
(2010) 01 AHC CK 0037
In the Allahabad High Court
Case No : C.M.W.P. No. 1015 of 2008

Jai Prakash Singh Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 8(2)

Citation : (2011) 3 AWC 2614

Hon'ble Judges : Pradeep Kant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kant, J.—Heard Sri Vijay Kumar Gautam, learned Counsel for the Petitioner and Sri Tirath Raj Shukla, learned Counsel for the Respondents.

2. By means of this writ petition the Petitioner Jai Prakash Singh Yadav challenges the order dated 13th September, 2007, passed by Superintendent of Police, Ballia dismissing him from service by exercising power under Rule 8 Sub-rule 2 (b) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991.

3. The Petitioner was selected as Constable in Civil Police in the recruitment held at Azamgarh Centre on 26.6.2005. In pursuance of the advertisements No. 51-04, dated 6th January, 2005 directions for recruitment was made at Azamgarh Centre. All the persons who were desirous of being so appointed and were possessing all the requisite qualifications applied for the post and they had undergone physical test, written examination and interview. The applicants who could qualify all the aforesaid tests were selected and were given appointments.

4. The Director General of Police, U.P. vide, his confidential letter dated 29.6.2007 issued directions for reviewing the entire selection on some alleged irregularities being detected in holding the said selection. The Superintendent of

Police in pursuance of the directions aforesaid reviewed the entire selection with respect to the recruits who were appointed in the year 2005 and 2006 and the deliberations in interview, physical verification, educational qualification, date of birth, health certificate, caste certificate etc. were got re-examined and re-verified.

5. In regard to the Petitioner it was found that in the High School certificate which was produced/filed by him alongwith the application form mentioned his date of birth 1.7.1986, which on getting re-verified from the Regional Officer. U.P. Board of Secondary Education, Varanasi, revealed that his date of birth was actually 1.7.1987. This alleged act of the Petitioner was taken as furnishing a forged certificate at the time of recruitment. The Superintendent of Police found that in this situation, it was not in public interest to allow the Petitioner to continue in service. After making the said observation in the order, he further observed that the Petitioner had filled the form in his own hand-writing and has also undertaken that in case any information given in the application form is found to be incorrect then his selection may be cancelled and then whatever legal action can be taken would be taken for which he would have no objection. An affidavit was filed by him that if any information was found incorrect after his selection, his selection could be cancelled.

6. The Superintendent of Police in his wisdom, thought that it was a case where it was not reasonably practicable to hold the enquiry and, therefore, applying the provisions of Rule 8 2 (b), dismissed the Petitioner from service without giving him any opportunity of hearing and without holding any inquiry.

7. On facts, it is the admitted case that in the High School certificate issued by the U.P. Board, the date of birth was recorded as 1.7.1986. It is not know as to what prompted the Superintendent of Police to get it re-verified from the Board and it is also not clear from the counter-affidavit filed by the State that how and on what basis and material, the Board has given that his date of birth was actually 1.7.1987 and not 1.7.1986.

8. The counter-affidavit, filed by the State and the supplementary-affidavit filed by the Petitioner makes a very curious and interesting reading regarding the date of birth mentioned in the High School certificate and as has been verified by U.P. Board. The State says in paragraph 4 of the counter-affidavit that Petitioner's date of birth as recorded in the High School certificate was 1.7.1986 but the same was found to be 1.7.1987, when verified by the U.P. Board but it does not disclose the fact that from where the Board got this correct date of birth particularly when no inquiry was made from the Petitioner. The material on which this conclusion was drawn by the Board has neither been brought on record nor it finds mention in the verification report submitted by the Board, to the Superintendent of Police.

9. In paragraph 6 of the counter-affidavit, the following contents has been stated by the State:

...it is stated that according to verification done by U.P. Board of High School and Intermediate Education, Regional Office, Varanasi, correct date of birth of the Petitioner is 1.7.1986.

The averments are self contradictory and are without support. The plea of the Petitioner is that his date of birth was 1.7.1986.

10. In this background it is a matter of consideration that from where and on what basis the U.P. Board on re-verification, furnished its report alongwith letter dated 31.8.2007 to the Superintendent of Police, saying that his date of birth was 1.7.1987 and not 1.7.1986. The chart submitted by the Board also shows the date of birth was recorded as 1.7.1986 in the column of the date of birth where no date like 1.7.1987 has been recorded at all. Rather the date 1.7.1986 has been mentioned twice in the same very column and in the last column, though originally the same date of 1.7.1986 was mentioned, but later on it was cut and a note was made that the date of birth is 1.7.1987 and not 1.7.1986. How this entry has been made and who permitted to make such an entry has neither been explained by the State, nor could be explained.

11. There is one more aspect of the matter which totally belies the case of the Respondent and that is a letter written by the Secretary of U.P. Board of High School and Intermediate Examination on 18.8.2007 to the Superintendent of Police, Ballia which says that the date of birth of the Petitioner was 1.7.1986 which is duly verified.

12. Apart from the legal plea that the provisions of Rule 8 2 (b) of the rules of 1999 could not have been applied in the instant case, this appears to be a case where the Government authorities have acted not only negligently and carelessly but as a matter of fact they have also devised a novel method, by getting a report about the date of birth only to dismiss the Petitioner from service.

13. The action of the Respondents not only deserves condemnation but is also to be seriously deprecated and requires appropriate disciplinary action against the officers of the Police Department and the Madhyamik Shiksha Parishad, U.P. Board of High School and Intermediate Education.

14. A person, namely, the Petitioner, who applied for being recruited as a constable in U.P. civil police was duly considered and on being satisfied about his eligibility and qualifications including the date of birth etc. with the certificates produced by him, he was selected and appointed. Unless there was some reason for any doubt regarding the recorded date of birth of the Petitioner from any quarter whatsoever, there was no occasion for the Director General of Police or the Superintendent of Police to re-inquire and re-verify the date of birth of the Petitioner. Nothing has been brought on record by the State to show as to why the Petitioner's case was submitted for scrutiny before the Board for re-verifying his date of birth when apparently there was no complaint against him.

15. The selections made cannot be interfered with at the sweet-will of the

persons who are responsible for holding the selection unless of course some serious irregularities are found to have been committed in the selection. The appointments cannot be set aside or quashed in a light and in a casual manner as has been done in the instant case. Sanctity has to be accorded to the selections made, and unless proved otherwise they have to be upheld. Tinkering with the selections and/or appointments made, in such an irresponsible and apparently designed manner, hits very hard the selectees, who face termination of their services, despite being legally selected.

16. The law is well-settled that for dispensing with the inquiry it is essential that a valid reason has to be recorded by the authority in writing because of which it was reasonably impracticable to hold such enquiry. This makes it clear that there has to be some reason which persuades the authority in power to dismiss any employee without holding disciplinary inquiry and without giving him any opportunity of hearing, and such a reason has to be recorded in writing in the order.

17. The aforesaid provisions do not empower the authority concerned to order dismissal from service or award major punishment in service arbitrarily.

18. In this case learned Counsel for the Petitioner, in support of his plea that Rule 8 (2) (b) could not have been attracted in the instant case, has cited a number of judgments namely State of U.P. and Ors. v. Chandrika Prasad, 2006 (1) ESC 374 (All) (DB), decided on 19th October, 2005; Special Appeal No. 165 of 2007. Vashisth Narayan Singh v. State of U.P. and Ors. decided on 8.2.2007; Pushpendra Singh (C.P. 2187) and Hemvir Singh (C.P. No. 1048) Vs. State of U.P. and Senior Superintendent of Police, decided on 21.2.2008; Sudesh Kumar v. State of U.P. and Ors. 2005 2 SCC 525 , decided on 19.4.2005; Jaswant Singh Vs. State of Punjab and others, decided on 27th November, 1990 and Union of India and Another Vs. Tulsiram Patel and Others, decided on 11.7.1985.

19. Learned Counsel for the Petitioner has cited the aforesaid cases in support of his plea that in the instant case, the aforesaid provision could not have been applied or attracted as there was no ground for not holding inquiry nor any such ground has been recorded by the disciplinary authority giving any reason which prohibited or compelled him not to hold the inquiry or in other words, holding of an inquiry was not reasonably practicable.

20. Notice is also taken in the present case of the fact that the charge against the Petitioner in the instant case was that he furnished a forged certificate of High School examination where the date of birth was recorded as 1.7.1986 but it was found on verification from the Board that it was actually 1.7.1987. Why for such a charge the inquiry was not possible or why it was not reasonable and practicable to hold such inquiry against the employee has not been disclosed at all. It was a simple case where a person who was selected and later on appointed, was charged of furnishing the high school certificate which incorrectly recorded his date of birth. Such a charge could have been very well enquired into

by holding departmental inquiry.

21. This Court is, therefore, of the considered opinion that Rule 8 (2) (b) could not have been attracted in the instant case and, therefore, the order of dismissal is per se bad in law.

22. It is further observed that even on merits there was nothing before the Superintendent of Police to reach the conclusion that the date of birth of the Petitioner was 1.7.1987. As already observed, the conduct of the Respondents including the Superintendent of Police as well as the Board cannot be appreciated and it is for the State Government to initiate necessary proceedings and make an inquiry into the matter as to why the Superintendent of Police required re-verification of the date of birth of the Petitioner despite clear date of birth being recorded in High School certificate and on what basis the U.P. Board gave information that it was actually 1.7.1987 and not 1.7.1986 particularly when the letter written by Secretary Madhyamik Shiksha Parishad to the Superintendent of Police on 18th August, 2007 verifies that the date of birth of the Petitioner was 1.7.1986 and not only that, but in the counter-affidavit also the State has actually admitted that the date of birth was 1.7.1986 but they unsuccessfully tried to make out a case that the date of birth, was wrongly recorded in the High School certificate and it was actually 1.7.1987.

23. In the given facts and circumstances of the case, the writ petition deserves to be allowed with compensatory cost as the Petitioner has been ousted from service for no fault of his and without giving any opportunity of hearing.

24. I, therefore, while setting aside the order dated 13.9.2007 dismissing the Petitioner from service, also impose a cost of Rs. 50,000 upon the State-Respondents which shall be paid to the Petitioner within a period of one month from the date of receipt of certified copy of this order. In case the cost is not paid within the aforesaid time, the same shall be recovered as arrears of land revenue by issuing recovery certificate by Registrar General of this Court. The cost given to the Petitioner by the State Government shall be recoverable from the salary of the erring officers.

25. The writ petition is, therefore, allowed and the impugned order dated 13.9.2007 is set aside. The Petitioner shall be reinstated into service forthwith. All the consequential benefits shall also be given to the Petitioner forthwith.