

(2018) 03 RAJ CK 0238

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3911 of 2004

Kheema Ram @APPELLANT@Hash State of Rajasthan

Date of Decision : 22-03-2018

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16
Rajasthan Civil Services (Pension Rules) 1996 — Rule 7

Citation : (2018) 03 RAJ CK 0238

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Sajjan Singh Rathore, Vikram Singh Bhati, B.L. Bhati

Final Decision : Allowed

Judgement

This writ petition is directed against the order dated 5.8.2004 (Annex.8) passed by the Disciplinary Authority, whereby, the inquiry report against the petitioner has been accepted and after seeking approval from His Excellency the Governor, 100% pension of the petitioner has been ordered to be stopped by way of punishment.

The petitioner entered the service on the post of Assistant Teacher in the respondent "Department on 27.6.1962, during course of his service, he was promoted to the post of Headmaster on 6.10.1983 and was confirmed on the said post on 5.8.1987. On reaching the age of superannuation, the petitioner retired from service on 14.3.1997.

During course of his service, on 21.2.1990, the petitioner was issued charge-sheet under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (the Rules of 1958) alleging that he had secured appointment on the post of Headmaster through RPSC on the post reserved for scheduled caste by submitting a false Caste Certificate as "Rawal".

The petitioner filed reply to the charge-sheet and contested the same. It was submitted that as per the Constitution (Scheduled Caste) Order, 1950 and

the Scheduled Caste and Scheduled Tribe (Amendment) Act, 1976 as Rawal has been shown as a scheduled caste at item No.50 in the list pertaining

to Rajasthan, he was entitled to reservation as scheduled caste and he was not Brahmin as alleged.

The inquiry office after holding the inquiry, concluded as under:-

â??fu""d""kZ vfHk;kstu i{k }kjk izLrqr lk{; vfHkys[k ,oe~ lk{; o izfri{k dh vksj ls izLrqr lk{; vfHkys[kksa dk foospu djus ij ;g fu""d""kZ mHkj dj vk;k fd

vkjksih vf/kdkjh ij vkjksi la[k&1 lk{; vfHkys[kksa ls izekf.kr gSa fd vkjksih vf/kdkjh us yksd lsok vk;ksx ds ek;/fed fo|ky; ds iz/kkuk/;kid ds in ij vkosnu

vkjf{kr inksa ds fy;s fd;k vkjksi izekf.kr gSaA

vkjksi la[k&02 esa eq[; vkjksi ;g gSa fd vkjksih vf/kdkjh us vuqÅ' tkfr ds inL; ugha gksus ds cktwn vuqlwfpr tkfr dk izek.k i= izkIr dj fy;kA dh

Latest Revised list of Scheduled Castes and Scheduled Tribes, 1978d h vuqlwfpr esa Å?Å'laÅ' 50 ij ^^jkoy** tkfr vafdr gSA vkjksih vf/kdkjh }kjk

izLrqr lk{; vfHkys[k esa jkoy tkfr ds :i esa vfHkysf[kr gSA bl vk/kkj ij vkjksih vf/kdkjh }kjk izkIr fd;k x;k vuqÅ'tkfr dk izek.ki= lgh gS ijUrqr vfHk;kstu

i{k }kjk izLrqr lk{; vfHkys[k ,oe~ lk{; ds vk/kkj ij jkoy tkfr dHkh ls czkg~e.k jkoy gSA ;g vkjksi vkafâ??kd :i ls lfU/kxRrk ds vk/kkj ij izekf.kr gSaA

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tkap vf/kdkjh ,oe~ mi funsâ??kd Â¼ek;/fedÂ½ tks/kiqjAâ??

Based on the inquiry report, as the petitioner had retired from service after seeking approval from His Excellency The Governor, under Rule 7 of

Rajasthan Civil Services (Pension Rules) 1996, punishment by stoppage of 100% pension, was imposed on the petitioner.

Feeling aggrieved, the present writ petition has been filed by the petitioner. It is submitted by learned counsel for the petitioner that the inquiry officer/

Disciplinary Authority had no jurisdiction to record a finding pertaining to the caste of the petitioner, inasmuch as, once the inquiry officer found as a

fact that certificate was issued by a competent authority indicating the petitioner as person belong to scheduled caste community, the Disciplinary

Authority had thereafter no jurisdiction to come to a conclusion that the petitioner was not belonging to scheduled caste community and, therefore, the

order impugned passed, deserves to be quashed and set aside.

Reliance was placed on judgment of this Court in Punjab National Bank, New Delhi & Ors. v. Surendra Nath : 2000 (3) RLR 552.

Learned counsel appearing for the respondent - State vehemently submitted that the petitioner cannot be permitted to take advantage of a false

certificate produced by him. It was submitted that the petitioner had participated in the inquiry and on the material available on record, the inquiry

officer has recorded a categorical finding that the petitioner belongs to Brahmin community and does not belong to Rawal Community as claimed by

him and once such a finding of fact was recorded, there was no reason to interfere with the said finding.

Further submissions were made that the petitioner cannot be permitted to take advantage of the reservation, which is provided for persons belonging to

the scheduled caste community and, therefore, the order passed by the Disciplinary Authority doesn't call for any interference.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

Â A bare look at the finding recorded by the inquiry officer, as quoted hereinbefore, would reveal that it has been specifically held that the caste

certificate produced by the delinquent officer was correct, however, he went to hold, based on the evidence led by the Department and the delinquent

officer that it was doubtful that the petitioner belongs to the scheduled caste community. The Disciplinary Authority by its impugned order, rejected the

explanation given by the petitioner holding the same as not satisfactory and imposed the punishment, as noticed hereinbefore.

The issue, which arises for consideration, is as to once the finding has been recorded about the genuineness of the certificate, whether the inquiry

officer and/or the Disciplinary Authority has the jurisdiction to then decide whether the person belongs to the community regarding which, the

certificate has been produced by the delinquent officer?

The Division Bench of this Court in the case of Punjab National Bank (supra) after considering the entire issue, inter alia, laid down as under:-

â??25. Thus, from the above rulings rendered by this Court and also of the Madras High Court it is clearly seen that the employer has not followed

the procedure by approaching the authority who issued the certificate, instead, the employer has initiated disciplinary action against the employee and

cancelled the certificate without adopting the settled procedure by various judgments referred to above. Under such circumstances, the entire

disciplinary proceedings initiated by the Bank and removing the respondent from service on the basis of such enquiry is wholly bad and against the

law. In our opinion, the learned Single Judge has rightly quashed the entire disciplinary proceedings on two grounds: (a) that the certificate of the

competent authority was properly considered and accepted by the appointing authority and (b) the appointing authority once accepted a certificate

issued by the competent authority regarding declaration of caste of its employee, the same cannot be questioned at issue in a disciplinary proceedings

for verifying the correctness or veracity of such certificate. In our opinion, the judgment impugned in this appeal is correct and not liable to be

interfered with as contended by the learned counsel for the appellant-Bank.â??

It is well settled that the jurisdiction to decide on the aspect as to whether the person belongs to a particular community or not and/or the validity of a

certificate lies with the authorities under the provisions dealing with issuance of the certificate pertaining to the caste and no other authority has the

jurisdiction to decide on the said aspect.

In view of the above law laid down by Division Bench of this Court, once the certificate produced by the petitioner was found to be genuine, the

Disciplinary Authority apparently had no jurisdiction to concur with the opinion of the inquiry officer and come to a conclusion that the petitioner

didnâ??t belong to scheduled caste community and therefore, the disciplinary proceedings initiated against the petitioner and/or the punishment

imposed against the petitioner after holding him guilty of the charges, cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed. The order passed by the disciplinary authority dated 5.8.2004 (Annex.8) is quashed

and set aside. The petitioner would be entitled to all consequential benefits flowing from quashing of the said order including the arrears of pension, in

accordance with law.

Needful be done by the respondents within a period of two months from the date of this order. In case, the arrears etc. are not paid within a period of

two months from today, the petitioner would be entitled to interest @ 6% per annum from the date of this order till actual payment is made to the

petitioner.