

(2005) 02 DEL CK 0073
In the Delhi High Court
Case No : WP (C) . 2856 of 2001

Prakash Anthony

APPELLANT

Vs

United India Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Citation : (2005) 117 DLT 426 : (2005) 80 DRJ 346

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Ajit Pudduserry, for the Appellant; Vineet Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner, by this writ petition seeks quashing of the order dated 27th July/11th August, 1999, imposing the penalty of removal from service as well as order dated 12th October, 2000, by which the appeal preferred by the petitioner against the order of removal from service was rejected. Petitioner also seeks exemplary costs and such other orders, as are deemed necessary in the facts and circumstances.

2. Petitioner, a graduate and having registered with the Employment Exchange, Shahdara, applied for being appointed to the post of Assistant Typist with the respondent company in response to an advertisement issued by the respondents. Petitioner declared himself as a Member of the Scheduled Tribe and was selected and issued appointment letter dated 31st December, 1987 on this basis. Petitioner had submitted an identity card issued by the Employment Exchange, Shahdara, where he was registered, showing him as a member of the Scheduled Tribe. Petitioner also submitted a Caste certificate, issued by the Government of Bihar dated 23rd August, 1985, translated copy of which is in the following terms:-

Block Office Bettiah

CASTE CERTIFICATE

NO. 539

DATE 25.9.85

The Block Development Officer on the basis of inquiries do hereby certify that Shri Prakash Anthony S/o. Shri M.Alexander Mohalla Christian Quarter, Police Station Bettiah is a Christian extremely Backward Class/backward class/harijan/muslim.

Block Development Officer.

Bettiah 25.9.85

3. Petitioner after his appointment continued to work with the respondent. In February, 1992, petitioner applied for promotion to the post of Assistant Administrative Officer. Petitioner's candidature was rejected, inter alia, on the ground that he did not belong to the Scheduled Tribe Community. Vide letter dated 24th February, 1992, petitioner's Explanation was called as to why action should not be taken against him for having submitted false information, regarding his caste. Petitioner in response stated that he had committed a mistake by applying for the post. Clarification was further sought by the respondents vide their letter dated 13th July, 1994. Petitioner vide his letter of 4th August, 1994 submitted the clarification asked for by the respondents. He also sought to explain that confusion had been created on account of format of the caste certificate. On 25th May, 1995, petitioner was asked to submit documentary proof in support of his belonging to the Scheduled Tribe Category within 7 days. Petitioner responded by saying that he had applied to the concerned official for issuance of a fresh certificate. Petitioner, in due course, also submitted a certificate issued by the Block Development Officer, which is to the following effect:-

BLOCK OFFICE BETTIAH

CASTE CERTIFICATE

NO. 208

Date 23.3.199

This is to certify that Shri Prakash Anthony S/o.Shri M.Anthony Alexander is a resident of Mohalla Christian Quarters, Dargah, Police Station Bettiah, Distt. West Champaran originally belonged to Lohara tribe but has embraced Christianity.

Block Development Officer,

Bettiah West Champaran 23.3.1996

4. A memorandum dated 19th January, 1996, proposing to hold inquiry under Rule 25 of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 was

issued. The imputation of charges was that at the time of recruitment during, 1987, petitioner furnished false information that he belonged to Scheduled Tribe Category and thereby secured appointment to the post of Assistant Typist in the company against a vacancy reserved for Scheduled Tribe Category. By the above action, petitioner had failed to maintain absolute integrity under Rule 3(1)(i) and thereby committed misconduct within the meaning of Rule 4(4), 4(16) and 4(20). During the course of inquiry, petitioner submitted that in the certificate his caste was not mentioned as Scheduled Tribe but as Backward Class. This he claimed was because the format adopted by the State of Bihar, did not have provisions for Scheduled Tribe and Scheduled Caste. He claimed that the above categories were included in the backward Class. He claimed that the term "Backward Class" is a wide and it encompasses Scheduled Caste and Scheduled Tribe. Petitioner claimed that the ancestors of the petitioner originally belonged to the "Lohara Tribe" and had got converted to Christianity. By the Constitution (Scheduled Tribes) Order, 1950, as amended by the President of India under Article 342 of the Constitution of India, the Tribe "Lohra" and "Lohara" came to be included in the said order, as Scheduled Tribes for the entire State of Bihar. Reliance is placed on the order passed by the Supreme Court in *Shambhoo Nath v. Union of India and anr.* (Civil Appeal No. 4631/1990), wherein the Court held that "there was no dispute that Lohara community is included in the Scheduled Tribe from the date of amendment of the list in 1976 and the dispute as to whether the community was known as Lohara or Lohara and if it was the latter, it had been so included from before, we do not justify the action of the respondents in that case in dismissing the employment on the ground that at the time he was recruited, the community was not included in the list." In the present case, the recruitment of the petitioner took place in 1987, when admittedly "Lohara" community was included as a Scheduled Tribe. The Inquiry Officer as well as the Appellate Authority in the appeal held that the petitioner failed to submit the requisite certificate from the Competent Authority of State of Bihar showing that he was member of the Scheduled Tribe. It was held that the judgment on which reliance is placed by the petitioner could not be a substitute for failure to lead evidence and the said judgment was confined to its fact and would not act as a precedent. Learned counsel for the respondent during the course of submissions also refuted the contention of the petitioner that there was any violation of principles of natural justice. He submits that sufficient time had been granted to the petitioner to lead evidence to show that he belonged to the Scheduled Tribe. Petitioner had not been able to produce the requisite certificate in the proper form. Counsel also disputed the assertion that State of Bihar was not issuing a certificate, specifying the person belonging to Scheduled Caste or Scheduled Tribe. Sample Certificates were produced on record. In these circumstances, respondents concluded that petitioner was guilty of furnishing false information for securing employment and sought to justify the order of removal from service.

5. Having noted the salient facts and submission made by the petitioner and the

respondents and perused the documents, as produced on record, as well as the judgment relied on, I find that the penalty of order of removal from service passed by the respondents is not sustainable. Petitioner had been employed in the year, 1987, after the respondents had accepted his declaration of being Scheduled Tribe candidate, as stated in the application form and the card issued by the Employment Exchange. The certificate, as produced by the petitioner, even at that stage mentioned him to be one belonging to backward class. It was for the respondents at that stage itself if they nurtured doubts as to whether Scheduled Tribe would not be covered at the relevant time by the expression "Backward Class" or the certificate as not being adequate or proper to have raised an objection thereto. Leaving that apart, Inquiry is belatedly sought to be initiated 9 years later, for an alleged false declaration made in the year, 1987. Coming to the merits of the matter, petitioner has produced certificate dated 25.9.1985, to the effect that he originally belonged to "Lohara" Caste but has embraced Christianity. This apart, respondents themselves had deputed a retired Deputy Superintendent of CBI to inquire into the correctness of the Certificate, submitted by the petitioner, claiming that his ancestors belonged to Lohara Tribe and they had accepted Christianity. The report points out that Christian converts from Scheduled caste to any other backward classes were declared "as other backward classes", as per the policy of the State Government. Though the Lohara were held to be Scheduled Tribes by the Supreme Court, yet the State Government was not issuing such a certificate to "Lohara" (Annexure K). The aforesaid coupled with the decision of the Division Bench of the High Court of Patna in Bihar Rajya Lohara Janjati Sangharsh Morcha v. Union of India and Ors. (M.J.C.Nos.676,677 and 1298/1994), holding that the controversy whether "Lohara" was "Lohara" had been resolved by the decision of the Supreme Court, which held that "Lohara" comes within the scope of Scheduled Tribe Order, 1950, concludes the matter. The Court further held that the Central Government/State Government merely by issuing an executive order could not nullify the said decision of the Supreme Court and the clarification and notification issued cannot affect the said decisions. Contempt proceedings were dropped since an opportunity was given to the State Government to atone issuing an appropriate certificate, in favor of the applicants belonging to "Lohara" Community. It was also not in dispute that the conversion to Christianity would not result in losing the status of Scheduled Tribes. In these circumstances, the Disciplinary Authority as well as the Appellate Authority misdirected themselves in not applying the judgment of the Supreme court in Shambhu Nath's case and of the division Bench of the Patna High Court in Bihar Rajya Lohara Janjati Sangharsh Morcha v. Union of India and Ors. (Supra) to give the benefit of the Scheduled Tribe. The impugned order dated 27th July/11th August, 1999, imposing penalty of removal from service as well as order dated 12th October, 2000 are quashed and set aside. Petitioner is directed to be reinstated in service. Neither the petitioner presses for back wages nor the same are warranted in the facts of this case.

Writ petition stands allowed in the above terms.