
(2004) 09 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3602 of 1999

Rakesh Kumar

APPELLANT

Vs

Co-operative Cane Development Union Ltd.Dhampur,Bijnor
through its Secretary & Anr.

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 67, 68

Citation : (2004) 09 AHC CK 0172

Hon'ble Judges : R.B.Misra, J

Final Decision : Disposed Of

Judgement

R. B. Misra, J.—Heard Sri Mahendra Narain Singh, learned Counsel for the petitioner, and Miss Pooja Agrawal, learned Counsel for the respondents.

In this petition prayer has been made to quash the order dated 1511999 passed by the President, District Cane Services Authority, Bijnor, whereby the petitioner's service as a Seasonal Clerk in the Cooperative Sugar Development Committee, Dhampur, Bijnor having been obtained on the basis of forged certificate was dispensed with.

2. It appears that the petitioner by virtue of having High School certificate was given appointment/promotion to the post of Seasonal Clerk from the post of Slip Distributor on 1941986, however, in respect of some complaint the petitioner was asked to submit his original testimonials and certificate, which the petitioner avoided, therefore, the Secretary of District Cane Services Authority, Bijnor wrote a letter to the Principal, J.V.M. Inter College, Nahtaur, District Bijnor, who had indicated that the certificates of the petitioner were forged one. Thereafter, a show cause notice on behalf of President, District Cane Services Authority, Bijnor was served to the petitioner, who got the same stayed in Case No. 565 of 1993 by the Civil Court, whereas, subsequently by order dated 1781996 the trial Court dismissed the case of the petitioner, against which the petitioner preferred a revision, which too was dismissed by the Additional District & Sessions Judge,

Bijnor on 1541998 affirming the view taken by the trial Court. In the above facts and circumstances, after perusing the records the President/Adhyaksh, District Cane Services Authority, Bijnor by its order dated 1511999 while dismissing the petitioner from service has observed that the petitioner on the basis of forged certificate and by foulmeans had obtained the promotion on the post of Seasonal Clerk from the post of Slip Distributor. Hence, the present writ petition.

3. According to the petitioner, no inquiry was ever made by the respondents or District Cane Services Authority before terminating his service and without arriving at finding by any inquiry officer the presumption has been made by the District Cane Services Authority that the petitioner is involved in foulplay and forgery, and the order dated 1511999 has been passed behind his back without affording opportunity of hearing to the petitioner, whereas, in view of Regulations 67 and 68 of U.P. Cane Cooperative Service Regulations, 1975 (hereinafter in short called as "Regulations, 1975") the proper inquiry was to be conducted by the respondents and thereafter, any action could have been taken.

4. For conveniences Regulations 67 and 68 of "Regulations, 1975", which deal with the procedure of inquires, punishment and appeals, are enumerated as under:

?(67) On receipt of a complaint the Inquiring Officer concerned shall first make a preliminary inquiry against the official concerned and record statements to see if a prima facie case is made out. Where a case is made out against the official he will conduct the disciplinary proceedings in accordance with the procedure prescribed below. If in the opinion of the Inquiring Officer no case is established, he will report the matter to the competent authority as mentioned in column 4 of the second schedule. The competent authority may either drop the case or order further inquiry by any other Officer.

Procedure:

(68) A complaint into which disciplinary proceedings are considered necessary on the basis of the preliminary inquiry, proceedings shall be recorded in writing in the form of charges which shall be communicated to the official concerned and a copy of the same endorsed to the authority concerned as mentioned in column 4 of the second schedule. The basis of each charge and the evidence proposed to be considered in support of the charge should be given in details against each charges. The official shall be called upon by the Enquiring Officer to submit his explanation in writing for each charge, within a specified time and also to state whether he desires to be heard in person or to produce any evidence (documentary or oral) or to examine or crossexamine any witness in his defence, (He will be allowed to see the relevant records if he so desires).

After his explanation has been received a date will be fixed for personal hearing when evidence, both oral and documentary shall be produced. He will be allowed to crossexamine such witnesses as he likes. He will then be given an opportunity to produce his own witness or documents in support of his defence. The Inquiring

Officer shall then weigh the entire evidence and give his findings on each charge and recommended, punishment when, in his opinion should be inflicted on the official, to the authority mentioned in column 4 of the second schedule. A record of the proceedings shall be maintained by the Enquiring Officer.

If the official fails to submit his explanations within the time specified in the chargesheet without sufficient reason, the Inquiring Officer shall be free to give his findings on the basis of the evidence before him and will recommend suitable punishment to the competent authority.

In case, on the basis of the report of the Inquiring Officer, the competent authority proposes to dismiss, remove or reduce in rank the official concerned it shall inform the official concerned, of the action proposed to be taken and shall give another opportunity to the official to defend himself. A copy of the report of the Inquiring Officer shall also be supplied to the official concerned along with the show cause notice. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person or to give further evidence for which an opportunity will be allowed to the official if so desired by him. The competent authority conducting the enquiry may, however, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings of the inquiry shall contain sufficient record of the evidence and statement of the findings and the grounds thereof.

In case the competent authority decides to award a punishment other than dismissal, removal or reduction in rank, it may pass final orders on the basis of the inquiry report of the inquiring officer.

The above procedure shall not apply where the charged official has absconded or where it is for other reasons impracticable to communicate with him. In such cases, the inquiring officer will make a complete report to the competent authority for taking suitable action against the official concerned.

All or any of the provisions of the above procedure may, in exceptional cases and for special and sufficient reasons to be recorded in writing, be waived by the competent authority with the prior and express approval of the cane commissioner in cases where there is difficulty in observing exactly the requirements of the procedure and if those requirements are waived without injustice to the official charged.?

5. According to the learned Counsel for the petitioner, his case is squarely covered by the decision of this Court dated 29/12/2004 passed in Civil Misc. Writ Petition No. 27437 of 1997, Mahendra Singh and others v. State of U.P. and others.

6. In the decision of Mahendra Singh (supra) after considering the catena of decisions of the Supreme Court as well as High Courts situations have been conceived of in respect of irregularities, defects, etc. and this Court has dealt with the situations accordingly which are given as under:

?(7) To deal the issue involved in the present case it would be necessary to consider very important aspects in the interest of justice, rule of law and in the great interest of public, when any particular process or selection or appointment has suffered from legal and procedural improprieties, deficiencies, irregularities, illegalities, foulplay, corruption, dubious, malpractice, fraud, forgery, falsity, scandal, misrepresentation, mala fide, favouritism, nonavailability of post vacancy, illegal and erroneous constitution of selection committee, selection being bad for lack of proper sanction of competent authority or for lack of competency of appointing authority and the said selection is defective for statutory procedural infirmities e.g. for nonpublishing advertisement or not inviting names from employment exchange, selection made without interview, fake and ghost interviews, tempering with records, fabricating documents or nonobservance of reservation policy, anomaly in preparation of select list, unauthorised appointments made beyond expiry of the select list, taking benefit of manipulation in date of birth and production of false certificates/degree, lack of eligibility criteria, deficiency in qualification, admission to a course or benefits gains in any form procured by foul means, nonobservance of other provisions or requirements of relevant Act, rules, regulations, byelaws, norms, Government orders, official memorandum, legal established pattern, (as some examples out of many more variety of defects) then selected beneficiary candidate as an outcome of such defective selection or spoiled system if appointed and has started working, acquiring legal right to the post shall be removed in the prescribed manner.?

?(101) It is wellsettled that the appointment made from selection de hors the rules or provisions or the `Act" applicable are unenforceable and inexecutable, thus, are to be set aside as the rule of law. The system and the public at large become susceptible, could never tolerate such illegality and the illegally appointed person being product of spoiled system, however, the declaration of such appointment of the beneficiary candidate to be a defective output or in genuine product is to be made undergoing a process or by making inquiry or probe, needed in facts and circumstances in reference to the complaint or on the information to the State or competent authority. However, such probe or inquiry is for the specific purpose unlike disciplinary inquiry, nevertheless is to be exhaustive and broad based to such an extent so that in its optimum amplitude and horizon the effected party being a beneficiary candidate may also be given a chance by associating himself to consider his stand or say treating him a necessary ingredient or component and also in order that all possible aspects might be taken care of indicated above in the process and no scope is left or nothing remains or desired to be placed or incorporated on the part of the beneficiary candidate before finalisation of the verdict or declaration in respect of the ingenuity or defectiveness or illegalities of selection or appointment or benefits/ gains in any form. The social order, healthy system, interest of justice and interest of public requires that if any person has procured appointment by utilising forged degree or certificate or wrong date of birth or erroneous

qualification or has used concocted documents to procure employment then service of such person if terminated by the Court on the sole ground of nonproviding of opportunity of hearing or principle of natural justice then this may give unusual message tantamounting acknowledging such deficiencies and illegalities being completely ignored or rectified because the ingenuity and misdeeds and foul play in the background persists in gain or appointment of such beneficiary candidate and it shall always pinch to the system as thorn to the healthy body. Likewise also, if one or many of the persons have procured appointment on the basis of some G.O., notification or order or circular, which later on after inquiry or probe turned out to be bogus, fake and nonexistent then before declaring the selection or appointment as ingenuine or defective, if any person out of lot has been inquired into and defectiveness of appointment and selection has been proved then beneficiaries in mass are not to be heard separately. The principle of natural justice need not to be stretched too far so as to include in its ambit and scope of providing of opportunity of hearing a full fledged detail inquiry in respect of deficiencies mentioned in paragraph 7 above. It all depends on the facts and circumstances. If some document, order, notification, circular found to be ingenuine and illegal, however, has been utilised for the purpose of procuring employment then the declaration that such order, document, notification or circular is bogus, forge, fake, nonexistent by author or competent authority in whose name these are said to be issued, then beneficiary candidates need not be given opportunity of hearing in the light of the verdict of Supreme Court in B. Sheetal Nandwani (supra).

(102) The defects as referred in paragraph 7 above are few examples only, there may be many more cause depending upon the facts and circumstances affecting the sanctity of appointment or selection or gains derived in any form. Need of hour and public demand is to get best calibre, output or product from the system, for which in deed the productive system has to be made healthy, clean, genuine. In any case everyone discards defective piece as product of spoiled system. If the drawbacks and flaws have cropped up since inception and structural defects inherited in the system of production making it spoiled system, the output /product is bound to be imperfect and defective one, therefore, the defects as indicated or conceived of in paragraph 7 above are to be eradicated on administrative or judicial side, however, in both fairness and observance of principle of natural justice shall be necessary. The competent authority might refer the inquiry report, so made earlier, or look at the proposed inquiry or probe or proceeding to be conducted subsequently taking into consideration records and documents and fixing also specific date, time and place and allowing the beneficiary candidate to avail oral personal hearing and to adduce evidences and further permission to examine or crossexamine the witnesses. The beneficiary candidate has to be heard so that truth may be arrived at and it could not be said at any stage that something was left from consideration or desired to be incorporated on the part of the beneficiary candidate. The opportunity of hearing to beneficiary candidate is neither farce, nor mandatory or directory, in every

case but is most essential ingredient and legal requirement to be adopted to arrive at truth and to achieve finality and precision in the finding or declaration. The hearing of the beneficiary candidate is in order to bring perfection in the finding on the issue of appointments or selection or gains derived, by covering vital aspects and broad based parameters, and giving weightage on different parameters involved in inquiry or probe and in hearing before or after in reference to the defects depending upon the facts and circumstances. Sometimes the competent authority or inquiry officer may concentrate or contemplate much on the documents or records, sometimes on the oral or written evidences only. Sometimes more weightage over the statement of witnesses may be vital. However, all these shall depend upon the requirement of the case and on the wisdom of the competent authority. In order to ensure precision and fairness in the finding of the inquiry or probe, the beneficiary candidate as an affected party, is to be heard treating him to be an essential component of the inquiry or the declaration. Providing of opportunity of hearing to the beneficiary candidate in reference to the inquiry or probe or declaration may not be so casual, as the beneficiary candidate may drag on hearing unnecessarily. However, depending on the facts and circumstances in a particular case, even a written submission preferred at the choice of the beneficiary candidate may serve the purpose or may be treated as sufficient for observance of principle of natural justice. If by other than conventional mode, during adjudication by the Court / Tribunal while considering the pleadings of the parties, if the selection or appointment in question is proved or declared as defective then it shall be necessary to hear the affected party in reference to such declaration. If the declaration of the selection or appointment to be defective is not based on inquiry or probe, the beneficiary candidate being affected party may be heard even on subsequent stage, in any case, before passing termination order. In conspectus, the beneficiary candidate being an outcome of such selection, which has been noted to be defective or spoiled selection, on the basis of inquiry or probe acknowledged as such by the Court or Tribunal, shall have no legal right to remain in the employment and is bound to be ceased or ousted in any case but in accordance with law and the affected beneficiary person is either to be heard by associating him in reference to such inquiry or probe or declaration, so that the stand of affected party may be incorporated before taking the decision of ousting him by the competent authority.

(103) In view of the foregoing analysis and observations, now, it is clear when any selection/recruitment or appointment to some post was made or benefits/gains are procured illegally and it is noticed, on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foulplay adopted or non observance of Act, rules, norms were made in process then the beneficiary candidate, who has become output and product of such defective and bad selection or outcome of spoiled system process shall have no right or claim to the post or salary or any consequential benefits in the service by virtue of such

selection or appointment or gains in any form being illegal or void or nonest and being violative of mandate of provisions of Articles 14 and 16 of Constitution, but before termination or dismissal of such persons or beneficiaries, a proper inquiry associating with such beneficiary candidates shall have to be made by providing them opportunity of hearing in consonance to the principle of natural justice. If at the instance of some complaint or at the instance of competent authority or of the State Government or employer, the proper inquiry or probe taking into consideration the facts, circumstances, records, evidences or witnesses has already been made by any of the competent authority and person being a beneficiary candidate has been associated in the said inquiry or probe or investigation and such inquiry has been made in consonance to the principle of natural justice then termination of beneficiary candidate in such circumstances shall not be said to be illegal and such beneficiary candidate is not to be given opportunity of hearing any more, but in the circumstances indicated above if the beneficiary candidate by virtue of being a product of a defective selection or process is dismissed or terminated and no inquiry was ever made as indicated above and such termination order if set aside on the ground of not providing of opportunity of hearing in consonance to the principle of natural justice, the Court at its pleasure may direct a fresh inquiry or probe to be made in accordance with law keeping in view the gravity of defects, charges, drawbacks, allegations involved in the said selection as narrated in paragraph (7) above inherited in the said selection or process or appointment or illegal gains and in order to eradicate defects and evils, which had cropped up or had insinuated from its inception. If the beneficiary candidate is heard in reference to the inquiry or probe or report by providing him adequate opportunity of hearing in consonance to the principle of natural justice before termination of his service then subsequent another opportunity of hearing shall not be necessary.

(104) In view of the foregoing analysis and observations, the legal propositions are summarised, when the selection or appointment or benefits/ gains in any form procured by one individually or by many collectively on one or other drawbacks or grounds as mentioned above in paragraph 7 are found to be defective or noted as output of spoiled system then following steps are necessary to be observed:

(i) Keeping in view the facts and circumstances of the particular case and the nature of defects, deficiencies, drawbacks in the process, selection or appointment or in the matters of benefits/ gains in any form derived, the Court may evolve any suitable mode and modalities for making inquiry or probe or investigation in order to arrive at truth.

(ii) The beneficiary/ candidate is entitled to opportunity of hearing in consonance to the principles of natural justice before termination of his service.

(iii) If there exists multiple deficiencies out of what have been narrated in the paragraph 7 above or defects are complicated and mixed or issues are intricate for instance, the matter involving bribery, financial irregularities, misuse of

powers and offences under Prevention of Corruption Act or involving deep rooted conspiracy then at the command of the relevant Court or at the instance of the State Government or competent authority the inquiry or probe or investigation could be made exhaustively, like, disciplinary proceedings as per applicable relevant rules in a particular case apart from examining and investigating other related documents, records, materials or persons relevant and necessary in the finalisation of controversion and scandal, but for that purpose text of allegations with documents, records, evidences relied upon, evidences and witnesses to be adduced, providing of opportunity of oral hearing, and opportunity to crossexamine the witnesses to the affected parties at fixed date, time and place and such inquiry or probe or investigation to be made in consonance to the principle of natural justice.

(iv) If the defects, deficiencies, irregularities etc. are apparent and not complicated consisting of one or more drawbacks as narrated in paragraph 7 above then only summary inquiry or probe or investigation unlike disciplinary inquiry in consonance to the principle of natural justice in respect of the allegations or defects could be made by examining and having documents, records, materials or persons and taking the responsibility of affected beneficiary party, providing opportunity of hearing to him in consonance to the principle of natural justice.

(v) Where defects, deficiencies, irregularities, fraud or forgery or admissions in a course or benefits / gains in any form, selections or appointments are referable to the verdict of the Hon'ble Judge or any institutions or institutional head, for instance High Court or Head of Department of the State Government or Constitutional dignitaries, then the controversion or denial of existence of such documents by concerned author are sufficient to annul the benefits/ gains in any form derived in selection or appointment by one or many beneficiary candidates and no opportunity of hearing or observance of principle of natural justice shall be necessary in those cases.

(vi) When the beneficiary candidate was already associated and heard by observing principle of natural justice in the inquiry or probe in respect of the selection or appointment or in respect of gains in any form and when the inquiry or probe was made suo moto or on general or specific complaint made on behalf candidates participating in the selection in question or on the basis of preliminary inquiry conducted for and on behalf of the appointing authority or on the basis of audit or inspection report, the State Government or competent authority or employer thereafter has made itself or got conducted a detailed inquiry through C.B.I. or an independent agency or Vigilance Department or Committee, taking into consideration all the facts, circumstances, records, evidences and witnesses and on the basis of finding arrived at out of such inquiry, and the selection in question is found to be defective on one or more out of above mentioned drawbacks grounds, then further opportunity of hearing to the beneficiary candidate before termination of service is not necessary to be given.

(vii) When for one or many of the drawbacks and grounds mentioned in above "paragraph 7", the gains or selection or appointment is found defective and the termination of the service of the beneficiary candidate is set aside for not providing opportunity of hearing or for nonobservance of principles of natural justice, in those circumstances reinstatement of beneficiary candidate in service with consequential benefits shall not be a usual phenomena.

(viii) Keeping in view the seriousness of defects and drawbacks occurred in the selection or appointment in question, the Court at its pleasure and in the interest of justice and in order to uphold the rule of law, may direct inquiry or probe to be made afresh, allowing the participation of the beneficiary candidate with a view to provide opportunity of hearing in consonance to the principles of natural justice and to take decision within a stipulated time and the Court at its pleasure may not allow the reinstatement of such beneficiary candidate being an output of defective selection till a fresh inquiry is conducted and decision is taken in consonance to the directions of the Court.

(ix) The above mentioned drawbacks, or defects cropped up or inherited in the selection or appointment or insinuated from its inception could never be ignored, or overlooked or treated as redundant and could never automatically be said to be rectified or could not be dulcified on the reinstatement of the beneficiary candidate in service when the termination of such beneficiary candidate is set aside on the ground of principle of natural justice.

(x) For reinstatement it is not necessary to show sympathy to the beneficiary candidate for his bona fide, or for claim of no fault on his part or for his innocence.

(xi) When the selection or appointment is found to be defective for one or on many grounds or drawbacks mentioned "paragraph 7" above, the beneficiary candidate is bound to be brought under penal action even if the misdeeds was not directly attributable on his part and the effect of the setting aside the selection in question would mean and cannote that the selectee / beneficiary candidate shall have no right to the post or to the salary and the salary and perks received by him by virtue of such illegal and unauthorised appointment is normally to be repaid to the State Government or the employer unless the Court for reasons to be recorded does not pass any order for withholding of repayment in a particular case.

(xii) The Court in the interest of justice and to uphold the dignity of rule of law and to maintain fairness in administration, may indicate or may give liberty to the State Government or employer to proceed to take proper action in accordance with law against those authorities or officers, who were instrumental or involved in such defective and scandalous selection or appointment or illegally extending benefits / gains in any form, so that wrong doers and persons involved might not be ignored for their misdeeds and misconduct.?

7. I have heard learned Counsels to the parties. I find that the petitioner is said

to have played foulplay in obtaining the forged certificate and on the basis of this forged certified he has obtained the promotion to the post of Seasonal Clerk, however, his right has accrued. It is well settled that an output of spoiled and defective system shall have no right to the post and salary, however, no inquiry was ever conducted as required by the "Regulations, 1975" or any inquiry in consonance to the principle of natural justice to arrive at the finding of fact to ascertain that the petitioner had procured forged certified and utilized the same for getting employment and promotion. The petitioner was also not associated in any fact finding before arriving at inquiry of the finding. In these circumstances, the order dated 15/11/1999 is not legally sustainable, therefore, it is set aside. However, keeping in view the gravity of the forgery/offence, it is necessary that a show cause notice afresh be issued to the petitioner along with the documents and evidences to be relied upon in support of the allegations and the petitioner shall be given opportunity to give explanation and to cross-examine the witnesses and the petitioner may also produce the oral and documentary evidence in defence, if necessary, and after fixing the date, time and place in consonance to the principle of natural justice and keeping in mind the observations made by this Court in Mahendra Singh (supra), as referred above, an inquiry has to be made by the President/Chairman, District Cane Services Authority, Bijnor and afresh decision shall be taken by him within a period of four months from the date of production of a certified copy of this order. The deployment of the petitioner in the department concerned shall depend upon the decision to be taken afresh by the President/Chairman of the said authority. The petitioner is expected to render all possible cooperation.

In view of the above observations/directions, the writ petition is disposed of.