
(2008) 04 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 345 of 2002

Man Mohan Singh Negi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 311
Government of India Act, 1935 — Section 240(3)

Citation : (2008) 3 UC 1780

Hon'ble Judges : P.C. Verma, J

Bench : Single Bench

Advocate : B.D. Upadhyay, for the Appellant; Arvind Vashisth, Asstt. Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

P.C. Verma, J.—This petition has been filed by the Petitioner seeking following relief:

(A) Issue a suitable writ, order or direction in the nature of certiorari call for the record of the case and quash the impugned order dated 05-1-1994 (annexure-1 to the writ petition) passed by the Respondent No. 3, communicating the order of the Respondent No. 2 a copy was not served on the Petitioner.

(B) Issue a suitable writ, order or direction in the nature of mandamus commanding the Respondents to treat and continue to treat the Petitioner in continuous service as a Technical Assistant as if no impugned order of termination/removal against the Petitioner was ever passed. Further the Respondents may be reinstated to interfere with the serving and working of the Petitioner as a Technical Assistant in any manner whatsoever.

(C) Issue any suitable writ, order or direction to which this Honble Court may deem fit and proper in the circumstances of the case.

2. Brief facts of the writ petition are that in pursuance of the post of Technical

Assistant advertised by the Respondent No. 3 in "Indian Express" newspaper the Petitioner applied for the same and as per requirement filed the documents, such as, registration certificate of the Employment Exchange, experience certificate, High School and Intermediate examination passed mark sheets and certificates and the provisional certificate showing that he passed final year diploma in Mechanical Engineering three years course from Nainital Polytechnic. Thereafter Petitioner received a letter dated 21-02-1989 to appear before the Interview Committee for interview. He appeared before the said committee. Later on, the Respondent No. 2 on the recommendation of Selection Committee offered appointment to the Petitioner as Technical Assistant under Rule 44 (XII) of Rules and Regulations of the Respondent No. 2. Ultimately, appointment letter was issued to the Petitioner on 13-03-1989 by Respondent No. 3 directing him to report himself on duty latest on or before 20-03-1989. In pursuance of the appointment letter, the Petitioner took over charge on the post of the Technical Assistant and since then he served and worked with the Respondent No. 3 till the date of the impugned order which is under challenge. On 05-01-1994 the Respondent No. 1 communicated the Petitioner that his services have been terminated by the Chairman Executive Committee, Electronics Services and Training Centre Kaniya, Ram Nagar, District-Nainital on the ground that the Petitioner for getting job submitted a forged experience certificate and as such he be not paid any service emoluments from 06-01-1994. He was also required to show cause within 15 days why the service emoluments paid to him be not realized from him in view of forged experience certificate submitted by him. The Petitioner submitted his reply on 13-01-1994.

3. The Petitioner also alleged that in fact one Sri DP. Shaha / Respondent No. 4 throughout harassed him and he always threatened to oust the Petitioner from the service. Being aggrieved by the said act of the Respondent No. 4 the Petitioner lodged F.I.R. against him on 22-10-1993 at Police Station, Ram Nagar. The Petitioner also alleged that the Respondent Nos. 2 & 3 passed the impugned order in colourable exercise of their powers at the instance of the Respondent No. 4 without affording any opportunity of being heard to the Petitioner and on vague grounds as to which of the certificates submitted by him was forged as a number of certificates as aforesaid were submitted by the Petitioner to the Respondents. It is also alleged that the Petitioner was not afforded any opportunity of hearing. The impugned order cast stigma. It is not an order of termination simpliciter but a punitive order of dismissal of Petitioner.

4. The Respondents in their counter affidavit stated that the Petitioner has obtained appointment on the post of Technical Assistant fraudulently on forged document as he did not fulfill the minimum qualifications of having two years' experience which is essential qualification for the post in question. The experience certificate submitted by the Petitioner of the Public Works Department is a forged document. Perusal of both the experience certificates issued by the Public Works Department and the Kelvinator of India Limited shows that there is over lapping for over 8 months. It is not clear that as to why the Petitioner could

have worked in both the organizations at the same time and obtained experience certificates for the period having over lapping. The Respondent also alleged that the services of the Petitioner were terminated by the Respondents when it was revealed to the Respondents on verification of antecedent of the Petitioner.

5. The Petitioner in his rejoinder affidavit denied the assertion of the Respondents and stated that he has two years" service in Kelvinator and thereafter he accepted service in Public Works Department from January 1982 to April 1982. He alleged that the Annexure No. 5 and Annexure No. 5-A to the counter affidavit do not relate to the Petitioner and a bare reacing of both it can be seen that they relate to some Manmohan Singh son of Narendra Singn. The Petitioner reiterated that the certificate obtained by the Petitioner is bonafide and not fictitious as alleged by the Respondents.

6. I have heard the learned Counsel for the parties. The sole question, which is to be decided in this case, is whether the Petitioner"s services could have been terminated without affording opportunity of hearing and without holding any proper inquiry against him. Perusal of the impugned order shows that it is punitive in nature and has been passed without holding any inquiry. For the sake of convenience, the impugned order dated 05-01 -1994, contained as Annexure No. 1 to the writ petition, is reproduced as under in English version:

Office Memorandum In compliance of the decision and order of Chairman, Executive Committee, E.S.T.C. you are informed that:

(1) You (Sri Manmohan Singh Negi, Technical Assistant) filed a forged experience certificate for getting the service in E.S.T.C. which has been confirmed from the ex employer. Therefore, your (Sri Manmohan Singh Negi, Technical Assistant) services in E.S.T.C. are terminated with immediate effect. You (Sri Manmohan Singh Negi, Technical Assistant) shall not be given any admissible payment with immediate effect (06th January, 1994).

(2) You (Sri Negi) also submit your explanation as to why the payment made to you during the service period which service you got by forged experience certificate, shall not be recovered from you. You are given maximum period of 15 days for the said explanation. In case of non-receipt of satisfactory reply during the said period, early action will be taken Sd/-D.S. Verma Director (Training) & officiating Principal Director.

7. It is the rule of natural justice that a person against whom an order is passed should be informed of the allegations and charges against him. He should be given an opportunity of submitting his explanation thereto. In the case of Petitioner the rule of natural justice has been violated. The Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, has held that violation of principle of natural justice by a State action is a violation of Article 14 of the Constitution of India. The relevant paragraph Nos. 95 and 96 of the said judgment are reproduced here as under:

95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry. If we look at Clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the *audi alteram partem* rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under Clause (2) of Article 311 has been elaborately set out by this Court in *Khem Chand Vs. The Union of India (UOI)and Others*, in the passages from the judgment extracted above. Though that case related to the original Clause (2) of Article 311, the same applies to the present Clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as

pointed out earlier, in the case of Suresh Koshy George Vs. University of Kerala and Others, such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in Lall case LR (1947-1948) 75IA 225, 243-4 upon Section 240(3) of the Government of India Act, 1935, which was accepted by this Court in Khem Chand Vs. The Union of India (UOI)and Others, . If, therefore, an inquiry held against a government servant under Clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of Clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

8. The Apex Court has held in the aforesaid case law that the principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter.

9. In view of facts and circumstances it is clear that the impugned order is punitive in nature and it has been passed without holding proper inquiry against the Petitioner. Therefore, it cannot be sustained in the eye of law.

10. The petition is allowed. The impugned order dated 05-01-1994 is quashed. No order as to costs.