

(2013) 04 AHC CK 0332

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22916 of 1992

Padam Kumar Agarwal

APPELLANT

Vs

The Inspector General (Registration) and Another

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 6 ALJ 438 : (2013) 100 ALR 141 : (2013) 3 UPLBEC 2516

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : V.K. Srivastava, K.M. Mishra, V.K. Agrawal and Vijendra Singh, for the Appellant;

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner is working as a Clerk in the office of the District Registrar, Firozabad. He is aggrieved by the order of his termination dated 16.4.1992 passed by the Inspector General of Registration, U.P., Allahabad, which has been communicated to him on 23.4.1992. He is seeking writ of certiorari to quash the aforesaid orders. A brief reference to the factual aspect would suffice.

2. The petitioner's father Suresh Chandra Gupta was a Registration Clerk in the office of the respondent No. 2. He unfortunately died in the year 1982. The petitioner, at the time of death of his father, was minor. After attaining the age of majority he moved an application for appointment on compassionate ground. The respondent No. 1 Inspector General of Registration, U.P., Allahabad appointed him on the post of clerk on compassionate ground on 18.6.1990. A copy of the appointment order is Annexure-1 to the writ petition. It is stated that the petitioner joined his services and he was working, his salary was also paid upto March, 1991, but his salary was stopped without disclosing any reason. He made representation for his payment of salary and to his utter shock he was served a copy of termination dated 23.4.1992. From the communication dated 23.4.1992 it is evident that the said order was passed in compliance of the order dated 16.4.1992 which is on the record as Annexure-1 to the counter affidavit. In the

termination order dated 16.4.1992 it is mentioned that petitioner has obtained his appointment by fraud as his elder brother Pawan Kumar Agarwal has already been appointed on the compassionate ground and for the said reasons his appointment was cancelled.

3. A counter affidavit has been filed on behalf of the respondents. The stand taken in the counter affidavit is the same which has been mentioned in the impugned order dated 16.4.1992 viz the petitioner's elder brother was appointed on compassionate ground after the death of the petitioner's father and concealing this fact the petitioner has secured appointment and for the said reasons his appointment is cancelled.

4. I have heard Sri. K.M. Mishra learned counsel for the petitioner and learned Standing Counsel.

5. Learned counsel for the petitioner submits that the order of termination has been passed in utter disregard to principles of natural justice and no opportunity or notice was given to the petitioner and on this ground alone the order is vitiated. He further urged that the allegations in the impugned order that the petitioner secured appointment by misrepresentation is incorrect as the petitioner's brother was not appointed on compassionate ground. Learned counsel for the petitioner has drawn the attention of the Court to the document which he has brought on the record as Annexure-SA-1 to the Supplementary Affidavit. The said document has been obtained by him under the provisions of the Right to Information Act. The said document issued from the office of the District Magistrate, Etah reveals that the appointment of the petitioner's brother was not made on compassionate ground rather it was a regular appointment.

6. Learned counsel for the petitioner further submitted that the writ petition was dismissed for non prosecution on 8.7.2008. It is contended that there was no fault on the part of the petitioner as writ petition was dismissed on account of inadvertent mistake of the office of the counsel and this Court having satisfied by the cause shown by the learned counsel for the petitioner recalled its order on 24.1.2011. He further submits that salary of the petitioner has been stopped from September, 2010 on account of dismissal of the writ petition although he worked during this period.

7. Learned Standing Counsel submits that the appointment of the petitioner was obtained by fraud and as such no opportunity was necessary. He further submits that the brother of the petitioner was appointed on compassionate ground.

8. I have considered the respective submissions of the learned counsel for the parties and perused the record.

9. Indisputably, the petitioner's father died in the year 1982 and at that point of time the petitioner was minor. As soon as he has attained majority he moved application for appointment on compassionate ground and the respondent No. 1 herein appointed him. Petitioner's appointment has been cancelled on 16.4.1992

alleging therein that the appointment of the petitioner has been obtained by fraud. From the perusal of the impugned order it is evident that serious allegations of fraud has been alleged against the petitioner. In paragraph 12 of the writ petition the petitioner has stated that no notice or opportunity was afforded to the petitioner before passing the said order. In the counter affidavit the said averment has been replied in paragraph 10 wherein it is mentioned that since the petitioner has played fraud hence no opportunity was necessary. From the reply of the counter affidavit it is established that the petitioner was not offered any opportunity in case the petitioner was guilty of any fraud then it was incumbent for the authorities to give opportunity to the petitioner to explain his stand. Simply by a stroke of pen that there is allegation of fraud, his services has been terminated.

10. The horizon of Natural Justice has been expanded in last three decades by Judge made law. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, marks watershed in the administrative law. Procedural fairness is hallmark of civilized society. One of its facets is "essence of justice". If a person's right are prejudicially affected by any order of judicial/administrative/quasi judicial authority, the person must be heard. The pre decisional hearing is preferred to post decisional hearing.

11. The Supreme Court in a series of decisions have expanded its limit. Reference may be made to some of the decisions Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, : State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ; Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; S.L. Kapoor Vs. Jagmohan and Others, and recent judgment in Justice P.D. Dinakaran Vs. Hon"ble Judges Inquiry Commit. and Another, .

12. As regards, second submission of learned counsel for the petitioner that dismissal of writ petition for non prosecution may not cause prejudice to petitioner's interest, it is trite law that for the fault of Advocate party should not suffer. In the High Court personal presence of a party is not required unlike civil court. After engaging a counsel the party becomes confident that his interest is safe in the hands of his learned counsel. He poses complete faith in him. The Supreme Court in the case of Rafiq and Another Vs. Munshilal and Another, observed as under:--

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not

only required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done every thing in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest be represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K. Sanghi.

13. Bearing in the mind the aforesaid law, in my view petitioner shall not be made to suffer on account of dismissal of his writ petition for non prosecution. If, petitioner makes representation for payment of salary for the period when he actually worked, the respondent No. 2 shall pass a separate order in respect of the said representation having regard to the fact that if the petitioner has worked during the said period his salary shall be paid to him.

14. After careful consideration of the facts, in my view the impugned order dated 16.4.1992 for aforestated reasons needs to be set aside, it is accordingly set aside.

15. The respondents shall give opportunity to the petitioner and pass a fresh order. While passing the order, the respondent No. 1, shall have the regard to the fact that the petitioner is working in compliance of the interim order dated

18.6.1992, passed by this Court and in the counter affidavit there is no averment that the work and conduct of the petitioner was unsatisfactory.

16. Having regard to the facts and circumstances of the case a direction is issued upon the respondent No. 1, Inspector General of Registration, U.P. Allahabad to give opportunity to the petitioner and pass order in the light of the observations made above within three months from the date of communication of this order. The interim protection granted by this Court to the petitioner shall continue after fifteen days of the decision taken by the respondent No. 1. With the aforesaid observations the writ petition is disposed of finally.