
(2016) 08 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30763 of 2016

Jitendra Kumar Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 8 ADJ 221 : (2016) 6 AllWC 5865 : (2016) 118 ALR 450

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Seemant Singh, Advocate, for the Appellant; C.S.C, Ashok Kumar Yadav and Santosh Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.— Heard Sri Seemant Singh, learned counsel for the petitioner, Sri Avinash, learned Standing Counsel for the respondent nos. 1 to 4 and Sri Santosh Kumar, learned counsel for the respondent nos. 5 and 6.

2. This writ petition has been filed praying for the following reliefs:

(a) Issue a writ, order or direction in the nature of Certiorari calling upon the records of the case and to quash the impugned Government Order dated 13.5.2016 (Annexure No. 15 to the writ petition), impugned Circular dated 17.5.2016 (Annexure no. 16 to the writ petition) and impugned show cause notice dated 18.6.2016 (Annexure No. 17 to the writ petition) being illegal, arbitrary and in violation of principles of natural justice as the same are based on no medical report which could have been prepared by the earlier Medical Board at the time of examining the petitioner and the copy of which could have been supplied to the petitioner for giving him a due opportunity under law to challenge the same before the other authorities under law.

(b) Issue any other suitable writ, order or direction as this Court may deem fit and proper in the facts and circumstances of the case.

(c) Award cost of petition to the petitioner.

3. Briefly stated facts of the present case are that 1932 candidates under the physically disabled candidates quota, were selected for Special B.T.C. Training Course, 2007, Special B.T.C. Training Course, 2008 (Special Selection) and Special B.T.C. Training Course, 2008 out of which 1121 candidates appeared before the Medical Board along with their original certificates for physical verification. The physical disability of 234 candidates were not found certified. The medical examination of 811 candidates were yet to be done but in the meantime a Writ-A No. 53152 of 2010 (Ravindra Kumar Sharma v. State of U.P. and others) was filed in which an order dated 3.8.2010 was passed dismissing the writ petition.

4. The aforesaid order dated 3.8.2010 was challenged in Special Appeal No. 811 of 2010 (Ravindra Kumar Sharma v. State of U.P. and others) before the Lucknow Bench of this Court, which was disposed of by order dated 9.9.2010. As a consequence of the order passed in the aforesaid Special Appeal, the verification of certificates as well as physical verification were stopped. The aforesaid order dated 9.9.2010 passed in the Special Appeal was challenged by the State Government in Special Leave Petition No. 8880 of 2011 (State of U.P. and others v. Ravindra Kumar Sharma and others), which was allowed by Hon"ble Supreme Court by order dated 3.2.2016. The relevant portion of the order of Hon"ble Supreme Court is reproduced below:

10. The Division Bench of the High Court has ignored and overlooked the material fact that verification has already been done by the Medical Board and it has been found that certificates of 21% were fraudulently obtained. The High Court has issued a direction in the impugned order for physical verification of the candidate by the authorities and in case he does not suffer from disability so certified candidate can be subjected to fresh medical test. The High Court has overlooked that on mere physical verification it may not be possible to know various kinds of disabilities such as that of eyes, ear impairment etc. That can only be done by the medical examination and particularly when the High Court itself has observed that in case there is genuine suspicion and fraud has been committed medical certification can be reopened. Direction issued in this regard has not been questioned by the respondents and in fact process of reverification was already over when High Court issued aforesaid directions.

11. In our considered opinion in the peculiar facts of this case of such a fraud and genuine suspicion raised in the representation lodged by the Viklang Sangh and when 21% of such certificates have been found to be fraudulently obtained there was no scope for the Division Bench to interfere and issue order to perpetuate fraud, writ is to be declined in such a scenario and no equity can be claimed by the respondents.

12. In the circumstance we set aside the impugned judgment and order passed by the Division Bench of the High Court and dismiss the writ petition. However

before taking any action against the individuals they shall be issued show cause in the matter and thereafter decision will be rendered in accordance with law. Let this exercise be completed within a period of four months. The appeal is allowed to the aforesaid extent.

5. After referring the above quoted paragraphs of the order of Hon"ble Supreme Court, the State Government issued the impugned letter dated 13.5.2016 quoting therein the relevant portion of the orders of the learned Single Judge and the Division Bench of this Court as well as judgment of Hon"ble Supreme Court dated 3.2.2016 and directed the authorities concerned to complete necessary exercise in respect of left over 811 candidates.

6. Consequent to the aforesaid Government letter dated 13.5.2016, the Director, State Council for Education Research and Training, U.P. Lucknow (respondent no. 2) issued the impugned letter dated 17.5.2016 to the authorities concerned for compliance.

7. It appears that thereafter the impugned show cause notice dated 18.6.2016 has been issued to the petitioner by the Principal, District Education and Research Institute, Shahjahanpur mentioning therein that in the verification report submitted by the Medical Board, the physical disability of the petitioner has not been found certified. By the aforesaid impugned show cause notice, the petitioner has been required to submit his reply within 15 days.

8. Aggrieved with the aforesaid Government letter dated 13.5.2016, letter of Director, State Council for Education Research and Training, U.P. Lucknow (respondent no. 2) dated 17.5.2016 and show cause notice dated 18.6.2016, the present writ petition has been filed.

9. Learned counsel for the petitioner admits that petitioner is one of the candidate amongst 234 candidates, whose physical disability was not found certified as mentioned in the Government letter dated 13.5.2016. However he submits that earlier the medical certificate of the petitioner was examined by the Basic Shiksha Adhikari and no discrepancy was found, and as such, it was not open for the respondents to inquire into the matter and to verify physical disability of the petitioner. He submits that the Committee constituted under the Government letter dated 13.5.2016, does not consists of any medical expert, and as such, the entire proceeding against the petitioner is wholly arbitrary. The medical examination with regard to the physical discrepancy of the petitioner was an arbitrary action of the State Government. The State Government has already taken decision to punish the petitioner, and as such, the impugned show cause notice is wholly invalid.

10. It is admitted by the petitioner that the petitioner has not submitted any reply pursuant to the impugned show cause notice.

11. Learned counsel for the respondents supports the impugned letters and the show cause notice.

12. I have carefully considered the submissions of learned counsel for the parties.

13. I do not find any substance in the submission of learned counsel for the petitioner. The Government letter dated 13.5.2016 merely refers to the orders passed by Hon''ble Single Judge, the Division Bench of this Court and the order dated 3.2.2016 passed by Hon''ble Supreme Court and issued certain directions, which are not in conflict with the order of Hon''ble Supreme Court. The Committee, referred in the impugned Government letter dated 13.5.2016, has been constituted for the purpose of considering and taking decision on reply which may be submitted by candidates pursuant to show cause notices, which is in compliance to the order of Hon''ble Supreme Court dated 3.2.2016.

14. The facts of the present case, as briefly noted above, clearly indicates that when the verification of disability certificate and medical examination began and disability certificate of 234 candidates out of 1121 were not found certified and 811 candidates were yet to be examined, a Writ Petition No. 53152 of 2010 was filed, which was dismissed by order dated 3.8.2010. This order was challenged before the Division Bench of this Court in Special Appeal No. 811 of 2010, which was disposed of by order dated 9.9.2010. The order of the Division Bench was challenged by the State Government before the Supreme Court in Special Leave Petition no. 8880 of 2011, which was allowed by order dated 3.2.2016. The relevant portion of the aforesaid order of Hon''ble Supreme Court has already been reproduced above, which clearly indicates that the action of the respondents is not in conflict with the order of Hon''ble Supreme Court. The impugned show cause notice has been issued requiring the petitioner to submit reply within 15 days. Admittedly, the petitioner, instead of submitting reply; has filed the present writ petition.

15. It is settled law that normally a writ petition against a show cause notice is not maintainable. Proper course for the noticee is to submit reply before the authority concerned. The exception is that if the show cause notice itself is wholly without jurisdiction then a writ petition against it may be entertain able, which is not the case of the petitioner. Under the circumstance, the writ petition is not entertain able.

16. In view of the aforesaid, I do not find any merit in this writ petition.

17. The writ petition fails and is, therefore, dismissed.