
(2005) 07 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11493 of 2003

Jamuna Prasad Rajak

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Citation : (2005) 4 MPLJ 555

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Sujoy Paul, for the Appellant; Samdarshi Tiwari, Dy. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition was originally filed before the State Administrative Tribunal at Jabalpur on 23-6-1997. However, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

By this petition the petitioner is challenging the validity of the order Annexure A/4 dated 30-4-1996 by which he has been punished by removal from his service.

The petitioner was appointed on the post of Constable in the Police Department. Along with his application he submitted an Attestation Form (Annexure A/3) in which he has categorically stated that he does not belong to Scheduled Caste or Scheduled Tribe but his caste (Dhobi) is a scheduled caste in Bhopal and in the State of Uttar Pradesh.

The respondents felt that the petitioner by concealing the reality that he belong to general category procured the appointment, as a result of which he was charge-sheeted. The charges were framed as under:-

In the departmental enquiry an investigation report was submitted by Inspector Shri V.S. Kushwaha which is Annexure P/2 and in the said report it has been

categorically stated by him that the Master Chart which was prepared at the time of recruitment and selection is missing and therefore it cannot be ascertained whether petitioner was selected as a General or Scheduled Caste candidate.

The enquiry officer as well as disciplinary authority found the charges to be proved as a result of which the disciplinary authority passed impugned punishment order Annexure A/4 removing the service of petitioner w.e.f. 30-4-1996. The petitioner feeling aggrieved by the said order preferred an appeal to DIG and the said authority on 16-8-1996 dismissed his departmental appeal and the further appeal was dismissed D.G.P. vide Annexure A/7 dated 10-12-1996. Hence this petition.

In this petition Shri Sujoy Paul, learned counsel for the petitioner vehemently submitted that there was no concealment by the petitioner concealing his caste, In this regard he has invited my attention to Annexure A/3 which is the Attestation Form submitted by the petitioner and has submitted that he has specifically stated in the said form that he does not belong to Scheduled Caste community, but Dhobi caste is a Scheduled Caste in Bhopal district and also in the State of Uttar Pradesh. It has also been put forth by learned counsel that petitioner submitted his candidature in General category and not as a candidate belong to the Scheduled Caste. It has also been canvassed by learned counsel that the department itself conducted the investigation and Shri V.S. Kushwaha Inspector was deputed for that purpose. His report is Annexure A/2 in which he has categorically stated that Master chart indicating the position of the candidate under which he was selected is not traceable. On these premised arguments it has been submitted by learned counsel that the impugned order is arbitrary in nature and is perverse and the same be set aside and petitioner may be taken back in the service with all consequential benefits.

On the other hand Shri Samdarshi Tiwari, learned Dy. Government Advocate by inviting my attention to the averments made in the return has submitted that the petitioner procured the service by concealing his caste and gave a false certificate indicating therein that he belongs to Scheduled Caste community and this charge was found to be proved and therefore respondents rightly passed order removing petitioner from his services.

After having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

The authenticity of Annexure A/3 which is the Attestation form has not been denied by the respondent. On bare perusal of the said attestation certificate, it is perceivable that specifically petitioner wrote

and thereafter he wrote that but in Bhopal and in the State of Uttar Pradesh Dhobi Caste is Scheduled Caste. It would be appropriate to re-write whatever has been written by the petitioner in Hindi:

Indeed this document has also been filed as Annexure R/I along with the return.

It be seen that petitioner submitted his caste certificate of Jhansi (U.P.) and in the said State the caste of petitioner is Scheduled Caste. Thus, if the respondents were not inclined to accept his caste certificate issued from Jhansi (U.P.), they were free not to appoint petitioner on the basis of that caste certificate. The argument of learned counsel for petitioner is that petitioner never submitted his candidature as a scheduled caste candidate and he submitted his candidature as a candidate belonging to General category. An enquiry was also conducted by the department in that regard and the investigation report of Inspector Shri V.S. Kushwaha is on record as Annexure A/2 in which he has stated that the Master chart is not available and not traceable and therefore it cannot be said that petitioner was selected as a General candidate or as a candidate belonging to Scheduled Caste. Even otherwise since in the attestation form, the petitioner did not conceal any fact regarding to his caste, the view of this Court is that the finding arrived at by the enquiry officer as well as the disciplinary authority which has been affirmed by the appellate authority is perverse.

Resultantly, this petition succeeds and is hereby allowed. The impugned order Annexure A/4 dated 30-4-1996 and the appellate orders Annexure A/6 and A/7 dated 16-8-1996 and 10-12-1996 respectively are hereby quashed. Respondents are directed to reinstate the petitioner with full backwages and all consequential benefits.