
(2004) 05 AHC CK 0156
In the Allahabad High Court
Case No : C.M.W.P. No. 21352 of 1990

Panchoo Ram

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Constitution of India, 1950 — Article 16(2), 226

Citation : (2004) 3 AWC 2358 : (2004) 3 UPLBEC 2186

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant; B.P. Tripathi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri B. P. Srivastava for petitioner and learned standing counsel.

2. This writ petition was filed on 21.8.1990 against the order dated 31.7.1990 passed by Chief Medical Officer, Allahabad terminating the services of temporary Sweeper-cum-Chawkidar, The writ petition was admitted and an interim order was passed on 21.8.1990 directing that the operation of the impugned order shall remain in abeyance.

3. The petitioner was appointed on 28.1.1989, as a temporary Sweeper-cum-Chawkidar. The order dated 31.7.1990 does, not give any reason for terminating petitioner's services. It is apparently an innocuous order stating that the Government does not require services of Panchoo Ram, temporary Sweeper-cum-Chawkidar, that his services shall be terminated with immediate effect, and he shall be paid one month's pay and allowances in lieu of notice. It appears to be passed under U. P. Temporary Government Servants (Termination of Service) Order, 1975.

4. In the counter-affidavit of L.L. Srivastava, Surveillance Inspector, in the Office

of Chief Medical Officer, Allahabad it is stated in para 3 as follows :

"3. That before giving parawise reply to the averments made in the writ petition, it is necessary to give brief facts of the case which are as follows :

(a) That the post of Sweeper-cum-Chawkidar were fallen vacant under the Chief Medical Officer, Allahabad for which the selection was required in which only the candidates who belong to Sweeper Caste were to be selected but illegally the petitioner who is not belonging - to Sweeper Caste was selected hence after thorough consideration the Government has taken a decision that the candidates who are not Sweeper caste nor belonging to Scheduled Caste cannot be retained in service hence the termination order was passed.

(b) That the petitioner claimed to be the Government servant of the U. P. Government hence if he has any grievance against his employment he should have filed the claim petition before the Hon"ble U. P. Public Service Tribunal, Lucknow and no writ petition can be filed directly before this Hon"ble Court hence the writ petition is pre-matured and is not maintainable."

5. It is significant to note that the order or the averments in the counter-affidavit do not justify the termination, either on the ground of unsuitability, or that the termination is simpliciter, without casting any stigma. They refer to some decision taken by the State Government to the effect that the persons belonging to Sweeper Caste or Scheduled Caste cannot be retained in the service as sweeper.

6. The counsel for the petitioner is correct in his submission that the Constitution of India does not permit any such reservation for a particular job and post to be held by a particular caste. Sweeper-cum-Chawkidar is a post created by the State Government in the office of Chief Medical Officer, Allahabad.

7. A Schedule Caste is not a "Caste", within the meaning of that word in Articles 15(1) and 16(2) of the Constitution of India. It has a special meaning, namely, a caste as notified by President of India under Article 366(25), having regard to their extreme backwardness. Under Article 341 the President of India, after consultation with Governor, notifies for that State or U.T. and specifies that Castes, races, or tribes or part of or groups within them. The list is contained in the Constitution (Scheduled Caste) Order 1950, and can be amended by Parliament.

8. The Article 15(4) was inserted by Constitution (First Amendment) Act, 1951 to make special provisions for advancement of any socially and educationally backward classes of citizens or for Scheduled Caste and tribes. Article 46 in Part IV, "Directive Principles of State Policy" directs that State shall promote with special care the educational and economic interests of weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

9. The Article 335, enjoins that the claims of members of Scheduled Caste/

Schedule Tribes shall be taken into consideration, consistently, with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with that affairs of the Union or of a State. This Article is outside Part III and IV and overlaps with Article 16(4). A proviso was added to Article 335 by the Constitution (82nd) Amendment Act, 2000, that nothing in the Article shall prevent in making any provision in favour of members of Scheduled Caste/Scheduled Tribe's for relaxation in qualifying marks in any examination, or lowering the standards of evaluation, for reservation in the matter of promotion to any class or classes of services or posts in connection with the affairs of Union or the States.

10. Article 16 guarantees equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State employment on the grounds only of relation, race, caste, sex, descent, place of birth, residence or any of them. Clauses (3), (4) and (4A) are exceptions to this equality. Clause (4) enables the State to make any provision for the reservation of appointments or posts in favour of any backward class, of citizens which in the opinion of the State is not adequately represented, in the services under the State. The Scheduled Caste/Scheduled Tribes have been treated to be entitled to be treated as a "backward class" *Chitrallekha v. State of Mysore* AIR 1964 SC 1838 and *Indra Sawhney v. Union of India* AIR 1993 SC 447.

11. Coming to the case at hand the stand taken by Chief Medical Officer, Allahabad in the counter-affidavit violates Article 16(2). The petitioner has been discriminated on the ground that he does not belong to Scheduled Caste. The Constitution of India prohibits reservation on posts except to give adequate representation to backward class of citizens. This is provided by the State either by Statute, or administrative orders. Such representation based on caste cannot exceed reasonable proportion, namely, 50% as held in *Devadasan's* case and followed in *Indra Sawhney* (supra). At the relevant time in "1990, the Scheduled Castes were provided 18% reservations in the State of U. P. The stand taken in the counter-affidavit is thus against the Scheme of reservation on posts in the Constitution of India and the reservation provided to Scheduled Castes in the employment in the State. The petitioner belonging to O.B.C. was as such discriminated. His services were illegally terminated on the ground that only a Scheduled Caste could be appointed on the post of Sweeper-cum-Chawkidar.

12. This petition is pending in this Court for the last 14 years and as such I do not propose to relegate the petitioner to file a claim petition before the U. P. Public Services Tribunal.

13. For the aforesaid reasons, the writ petition is allowed. The order of the Chief Medical Officer, Allahabad dated 31.7.1990, annexed as Annexure-2 to the writ petition terminating petitioner's services is set aside. The petitioner shall be entitled to continue with all consequential benefits. The petitioner shall also be entitled to Rs. 5,000 as costs from the respondents.