

(2003) 09 AHC CK 0131
In the Allahabad High Court
Case No : C.M.W.P. No. 34170 of 2000

Rahul Kumar Sharma

APPELLANT

Vs

Deputy Commissioner (Executive), Trade Tax and Others

RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 4 AWC 3108

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : M.P. Sarraf, R.C. Tiwari, R.S. Gupta, V.K. Singh, R.K. Yadav, Mukesh Kumar and Ashok Kumar and Party in person, for the Appellant; B.K. Pandey and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The Deputy Commissioner (E) Trade Tax, Azamgarh held a test for the post of Junior Clerks in Trade Tax Department, in which the petitioner was selected. He was appointed vide appointment letter dated 14.7.1997 and was directed to join in the Mandal Karyalaya, Trade Tax Department, Jaunpur. He was also sent to the Institute of Secretariat Training of Management, Faizabad, where he had undergone training w.e.f. 14.12.1998 to 23.12.1998. The appointment of the petitioner in the pay scale of Rs. 950-20- 1.150-EB-25-1.500 was wholly temporary in nature and was liable to be terminated at any time by giving one months notice. The appointment letter dated 14.7.1997 containing the terms and conditions of the appointment is reproduced below :

^^vkns"k

r`rh; Js.kh Vad.k fyfid in gsrq vk;ksftr ijh{kk esa IQy vH;FkhZ Jh jkgqy dqekj "kekZ iq= Jh deyk izlkn eksqYyk@xzke U;w flVh LVs"ku] tkSuiqj ds dfu"B fyfid ds in ij vLFkbbZ :i ls osrueku :- 950&20&1] 150&n- jks- 25&1&500 esa fuEu "krksZ

ds lkFk fu;qDr dh tkrh gS rFkk mudh rSukrh e.My dk;kZy; O;kikj dj] tkSuiqj ds dk;kZy; esa dh tkrh gS A osru ds lkFk&lkFk bUgsa jkT; ljdkj }kjk le;≤ ij Loh?r vU; HkRrs Hkh ns; gksaxs A

1- budh Isok;sa fdlh Hkh le; fuEu izdkj ls lekIr dh tk ldrh gS%

?v? deZpkjh }kjk fMIVh dfe"uj dk;kZy; O;kikj dj dks ,d ekg dh uksfVI nsdj A

?c? fMIVh dfe"uj O;kikj dj dk;kZy; bUgsa ,d ekg dh uksfVI nsdj vFkok uksfVI ds LFkku ij bUgsa ,d ekg dk osru ;k ,d ekg dh uksfVI esa "ks"k vof/k dk osru nsdj A

2- bUgsa mRrj izns"k esa fLFkr O;kikj dj foHkkx ds fdlh Hkh dk;kZy; esa fdlh Hkh le; LFkkukUrfjr fd;k tk ldrk gS A

3- bUgsa dk;ZHkkj xzg.k djus ds fy, dksbZ ;k=k HkRrk ns; ugha gksxk A

4- ;ksxnku fjiksVZ dks izLrqr djrs le; nks jktif=r vf/kdkfj;ksa }kjk iznRr pfj= izek.k i= ewy :i ls izLrqr djuk gksxk A lkFk gh lkFk "kSf{kd ;ksX;rk ls lEcU/kr izek.ki=ksa dh izekf.kr izfr;ka Hkh izLrqr djuk gksxk A blh ds lkFk layXu fd;s tk jgs bl mDr lEifRr dh ?kks"k.kk i= Hkh izLrqr djuk gksxk A

5- dk;ZHkkj xzg.k djrs le; lEcU/kr ftys ds eq[; fpfdRlk vf/kdkjh ls izkIr LokLF; izek.k i= dks izLrqr djuk gksxk A

;fn mDr izkfo/kkuksa lfr bUgsa ;g fu;qfDr Lohdkj gks rks vkns"k izkfIr ds 15 fnu ds vUnj vius in ij dk;ZHkkj xzg.k dj ys vU;Fkk ;g le>k tk;sxk fd dk;ZHkkj xzg.k djus ds bPNqd ugha gS vkSj ;g vkns"k jnn le>k tk;sxk A

fMIVh dfe"uj ?dk;Zikyd? O;kikj&dj

vktx<+ lEHkkx&vktx<+ A

3. By means of this petition, the petitioner has challenged the validity and correctness of the impugned order dated 13.7.2000. By which the impugned order the appointment of the petitioner has been cancelled after about 3 years of his service in the department on the ground that the selection of the petitioner was not proper as in the selection of 1997 for the post of Junior Clerks, as the merit list of the candidates was not properly prepared according to Rules.

4. The letter of termination dated 13.7.2000 containing the reason for termination of the services of the petitioner is as under :

^^fn- d- dk;Zikyd O;k- d- v-@2000&2001@vLFkk

ih- ,Q- Jh jkgqy

dk;kZy; fMIVh dfe"uj dk;Zikyd vktx<+ lEHkkx vktx<+ % fnukad % tqykbZ 13] 2000 bZ-

tqykbZ] 1997 rRdkyhu fMIVh dfe"uj dk;Zikyd vktx<+ lEHkkx }kjk 04 lkekU; Js.kh 05 vuqlwfr tkfr Js.kh] 03 finM+h tkfr Js.kh vH;fFkZ;ksa dh fu;qfDr fyfid@Vad.k in ij dh x;h Fkh mDr 1 fu;qfDr lkekU; Js.kh ds in ij Jh jkgqy dqekj

"kekZ iq= Jh deyk izlkn U;wflVh LVs"ku tkSuiqj dh fu;qfDr la- 158 fnukad 14-7-1997 }kjk dh x;h Fkh mDr p;u ds le; lkekU; Js.kh] vuqlwlfpr dh Js"Brk lwph vyx&vyx cuk;h x;h Fkh rFkk lkekU; Js.kh ds pkSFks LFkku ij vkus okys Jh "kekZ dh fu;qfDRk lkekU; Js.kh ds in ij dh x;h Fkh A ijUrq ;fn lEefyr Js"Brk lwph cu;kh x;h gksrh rks budk Js"Brk ?e 6 gksrk A m?kj izns"k yksd lsok vuqlwlfpr tkfr;ksa] vuqlwlfpr tu tkfr;ksa vkSj vU; fiNM+s oxksZ ds fy, vkj{k.k vf/kfu;e] 1994 dh / kkjk 3 dh mi&/kkjk 6 ds vuqlkj ;fn vjf{kr Js.kh dk dksbZ O;f? ;ksX;rk ds vk/kkj ij [kqyh izfr;ksfxrk esa lkekU; vH;fFkZ;ksa ds lkFk p;fur gksrk gS rks ml lkekU; Js.kh dks vkjf{kr fjfDr;ksa ds izfr lek;ksftr ugha fd;k tk;sxk bls Li"V gS fd lkekU; Js.kh ds vH;fFkZ;ksa ds p;u gsrq loZ izFke ,d p;fur la;qDr Js"Brk lwph cuk;kh tkuh pkfg, Fkh blesa ls "kh"kZ LFkku ikus okys 4 vH;fFkZ;ksa dk p;u lkekU; Js.kh ds fjfDr;ksa ds fo:) fd;k tkuk pkfg, Fkk A Hkys gh bu lhVksa ij vkjf{kr Js.kh ds vH;FkhZ LFkku ij jgs gksa A iz"uxr p;u izf?;k esa mijksDr vf/kfu;e esa nh x;h O;oLFkk dk ikyu ugha fd;k x;k gS rFkk lkekU; o vkjf{kr Js.kh ds vH;fFkZ;ksa dh vyx&vyx Js"Brk lwph cuk;h x;h ftlds QyLo:i jkgqy "kEkkZ lkekU; Js.kh dh lwph esa 4 LFkku ikus ds dkj.k vuqfpr :i ls p;fur gks x;s tcfd lEefyr Js"Brk lwph esa budk LFkku 6 Fkk pwafd lkekU; Js.kh ds inksa dh la[k; 4 Fkh vkSj lEefyr Js"Brk lwph esa izFke 4 LFkku esa budk uke ugha vkrk gS vr% Jh "kekZ dk p;u fof/kLEer ugha gaSa A tkjh fu;qDr vkns"k fujLr fd;s tkus ;ksX; gsSa A

vr% v,n}kjk Jh jkgqy dqekj "kekZ iq= deyk izlkn] U;wflVh LVs"ku] tkSuiqj dh fu;qfDr vkns"k la- 158] fnukad 14-7-1997 dks fujLr fd;k tkrk gS A

g- viBuh;

jkeLo:i

dk;Zikyd O;kikj&dj vktex<+

fn- tqykbZ 13] 2000 bZ-**

5. It is alleged by the petitioner that his appointment has been illegally and arbitrarily cancelled by the impugned order dated 13.7.2000 ; terminating his services without giving any prior notice or opportunity of hearing or show cause to him.

6. It is submitted by the counsel for the petitioner that the petitioner has not given the charge and is still holding the same. It is further submitted that the petitioner has become overage for Government service, as according to his High School certificate his date of birth is 1.1.1975. It is also stated that the interpretation of law has given in the impugned order of termination of services by the respondents is not permissible and the said order is illegal and without jurisdiction.

7. Standing counsel appearing on behalf of the State submits that 12 vacancies for the post of Junior Clerks/Typist were advertised and instead of the merit list being prepared according to the U. P. Public Service (Reservation for S.C., S.T. and O.B.C.) Act, 1994, it was inadvertently prepared separately. He further submits that the petitioner would have been placed at serial No. 6 of the joint

merit list and not at serial No. 4.

8. The standing counsel contends that the petitioner would not have been selected in the aforesaid circumstances as there were only 4 posts and appointment was rightly cancelled by the impugned order dated 13.7.2000. It is also submitted by him that a reserved category candidate Sri Vtnod Kumar S/o. Ram Sevak had obtained 114.8 marks was entitled to be appointed in General Category instead of the petitioner who had obtained less marks than him. The attention of the Court has been drawn to Annexure-C.A.-II of the affidavit, in support of his contention, which is a chart showing merits of the candidates. He contends that when the appointment is made against the Rule, it can be cancelled at any time and such appointment is not valid in eyes of law.

9. It is not denied by the respondents that the petitioner was a general candidate and has been selected in open competition and has been working with the respondents for about 3 years. It is also not in dispute that there was no fault of the petitioner in preparation of the select list as he was never associated with its preparation. Even according to the terms and conditions of the service, the petitioner was entitled to at least an opportunity of hearing before cancellation of appointment but no notice or opportunity has been given to him and he has been hit "by a bolt from blue" after about 3 years of his appointment.

10. The petitioner has reasonable expectation that after having been appointed, he will continue in service but his expectation have been belied. It is settled legal principle that no party can take advantage of its own folly. It is not the case of any party that appointment had been secured by the petitioner by fraud or misrepresentation. On the contrary, the case of the respondents is that they had not properly prepared the select list. The authorities have also not applied their mind before issuing the impugned order as to the fact whether the petitioner could have been appointed during the life of the waiting list, even if he was placed at serial No. 6. The respondent cannot be permitted to cancel the appointment of the petitioner in illegal and whimsical manner after about 3 years ; he worked in the department in utter violation of principles of natural Justice. The petitioner has a vested right after 3 years of his selection and his appointment cannot be cancelled in the Illegal manner in which, it has been cancelled by the respondents. The action of the respondents is unreasonable, unfair and lacks transparency.

11. It is not only the duty of the Court to do justice but also to prevent injustice from being done. The equity and law both are in favour of the petitioner. The impugned order having been passed in violation of principles of natural justice and law is liable to be quashed.

12. For these reasons stated above the writ petition is allowed and the impugned order dated 13.7.2000 is quashed. No order as to costs.