
(2013) 12 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 40231 of 2008

Jishnu Kant

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 3 ADJ 187 : (2014) 3 AWC 2414

Hon'ble Judges : Rakesh Tiwari, J; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Judgement

1. The petitioner is a Judicial Officer. By way of this writ petition, he is seeking a writ of certiorari for quashing the adverse entry awarded to him by the High Court of Judicature at Allahabad (for short, the "High Court"), on administrative side, for the year 2005-06 and the order of the Hon'ble Administrative Committee, as communicated to him by the Registrar (Confidential) vide communication dated 30th May, 2008, rejecting his representation against the said adverse entry. Pending consideration, the petitioner has amended the writ petition and sought further relief for a direction upon the respondents to sanction him Selection Grade Pay Scale of Rs. 18,750-22,850 w.e.f. 18th January, 1996. The essential facts are that the petitioner, after being selected by the Uttar Pradesh Public Service Commission, was appointed as Munsiff in the year 1980. He earned his promotion against the post of Additional Chief Judicial Magistrate/Civil Judge (Senior Division) in the year 1990 and was further promoted to Uttar Pradesh Higher Judicial Service in the year 1999. In the year 2005-06, he was posted at Fatehpur as Additional District & Sessions Judge. He also functioned as Special Judge (SC/ST Act) there.

2. The District Judge, Fatehpur in his annual confidential remarks awarded entry as "Good" to the petitioner for the year 2005-06. He forwarded it to the Hon'ble Administrative Judge, Fatehpur, who did not agree with the assessment made by the District Judge and recorded the following assessment:

Seen the Self Assessment Form of the Presiding Officer Sri Jishnu Kant, Special

Judge (SC/ST Act), Fatehpur as well as the Annual remarks granted by the learned District Judge, Fatehpur.

Complaints were received against the Presiding Officer Sri Jishnu Kant for abuse of judicial power for extraneous reasons. His judicial acumen is not upto the mark. He does not possess good reputation. Accordingly, the annual remarks granted by the learned District Judge, Fatehpur as "Good" is reviewed and the officer concerned is awarded the entry as "Fair" for the period in question.

Administrative Judge, Fatehpur

3. Registrar (Confidential), High Court, communicated the aforesaid annual confidential remarks awarded by the District Judge and the Hon'ble Administrative Judge to the petitioner vide his communication dated 19th February, 2007.

4. Feeling aggrieved by the adverse entry, the petitioner made a detailed representation before the Registrar General of the High Court which was placed before the Hon'ble Administrative Committee, which considered and rejected it. The decision of the Hon'ble Administrative Committee was communicated to the petitioner by the Registrar (Confidential) vide communication dated 30th May, 2008. Against this background, petitioner filed the present writ petition.

5. During pendency of this writ petition, by way of amendment the petitioner also sought a direction upon the respondents to sanction Selection Grade Pay Scale of Rs. 18,750-22,850 to the petitioner on the ground that his immediate senior Sri Devendra Kumar Tiwari and junior Sri Shakti Kant have been granted the Selection Grade Pay Scale but the petitioner has been denied the same without any justifiable reason. He has brought on record a notification issued by the High Court dated 18th August, 2008, whereunder Selection Grade Pay Scale of Rs. 18,750-22,850 was granted to several District & Sessions Judges/ Additional District & Sessions Judges in view of the Government Order dated 04th August, 2003, but petitioner's name is not therein.

6. A counter-affidavit has been filed on behalf of respondent Nos. 2 and 3 i.e. the High Court and the Registrar (Confidential). The stand taken in the counter-affidavit is that while the petitioner was posted as Additional District & Sessions Judge/Special Judge (SC/ST Act, Prevention of Atrocities Act), Fatehpur, annual confidential remarks were recorded by the District Judge, Fatehpur and the Hon'ble Administrative Judge, Fatehpur for the year 2005-06, which were duly communicated to the petitioner. The representation dated 02nd March, 2007 made by the petitioner against the said entry was placed before the Hon'ble Administrative Committee in its meeting dated 11th April, 2008, which referred the same to a three-Member Committee of Hon'ble Judges comprising Hon'ble Dr. Justice B.S. Chauhan (as he then was), Hon'ble Mr. Justice Anjani Kumar and Hon'ble Mr. Justice Ashok Bhushan. The Committee considered the representation of the petitioner and gave its report dated 06th May, 2008 making recommendations. The report of the Committee is extracted in paragraph-5 of

the counter-affidavit. This report was considered by the Administrative Committee in its meeting held on 22nd May, 2008 which, after considering the representation of the petitioner and report of the Committee, approved the report of the Committee rejecting the representation of the petitioner. The decision of the Hon''ble Administrative Committee was also communicated to the petitioner on 30th May, 2008.

7. We have heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri V.D. Shukla, learned Counsel for the petitioner, and Sri Arvind Srivastava, learned Counsel appearing for the respondents-High Court.

8. Learned Senior Counsel appearing for the petitioner submits that there existed no material before the Hon''ble Administrative Judge for recording adverse entry in the service record of the petitioner for the year 2005-06. He further submits that some complaints were received against the petitioner and he was asked to submit his explanation. The petitioner submitted a detailed reply to the complaints made against him but the same had not at all been taken into account. Sri Khare further urges that junior to the petitioner has been granted selection grade pay scale but he has been denied the same arbitrarily.

9. Learned Counsel representing the respondent Nos. 2 and 3 submits that against the adverse remarks given by the Hon''ble Administrative Judge the petitioner had made a representation, which, on reference, was considered by a three-Member Committee of Hon''ble Judges, whose report was approved. Thus, the adverse remark awarded by the Hon''ble Administrative Judge was found to be justified in the facts and circumstances of the case.

10. As regards petitioner''s demand for grant of Selection Grade Pay Scale, learned Counsel for the respondents submits that his demand was considered by a four-Member Committee comprising Hon''ble Mr. Justice S. Rafat Alam, Hon''ble Mr. Justice Pradeep Kant, Hon''ble Mr. Justice U.K. Dhaon and Hon''ble Mr. Justice Sunil Ambwani, which did not found the petitioner suitable for grant of said benefit.

11. We have considered the respective submissions of the learned Counsel for the parties and perused the record.

12. The object of recording annual confidential remarks by a superior officer is based on several factors including reputation, behavior, work and conduct of the concerned person. Its object is not like a departmental proceeding to punish the Government servants. Its primary object is to keep the employer informed of the required materials about the employee for deciding how to utilise the talent of the concerned employee. It also helps the employer to make up its mind while allotting work, place and promotions. In the case of State of U.P. Vs. Yamuna Shanker Misra and another, , the Supreme Court has highlighted the importance of confidential reports in the following words:

7. It would, thus, be clear that the object of writing the confidential reports and

making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidential should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behavior, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.

13. As stated earlier, the petitioner was awarded adverse entry by His Lordship the Administrative Judge. It has been denied by the respondents that adverse remark has been given to him on the basis of two complaints alone. The annual confidential remarks is made on the basis of overall assessment. It is not required that while recording an adverse remark there should be some sort of regular departmental enquiry to establish the charges. Reputation of a person is based on his work and conduct and his overall behavior. In the present case, the Administrative Judge recorded his opinion about the petitioner, against which he had filed a detailed representation, which was referred by the Administrative Committee to a three-Member Committee of Hon''ble Judges. After consideration of representation of the petitioner, the three-Judges Committee aforesaid submitted its report, which was placed before the Hon''ble Administrative Committee, which approved it. In view of the aforesaid facts, it cannot be said that adverse remark was awarded to the petitioner mechanically without application of mind.

14. As regards the claim of the petitioner for Selection Grade Pay Scale is concerned, it was also considered by a four-Member Committee of Hon''ble

Judges in its meeting held on 02nd August, 2008 in terms of the Government order dated 04th August, 2003. From the records, we find that apart from the said Government order, the Committee had also followed the norms laid down by the earlier Committee. The Committee in its report dated 02nd August, 2008 has made the following observations in respect of the petitioner:

The annual confidential remarks for the year 2005-06 (Court Remarks) indicate that complaints were received against him for abuse of judicial power for extraneous reasons. His judicial acumen was reported to be not upto the mark. Also that he does not possess good reputation. The representation against the remarks has already been considered and rejected by the Administrative Committee.

15. Relevant it would be to mention that the four-Member Committee had adopted the norms of the previous Committee and in terms of the Government Order dated 04th August, 2003 had laid down certain norms. For the sake of convenience, relevant norms are extracted below:

(4) No officer whose integrity at any point of service was found positively lacking and the same has not been expunged or modified would be recommended for grant of selection grade pay scale.

(5) An officer whose integrity at any point of service career was not certified or was found doubtful for an year or was withheld but subsequently the same has been certified consecutively for last five years preceding the year of consideration, may be considered for grant of selection grade provided he is otherwise suitable, and

16. As the petitioner's representation against the adverse remarks was rejected, the four-Member Committee was justified in its report, which has been quoted herein-above.

17. In view of the aforesaid facts, the submission of learned Senior Counsel appearing for the petitioner that there existed no material on the basis of which Hon'ble Administrative Judge has recorded his adverse entry, is not correct. His second submission that the petitioner is entitled for the Selection Grade Pay Scale, is also not correct as the same has been denied on the justifiable reasons.

18. Thus, after careful consideration of the submissions advanced by the learned Counsel for the parties and perusal of the records, we are of the view that no interference under Article 226 of the Constitution of India is warranted in the present case. The writ petition lacks merit and is liable to be dismissed. Accordingly, it is dismissed. No order as to costs.