

The petitioner's case, before this Court is that he appeared in U.P. State Public Services Examination of 1994 batch, and; was selected for the post of Deputy

Superintendent of Police. A notification of appointment dated 26.3.1998 was issued, wherein the name of the petitioner finds mention at serial No. 15. This notification of appointment was not a part of the record of the writ petition and has been made available by the counsel for the petitioner, during the course of hearing, which is taken on record. The order dated 26.3.1998, provides for posting of the candidates for the purposes of training at Dr. Bhimrao Ambedkar Police Academy, Moradabad, and their appointment was to be on probation, for two years, from the date they assumed charge. It also provided that respective seniority of the candidates were to be determined in accordance with the provisions of Uttar Pradesh Police Service Regulations, 1942.

2. The petitioner submits that he had received communication dated 4.4.1998, which required the petitioner to report for joining on 20.5.1998 at the Police Academy, Moradabad, for training. It is further submitted that as delay was likely to be caused in holding of the training, he decided to appear in All India Civil Services Examination and, therefore, applied for extension of time for six months, to join vide application dated 5.5.1998. Another application was moved, reiterating the same contents on 14.5.1998. Lastly, he applied vide application dated 24.7.1998. However, no orders extending the time for joining were passed and consequently the period for joining was not extended beyond 20.5.1998. Ultimately, the petitioner was served with an order dated 1.9.1998, cancelling his appointment on account of not joining at Police Academy, Moradabad.

3. The petitioner approached this Court by filing Writ Petition No. 35090 of 1999, challenging the order dated 1.9.1998. The Writ Petition No. 35090 of 1999 was allowed on 14.2.2000. This Court found substance in the arguments in petitioner's case that similarly placed person, namely Sri Rohit Mishra, who too had not joined and consequently faced cancellation of appointment, was allowed joining, but petitioner was discriminated. The denial of equal treatment to the petitioner was held to be discriminatory and the writ petition was consequently allowed, with a direction permitting the petitioner to join. The Division Bench judgment dated 14.2.2000 was challenged by the State, by filing Civil Appeal No. 1536 of 2001. The appeal of the State was allowed by the Apex Court vide judgment dated 26.2.2001, which is reproduced :

Special leave granted.

We have heard the learned counsel for the parties.

We are not satisfied that the case of the respondent was identical to that of Rohit Mishra which is the precedent relied upon by the High Court in granting relief to the respondent. It is the case of the appellants herein that there was no request for extension of time received from the respondent and the High Court in the impugned judgment has not adverted to this part of the controversy. The pleadings before the High Court clearly show that the submission of the application by the respondent for extension of time was refuted. The High Court ought to have gone into this aspect before disposing of the writ petition.

It will be appropriate, in our opinion, that the case is remanded to the High Court for a fresh decision. We, accordingly, allow this appeal, set aside the impugned judgment of the High Court and direct it to decide Civil Misc. Writ Petition No. 35090 of 1999 afresh.

4. Pursuant to the remand, this Court again allowed Writ Petition No. 35090 of 1999 on 30.8.2001. The order dated 1.9.1998, cancelling petitioner's appointment was set aside and further direction to allow petitioner's joining for training was issued.

5. The order of this Court dated 30.8.2001 was again challenged by the State by filing Petition for Special Leave to Appeal (Civil), which came to be dismissed in limine, both on the ground of delay as well as on merits on 25.10.2002.

6. It appears that during the pendency of the matter before the Apex Court, contempt proceedings were initiated before this Court and the petitioner ultimately was allowed to join at Police Academy, Moradabad, on 15.10.2002 for training.

7. The petitioner has been continuously working since his joining on 15.10.2002. The benefit of service, including seniority etc. has been granted to petitioner w.e.f. his joining on 15.10.2002. The petitioner claims that since other persons appointed alongwith the petitioner, pursuant to the same selection have been given the benefit of service commencing from their joining on 20.5.1998, as such he be also allowed the benefits of service w.e.f. 20.5.1998.

8. Sri Arvind Srivastava, counsel for the petitioner has pressed the writ petition essentially on the premise that petitioner's case was similar to that of Sri Rohit Mishra and the department had discriminated the petitioner by denying equal treatment to him. Emphasis has been laid by Sri Srivastava in contending that while applications for grant of time to join were submitted both by the petitioner and by Sri Rohit Mishra, but the original applications dated 5.5.1998 and 14.5.1998 of the petitioner for grant of time to join were deliberately removed from the office records. It is contended that the private respondent Nos. 3 and 4 had played a fraud in manipulating the records of the department and in making misrepresentations before this Court and also before the Apex Court, as a result whereof it is submitted, the petitioner has been victimized. The argument, thus, is that the petitioner is entitled to be given all the benefits of service w.e.f. 20.5.1998, when other selected persons alongwith petitioner actually submitted their joining for training.

9. The petitioner's aforesaid contention has been refuted by the Standing Counsel, appearing in the matter on behalf of the respondents, who contended that the benefits of appointment, in terms of the applicable service rules, is available from the date of joining, which has already been allowed to the petitioner. It is contended that while allowing the petitioner's writ petition vide judgment dated 30.8.2001, this Court had directed petitioner to be sent for training alongwith next available batch and since the actual joining of the

petitioner was w.e.f. 15.10.2002, therefore, all benefits of service were available from it. Learned Standing Counsel further contended that the claim of parity by the petitioner qua Sri Rohit Mishra is not valid, inasmuch as the application for extension of time moved by Sri Rohit Mishra was initially allowed, whereas no orders in favour of the petitioner were actually passed. It is contended that the claim of parity by the petitioner qua Sri Rohit Mishra is misconceived and has rightly not been allowed by this Court. The case of the respondents, therefore, is that the petitioner is not entitled to the relief prayed for and the writ petition is liable to be dismissed.

10. We have considered the respective submissions of the counsel for the parties and have perused the records.

11. The submissions of the counsel for the parties have to be considered in light of the relevant provisions of law and the material available on record. The appointment order dated 26.3.1998 categorically required joining at Dr. Bhimrao Ambedkar Police Academy, Moradabad, for training and the petitioner was to be on probation for a period of two years from the date of assuming charge/joining. Following passage from the appointment order is reproduced :

12. The services of the petitioner are governed by the provisions of Uttar Pradesh Police Service Rules, 1942. Rule 20 and 21 provides for appointment and seniority respectively, for the member of service. The relevant portion of the rule is reproduced:

20(i). The Governor shall make appointments to the service on the occurrence of substantive vacancies by taking candidates alternatively, so far as this may be possible, from the two lists prepared under Rule 18. Candidates shall be taken in the order in which they stand in the list and the first candidate taken shall be from the list of inspector of police. A directly recruited candidate may lose his seniority if he is not available to join the service when a vacancy is offered to him.

21(1). The inter se seniority of direct recruits selected in one batch, shall be determined according to their merit at the selection but a candidate may lose his seniority if he fails to join without sufficient reasons when appointment is offered to him and the decision of the Governor as to the sufficiency of reasons shall be final.

13. The conjoint reading of the applicable service rules and the appointment letter leaves no room of doubt that the benefit of appointment is available to a candidate only from the date when he joins, pursuant to the appointment order, and the candidate would stand to lose his seniority, if he is not available to join the service when a vacancy is offered to him. From the records it is apparent that the petitioner intimated to join on 20.5.1998 vide communication dated 4.4.1998. The petitioner admittedly did not join. The petitioner, instead of joining, sought six months extension for joining. It is, therefore, clear that by virtue of sub-rule (i) of rule 20, the petitioner clearly lost his seniority, pursuant to the appointment, due to his voluntary act of not joining, pursuant to the

direction issued in this regard.

14. The records do reveal that the department cancelled the petitioner's candidature vide order dated 1.9.1998. This Court in Writ Petition No. 35090 of 1999 had summoned the original records of the State. Following observations came to be made by this Court in its judgment dated 30.8.2001:

With a view to ascertaining as to whether the petitioner had moved an application seeking extension, this Court by its order dated 10.4.2001 had directed the learned Standing Counsel to produce the entire records for perusal by the Court. The record (file No. 632(3)/93) has been brought by the learned Standing Counsel and it is conceded by Shri U.K. Pandey, Standing Counsel, that an application seeking permission to report for training alongwith the second group of trainees was moved by the petitioner on 24.7.1998 but no order thereon was passed despite favourable report/noting thereon. Appointment of one Rohit Mishra of 1996 batch was cancelled but subsequently the Chief Minister recalled the order of cancellation and allowed him to join the service. Apart from the case of Rohit Mishra, the appointment of one Ashutosh Shukla of 1993 batch was also cancelled but subsequently the cancellation was revoked and he was allowed to join. Similar was the case of one Jagat Ram Joshi of 1999 batch, whose appointment was cancelled but later on his cancellation was revoked and he was allowed to join his duties. All these facts are borne out from the nothing on the file.

The original file of the Government at page 101 shows that the recommendation was made to the effect that the petitioner and one Hemant Kumar Sant be given an opportunity to join their service. It appears that proposal forwarded by Joint Secretary was not accepted that the opinion of the U.P. Public Service Commission might be obtained. It would appear from the noting on page 76 of the original record of the Government that a notice was proposed to be given to the petitioner and 3 others who did not join for training before cancellation of their candidature but the notings on page 99 would show that no such notice was issued while it was done in the case of one Saurav Trivedi. For all these reasons, we are of the considered view that the petitioner has been illegally discriminated. True, there was no provision for giving notice but as stated by the Standing Counsel it has been the practice through out to give notice before cancellation of appointment of a candidate due to his failure to join the training. In the instant case the established practice has not been followed. There was no valid and justifiable reason for discriminating the petitioner from the other candidates similarly circumstanced.

Accordingly, the Writ Petition succeeds and is allowed. The impugned order dated 1.9.1998 of cancellation of the petitioner's appointment is quashed. The respondents are directed to send the for training alongwith the next available batch. The petitioner shall, however, be not entitled to get the back salary.

15. This Court while passing the judgment dated 30.8.2001, was influenced by

the fact that before cancellation of appointment of the petitioner, a notice by state was required to be issued as per the notings of the state itself, but it actually was not issued, where as similar notice was issued to other persons. Cognizance was also taken of the fact that in other cases, of cancellation due to non-joining, the State Government itself recalled the cancellation order and allowed joining. Noticing these facts, the order dated 1.9.1998 cancelling petitioner's appointment was quashed and a direction was issued to the respondents to send petitioner for training. It was, however, observed that the petitioner would not be entitled to get back salary.

16. Once, the order dated 1.9.1998 has been quashed, the order of appointment dated 26.3.1998 stands restored. However, the benefit of appointment was available to the appointed candidate only from the date of joining when the probation period was to commence. The petitioner, admittedly, did not report for joining on 20.5.1998 and had sought extension of time by six months. Since the petitioner by voluntary act has refused to comply with the order dated 26.3.1998 and had not reported for joining on 20.5.1998, his prayer for grant of benefit of service w.e.f. 20.5.1998 cannot be allowed. Fruits of appointment were available to the petitioner only from the date of his joining. The petitioner himself is responsible for the consequences, which may have arisen on account of his voluntarily act of non-joining and the mere fact that his subsequent joining was delayed due to the litigation, the consequence contemplated in the appointment order cannot be evaded. The terms of the appointment and the provisions of statute dealing with the service conditions cannot be bypassed.

17. We have considered the plea of the petitioner regarding claim of mala fide on account of alleged removing of his applications dated 5.5.1998 and 14.5.1998. The perusal of these applications make an interesting reading. The first application dated 5.5.1998 clearly acknowledged receiving of appointment order dated 26.3.1998 and the communication dated 4.4.1998, which required him to report for joining at the Police Academy, Moradabad on 20.5.1998. The petitioner stated that he had twice appeared in the Civil Services Main Examination and as this was his final attempt in Civil Services Examination, therefore, he be allowed six months time for joining. The second letter of the petitioner dated 14.5.1998 only invited attention of the authority to the previous letter dated 5.5.1998. However, the petitioner appears to have taken a complete turn in his next application dated 24.7.1998, wherein the pretext of grant of time, for appearing in Civil Services Examination, appears to have been abandoned and instead illness of petitioner's mother due to high blood-pressure and sciatica, and diabetes of his father, was stated as reason for non-joining. It is, however, not disputed that the candidature of the petitioner was cancelled on 1.9.1998 without any order passed on the applications of the petitioner for extension, and without issuing any notice to the petitioner. This Court found that the order dated 1.9.1998 was bad, primarily on account of the fact that the cancellation of candidature of other persons had been recalled and other persons were issued a notice before cancellation of their appointment, which was denied to the

petitioner and consequently, the order cancelling the appointment was quashed.

18. We find that the grant of relief to the petitioner was not effected in any manner by this Court on account of alleged existence or otherwise of the applications of the petitioner dated 5.5.1998 and 14.5.1998. This Court clearly noticed the existence on record of the petitioner's application dated 24.7.1998, upon which no orders had been passed. In our view, existences or otherwise of the applications dated 5.5.1998 and 14.5.1998 was not material and cannot be said to have adversely affected the petitioner in any manner. The plea of mala fide attributed to the private respondents etc., therefore, do not merit any consideration.

19. The judgments cited by the counsel for the petitioner, in case of Union of India (UOI) and Others Vs. Ramesh Gandhi, and Deepa Gourang Murdeshwar Katre Vs. The Principal, V.A.V. College of Arts. and Others, , have no applicability upon the facts and circumstances of the present case, particularly as we have found that existence or otherwise of applications dated 5.5.1998 and 14.5.1998 was not material. We also cannot entertain the plea raised by way of written argument that the Apex Court while passing the judgment dated 26.2.2001 was misled by the respondents on account of withholding of applications dated 5.5.1998 and 14.5.1998.

20. Having noticed the fact that the petitioner voluntarily had not offered his joining, in response to the communication issued by the state, and was allowed to join for training only on 15.10.2002, as such the benefits of service were rightly made available from joining, as was clearly contemplated in the appointment order dated 26.3.1998 as well as the rules itself. The petitioner is entitled to the benefit of seniority and service only from the date when his joining has been allowed.

21. The petitioner has worked for about a decade, whereafter attempts are initiated by him to have the terms and consequence of appointment varied, by allowing service benefit from prior to the date of his joining, which cannot be encouraged. After having enjoyed the fruits of this Court's order dated 30.8.2001, the petitioner cannot be allowed to reopen the controversy settled long ago, by filing review/writ petition after expiry of more than 10 years. In view of the discussions made above, we are of the considered opinion that petitioner is entitled to the service benefits only from the date of joining, which has already been allowed to him and his claim for grant of service benefits from a prior date i.e. 20.5.1998 has no substance and is liable to be rejected. Consequently, the writ petition fails and is dismissed.