

(2010) 05 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55208 of 2007

Rakesh Yadav C.P. No. 1065

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 311(2)

Citation : (2010) 127 FLR 957

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Manoj Yadav and Sujeet Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Through this writ petition the petitioner has prayed for issuing a writ of certiorari quashing the order dated 26.8.2007 passed by Superintendent of Police, District Azamgarh by which while invoking power given in Rule 8 (2) (b) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to Rules of 1991) petitioner has been removed from service, on the ground that while entering in the service the petitioner has played a fraud by filing a false affidavit showing him to be other backward class (Ahir by caste).

2. While assailing the impugned order Sri Manoj Yadav learned Counsel for the petitioner submitted that the aforesaid order has been passed totally on non existent ground as the petitioner's caste certificate was never sent for verification before respondent No. 6 and only a photostat copy of application for obtaining caste certificate was sent, on that report, the impugned order has been passed

3. In the submissions of learned Counsel for the petitioner the factum of the certificate has now been admitted by the respondents in their counter affidavit. Therefore, the impugned order could not have, been passed. He has also

submitted that the power contained under Rule 8-(2) (b) is just like emergency, power and it should not be invoked sparingly in the routine manner. He has also submitted that before passing the impugned order no opportunity of hearing was afforded to the petitioner. Had the opportunity was afforded to the petitioner he would have filed his reply in support of the caste certificate issued to him. He has further submitted that he belongs to backward class (Ahir by caste), therefore, also the impugned order is unsustainable.

4. Refuting the submissions of learned Counsel for the petitioner learned Standing Counsel has supported the order passed by Superintendent of Police District Azamgarh by submitting that inquiry was not necessary in such type of cases as the petitioner has filed false affidavit before the authority concerned that he has not concealed any fact whereas he has annexed the false caste certificate, therefore, no infirmity can be attached to the impugned order and the writ petition be dismissed.

5. I have heard learned Counsel for the petitioner, Sri Manoj Yadav and Learned Standing Counsel and perused the record

The facts giving rise to this case are that the petitioner was selected for appointment on the post of constable in Civil Police in the year 2005-2006 in the category of other backward classes. He has successfully completed his training and after completion of his training, was posted in District Azamgarh. It appears that at the time of making application for appointment, the petitioner has a caste certificate No. 939 dated 22.10.2002 issued by Tehsildar Rasra, District Ballia. After the petitioner's joining it transpired that in the year 2007 the superintendent of Police had sent a letter on 12.8.2007 to Tehsildar Rasra, District Ballia requiring him to furnish following information:

(1) Whether the caste certificate has been issued by his office ?

(2) Whether the caste certificate contains the signature of Tehsildar Rasra, District Ballia?

(3) Whether the seal put on the certificate is of Tehsildar Rasra District Ballia?

Pursuant thereto a reply has been given in negative. Copy of which has been brought on record as Annexure-5 to the writ petition, this is of 13th August, 2007. The contents of reply is reproduced below:--

"Inka Matra Prathana Patra Hai Jis Par Tehsildar, Rasra Ka Hastakshar/ Muhar Dinak Sahit Maujood Nahin Hein, Na Hi Karyalaya Dwara Ishka Jari Hona Paya Jata Hai."

6. On the basis of above report the Superintendent of Police, District Azamgarh while invoking the power contained under Rule 8 (2) (b) of the Rules of 1991 has removed the petitioner from service.

7. When the petitioner came to know about this, he has immediately approached the respondents No. 5 and 6 namely the Sub Divisional Magistrate Ballia and

Tehsildar Rasra, Ballia through an application dated 31.8.2007 (copy of which has been brought on record as Annexure-6 to the writ petition) requesting the Tehsildar to certify the caste certificate No. 939 dated 22.10.2002 and apprise whether the same was issued by the office of Tehsildar or not and also provide the report of Halka Lekhpal and Revenue Inspector on the application of the petitioner applied for obtaining caste certificate whether the petitioner belongs to other backward classes (Ahir by caste) and is resident of Gram Mannopur Tehsil Rasra District Ballia. Pursuant thereto, through letter dated 7.9.2007, the Tehsildar has informed the Sub Divisional Officer, Rasra District Ballia with respect to the application of Petitioner, stating therein that caste certificate No. 939 dated 22.10.2002 has been issued by the office of Tehsildar Rasra, District Ballia (copy of this report has been brought as Annexure-7 to the writ petition).

8. The averments with regard to the making of an application dated 31.8.2007 and the reply dated 7.9.2007 have been made in paragraphs 10 and 11 of the writ petition. Again the Tehsildar Rasra District Ballia per his report dated 24.9.2007 addressed to Sub Divisional Magistrate, Rasra, District Ballia has informed (copy of which has been brought on record as Annexure 9 to the writ petition) that earlier report sent by his office was sent on the basis of the photostat copy of the petitioner's application for obtaining caste certificate and along with that application caste certificate was not annexed by the office of Superintendent of Police while sending the letter dated 12.8.2007, therefore, the genuineness of the same could not be verified at that stage i.e., on 13.8.2007 (Annexure-5 to the writ petition).

9. It has been submitted by learned Counsel for the petitioner that awaiting the reports of the revenue authorities i.e., Sub Divisional Magistrate, Rasra, and Tehsildar Rasra district Ballia on the application of the petitioner dated 31.8.2007, a representation was made by the petitioner before the Deputy Inspector General of Police, Azamgarh Range, Azamgarh requesting him to defer the lodging of F.I.R. against the petitioner, till the report of revenue authorities are obtained on the petitioner's application made to revenue authorities.. It was also stated that along with letter of Superintendent of Police, Azamgarh dated 12.8.2007 only photostat copy of the petitioner's application for obtaining caste certificate was sent without caste certificate.

10. In reply to the averments made in the writ petition two counter affidavits, have been filed. One on behalf of respondents No. 5 and 6 sworn by Chhatra Pal Yadav, Tehsildar Tehsil Rasra, district Ballia and another on behalf of respondents No. 1, 2 & 3 sworn by Vishwa Nath Ram the Deputy Superintendent of Police, District Azamgarh.

11. In the counter affidavit filed by the respondents No. 5 and 6 the factum, of the various annexures relating to them and the petitioner's stand taken therein that the caste certificate No. 939 dated 22.10.2002 was issued by the office of Tehsildar Tehsil Rasra, District-Ballia and the earlier report Annexure-5 to the writ petition was sent under misconception as along with the letter of Superintendent

of Police, Azamgarh dated 12.8.2007 only photostat copy of the application made by the petitioner for obtaining caste certificate, was annexed, has not been denied.

12. Whereas in the counter affidavit filed on behalf of respondents No. 1,2 & 3 the earlier stand taken in the impugned order has been tried to be justified. Further an order dated 28.11.2007 passed by Deputy Inspector of Police, Azamgarh Range, Azamgarh rejecting the petitioner's representation/appeal has been brought on record.

13. Before entering into the merit of the dismissal order dated 26.8.2007 passed by Superintendent of Police, Azamgarh, I feel it necessary to look into the provisions contained under Rule 8 (2) (b) of the Rules of 1991 as the impugned order has been passed invoking the power contained in that rule. For better appreciation the aforesaid rule is quoted below:--

8. Dismissal and removal.--(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing Authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules;

Provided that this rules shall not apply--

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or

(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

14. From the bare perusal of Rule 8 it transpires that no police officers shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated under the rules. However, there are three exceptions given in the proviso to Rule 8 (2) in which the relevant Rule 8 (2) (b) requires that when the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that holding of an enquiry is not reasonably practicable, he may invoke the rule provided he must record his satisfaction for invoking this rule.

15. Here in the present case the authority empowered to pass an order of removal from service has recorded that it is not in the public interest to hold an enquiry, but the reasoning for recording the reason is missing. The entire tenor of the order is based upon the report of Tehsildar Tehsil Rasra District- Ballia and the affidavit filed by the petitioner while entering into the service.

16. The Apex Court in the case of Jaswant Singh v. State of Punjab and Ors.,¹

has laid down two conditions for invoking the power contained under Rule 8 (2) (b), (i) there must exist a situation which renders holding of an enquiry is not reasonably practicable (ii) the disciplinary authority must record in writing its reason in support of its satisfaction. Here in the present case the authority concerned has although mentioned the situation that holding an enquiry is not reasonably practicable but the reasoning for recording this reason is missing and so far as second condition with regard to the satisfaction to not to hold an inquiry is concerned it has nowhere been recorded that he is satisfied that situation is such emergent or compelling that holding of an inquiry is not reasonable practicable. The order has been passed on two assumptions; One the petitioner has filed false affidavit while entering in the service stating therein that nothing has been concealed or suppressed in filling up the Form of declaration, another the report of Tehsildar Tehsil Rasra, District Ballia which contains that there was no signature of Tehsildar.

17. Whereas now as it would appear from the perusal of writ petition and reply of the same given in two counter affidavits that now the factum of issuing caste certificate No. 939 dated 22.10.2002 has been admitted by the respondents. This Court in the case of Bishambher Singh Bhadora v. State of U.P. and Ors. 2 and Dharam Pal Singh v. State of U.P. and Ors. 3 has held that the removal/dismissal/reduction in rank order passed under Rule 8 (2) (b) must contain sufficient reasons for dispensing with an inquiry. I am of the view that this is not a case where it can be inferred, that holding of an inquiry was not reasonably practicable.

18. On merit also the basis of the impugned order is now no more survives, in view of the averments made, in the counter affidavit filed by the respondents No. 5 & 6, as from the bare perusal of Annexure-7, the letter dated 7.9.2007 and the letter dated 24.9.2007 Annexure-9 to the writ petition issued by the Tehsildar Tehsil Rasra District Ballia it transpires that the caste certificate No. 939 dated 22.10.2002 has been issued by the office of Tehsildar Tehsil Rasra District- Ballia and the earlier report of Tehsildar dated 13.8.2007 was sent on the basis of the photostat copy of the application meant for obtaining a caste certificate and not on caste certificate issued by the Tehsildar Tehsil Rasra, District- Ballia to the petitioner. The contents of Annexures 7 and 9 have been stated in paragraphs 11 and 12 of the writ petition.

19. The reply of paragraphs 11 and 12 of the writ petition has been given in paragraph 12 of the counter affidavit filed by Vishwa Nath Ram, Deputy superintendent of Police, District Azamgarh on behalf of respondents No. 1, 2 and 3 which is reproduced below:

"That in reply to the contents of paragraphs No. 10 to 12 of the writ petition, it is submitted that the correct fact has already been given in the preceding paragraph of this counter affidavit."

Whereas the reply of the paragraphs 11 and 12 of the writ petition has been

given by the respondents No. 4, 5 & 6 in paragraph 11 of the counter affidavit which is also reproduced below:

"That in reply to the contents of paragraphs 10, 11, and 12 of the writ petition it is stated that when the petitioner approached the respondent Nos. 5 and 6 by means of an application dated 31.8.2007 mentioning therein the caste certificate No. 939 issued in favour of the petitioner in the year 2002 then entire record were scrutinized and examined and after due verification of the record, a correct report has submitted by the office of the answering respondent which is perfectly just and legal."

20. From the perusal of the paragraph 12 of the counter affidavit filed by respondents No. 1 to 3 it is apparent that there is no denial either of the genuineness of the report or its contents. No efforts have been made by the answering respondents No. 1, 2 & 3 to verify the stand taken in the writ petition from the office of Sub Divisional Magistrate Rasra and Tehsildar Rasra District Ballia in view of the subsequent development. So far as the stand taken by the respondents No. 4, 5 and 6 are concerned they have admitted the factum of Annexures 7 & 9 to the writ petition meaning thereby the genuineness of caste certificate No. 939 has been certified by the Tehsildar Rasra and the reason for sending a different report has also been explained. Had the opportunity was offered to the petitioner, the petitioner must have brought all these materials before the respondents. Now non offering an opportunity has led to serious prejudice to the petitioner, in the result he is not in employment. The Apex Court in the case of D.K. Yadav v. J.M.A. Industries Ltd.,¹ has made the following observations.

The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily effecting the rights of the concerned person.

It is fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v. Chief Election Commissioner,² the Constitution Bench held that "Civil consequences" covers infraction of not merely property or personal right but of civil liberties, material deprivation and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the State or country.... they include..... rights capable of being enforced or redressed in civil action.... In

State of Orissa v. (Miss) Birapani Dei this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken, Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice

In State of W.B. v. Anwar Ali Sarkar,¹ per majority, a Seven Judge Bench held at the rule of procedure laid down by law comes as much within the purview Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi Union of India,² another Bench of Seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under article 14. The test of reasons and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirement of natural justice.

The law must therefore be now taken to be well settled that procedure Prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil right or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi judicial inquiry is to arrive at a just decision and if a rule or natural justice is calculated to secure justice or to put in negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood

without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

21. This decision has been followed in numerous cases decided thereafter which need not be detailed as this is the established principle of law that even an administrative order which leads to civil consequences must be passed in consonance with the rules of natural justice.

22. Here in the present case it is apparent on the face of record that no opportunity was given to the petitioner before passing the impugned order.

23. The Apex Court in *Chandra Prakash Shahi v. State of U.P. and Ors.*¹ has held that such an order amounts to dismissal, therefore, a notice and opportunity was necessary. It has gone to hold that notice is also required under Para 541 of the Police Regulations. Recently a Division Bench of this Court has dealt the issue in *Paras Nath Pandey v. Director, North Central Zone, Cultural Centre, Allahabad*,² that such order passed by the authority concerned cannot survive.

It is well settled that if order of termination is based, on concealment of fact or suppression of material then termination order cannot be passed without affording an opportunity of hearing. The Apex Court as well as this Court in numerous decisions has laid down this proposition. In the cases of *Kamal Nayan Mishra v. State of Madhya Pradesh and Ors.*,³ and *Sanjay Kumar Singh v. State of U.P. and Ors.* passed in Writ Petition No. 51282 of 2007 decided on 27.1.2010, it has been held that order leading Civil Consequences, passed without opportunity of hearing is unsustainable in eye of law.

24. Otherwise also to get an employment now a days is a hard task and when a person is in a service, so many things depend on him. Therefore, before imposing a penalty of termination/dismissal/removal from service, the authorities empowered for imposing such penalties must take due care and precaution. Here the power contained. under Rule 8 (2) (b) is just like the provisions of Article 311(2) of the Constitution of India and this power should, not be invoked sparingly unless the circumstances are so compelling that holding of an inquiry will lead to serious prejudice to the public interest.

25. I am of the view that the power conferred under a statute upon a higher authority to take action against the subordinate employee is not an absolute power and it is always subject to certain conditions and fulfilment of the requirements given under the statute governing the service conditions of an employee. In view of that I am of the opinion that the power contained under

Rule 8 (2) (b) has been misutilized by the Superintendent of Police, Azamgarh while removing the petitioner from service and order has been passed in casual manner without looking into gravity of charge levelled against the petitioner and its consequences in show cause notice.

26. In view of that the impugned order dated 26.8.2007 is unsustainable in the eye of law. So far as the order dated 28.11.2007 passed by Deputy Inspector General of Police, Azamgarh Range, Azamgarh on the representation/appeal of the petitioner is concerned that is also unsustainable as the said order has been passed on the basis of the petitioner's representation dated 7.9.2007 which has been made only for deferring the lodging of F.I.R., pursuant to the order dated 26.8.2007 passed by Superintendent of Police against the petitioner. In fact this order has not been challenged in the writ petition, but considering the entire facts and circumstances of the case since invoking of Rule 8 (2) (b) of Rules 1991 while dismissing the service of the petitioner has been held to be illegal, arbitrary, therefore, this order also goes.

27. In the result the writ petition succeeds and is allowed. The orders dated 26.8.2007 and 28.11.2007 are hereby quashed. The respondents are directed to reinstate the petitioner in service and grant all consequential benefits.