
(1994) 05 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 2433 of 1993 (R)

Kaushalendra Arya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-05-1994

Acts Referred:

Army Rules, 1954 — Rule 13

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (1995) 2 PLJR 358

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : M.M. Tiwari and B.K. Jha, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—By this application under Articles 226 and 227 of the Constitution of India the Petitioner who was attached with 6 Mahar (Borders) Regiment of Indian Army as Nayak Subedar (RT), has impugned the validity of the order of the Director Recruiting (ORB) under letter No. A/10064/JAL/Trg/5/(OR)(E) dated 29th April, 1993 (Annexure-4) whereby the Commandant of the Mahar Regimental Centre has been directed to arrange discharge of the Petitioner from Army service under the purported exercise of power under Army Rule 13. The Petitioner further challenges (Annexure 9), the order issued by Mahar Regiment Abhilekh Karyalaya Records, Mahar Regiment, Saugar (M.P.) through the Senior Records Officer dated 26th June, 1993 to the unit concerned, intimating that the Petitioner shall be discharged from service pursuant to Annexure 10. The Petitioner was appointed as JCO (R.T.) (Pandit) following an advertisement in 1990 for recruitment of Religious Teachers (Pandits and Granthis) in the Army. According to that advertisement, the qualification for eligibility for the aforesaid posts was as follows:

The minimum educational qualification for appointment will be graduation in any

discipline from a recognised University. In addition they must also possess one of the following qualifications according to the religious denomination of the individual:

i. Pandit: Madhyama in Sanskrit or Bhushan in Hindi or equivalent standard in the regional language concerned.

ii. Granthi: Vidwan in Punjabi or equivalent standard in the regional language concerned.

2. It is evident from the advertisement (Annexure 1) that the minimum educational qualification for appointment was graduation in any discipline from a recognised University. In addition, candidates were required to possess qualifications applicable to the category of religious denomination of the individual. In the Petitioner's case, this was Madhyama in Sanskrit or Bhushan in Hindi or equivalent standard in the regional language concerned. There is no dispute that the Petitioner possesses the latter qualification. The main dispute is whether the Petitioner was graduate in any discipline from a recognised University?

3. The Petitioner had passed Shastri examination from Guru Nanak Dev University, Amritsar, Punjab. This degree is recognised as equivalent to Bachelor of Arts degree by the Govt. of India and other States like Madhya Pradesh, Delhi etc. The Petitioner had filed his degree when he applied for recruitment in the Army. On being found eligible after initial screening including checking of the original educational certificates and medical examination, the Petitioner was issued a call letter by the Zonal Recruiting Officer, Jallundar. The Petitioner was thereafter allowed to appear in the written examination held on 14.4.1991. He qualified in the written test and was called for interview. He again produced all the original documents regarding educational qualifications. The Petitioner was duly selected for appointment as religious teacher i.e. (R.T.) J.C.O. (Pandit) in the Mahar Battalion of the Indian Army at Saugar (M.P.).

4. The Petitioner was sent for basic training and after successful completion of training in physical course and of religious teacher, the Petitioner was appointed permanently on substantive post in the pay scale of Rs. 1380-40-2100 in addition to D.A. and was at first posted at the Mahar Regiment Centre, Saugar (M.P.). Thereafter the Petitioner was transferred and posted to 6 Mahar Regiment (Borders) in Rajouri Sector, Jammu and Kashmir on 5th May, 1992 and thereafter transferred to Ranchi in October, 1992. He was ultimately discharged from service in the circumstances stated above.

5. It has been argued by Mr. Tewari, learned Counsel for the Petitioner that the Respondents without verifying whether the degree of Shashtri from Guru Nanak Dev University is equal to B.A. degree course or not, discharged the Petitioner arbitrarily and in violation of Articles 14 and 16 of the Constitution of India. He vehemently argued that the degree of Shashtri of Guru Nanak Dev University is recognised throughout India as it is equivalent to B.A. degree. This fact was well

known to the authorities who being satisfied accepted his qualification.

6. It was submitted that Respondent-authorities have acted in violation of the principles of natural justice in discharging the Petitioner without holding any enquiry.

7. The stand taken by the counsel for the Respondent No. 6 in the counter affidavit is that appointment of Petitioner was irregular because the certificate of Shashtri Degree from Guru Nanak Dev University, Amritsar produced by the Plaintiff was found to be unrecognised as equivalent to Graduation (B.A.) Degree for the purpose of employment under the Central Govt. in accordance to Personnel P.G. and Pension letter dt. 21.11.1990. A reference to this annexure will show that the Government have from time to time issued order recognising Sanskrit examinations conducted by different institutions for the purpose of employment under the Central Govt. and degree granted by the Rashtriya Sanskrit Sansthan, New Delhi; Kameshwar Singh Darbhanga Sanskrit University, Darbhanga; Sampurnanand Sanskrit Vishwavidyalaya, Varanasi are recognised by this order. This letter, however, does not show that Shashtri degree granted by Guru Nanak Dev University has not been recognised as equivalent to B.A. Degree. In my opinion reliance on Annexure A in support of the plea of the Respondents appears to be misplaced.

8. It is nowhere mentioned in the advertisement that the candidate must have done graduation from an University recognised by the Central Government. It only says that it should be a recognised University. As stated earlier, degree possessed by the Petitioner was recognised by almost all States of India as equivalent to B.A. Degree (Annexure 5).

9. A curious plea has been taken in paragraph 28 of the counter affidavit that Petitioner's appointment was not substantive but provisional, this plea appears to be untenable.

10. Mr. Tiwari, learned Counsel for the Petitioner submits that the impugned orders are liable to be quashed on the short ground that no prior opportunity was afforded to the Petitioner to demonstrate the fact that the degree possessed by him was equivalent to B.A. Degree and this fact is fully established by Annexure 5. It was submitted by Mr. Tewari that as no predecisional opportunity was given to the Petitioner, he could not demonstrate that there are many instances of the degree possessed by the Petitioner being equal to B.A. Degree. It is not disputed that Petitioner was appointed as a Religious Pandit on basis of his having Shashtri degree.

11. For the reasons stated above, this application is allowed and the impugned orders as contained in Annexures 4, 9, 10 and 11 are quashed. Let a writ of mandamus be issued to the Respondents to reinstate the Petitioner in service granting him all consequential benefits. There will however be no order as to costs.