

(2012) 02 AHC CK 0135
In the Allahabad High Court
Case No : Writ - A No. - 49806 of 2011

Rakshpal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) 02 AHC CK 0135

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri S.C. Kushwaha, learned counsel appearing for the petitioner. Learned Standing Counsel appears for the State respondents.
2. In a departmental enquiry held against the petitioner, it was found that he had secured admission in the Lekhpal's School for training on forged certificate of experience of work issued by the District Magistrate. The certificate of the District Magistrate, Bijnor, that the petitioner had served as Lekhpal from 1.1.1981 to 25.4.1981, and thereafter from 20.5.1981 to 19.5.1982, were not found to be issued by the District Magistrate. The petitioner's services were terminated on which he approached the State Public Service Tribunal, Lucknow.
3. The Tribunal in its judgment dated 30.12.2009 in Claim Petition No. 433 of 2008 has found that the petitioner was not given adequate opportunity of hearing and that the order is not reasoned and speaking order. The matter has been remanded for fresh enquiry.
4. In the departmental enquiry conducted after the remand of the matter by the Tribunal, once again the findings have been returned that the petitioner had obtained admission in the Lekhpal's School on forged and fabricated certificates, and once again the petitioner's services were terminated by the order dated 28.6.2010.

5. The petitioner again challenged the order of termination of his services in Claim Petition No. 1469 of 2010, which has been dismissed by the Tribunal on August 8th, 2011, giving rise to this writ petition.

6. The Tribunal did not find any substance in the grounds taken in the claim petition, that the petitioner had successfully completed the training and had thereafter obtained experience of long years before the enquiry was initiated against him. A finding was returned that in the enquiry after remand by the Tribunal the petitioner was given opportunity of hearing in which he could not successfully defend the charge that the certificate of the District Magistrate dated 5.2.2090 for having obtained training for the aforesaid period was forged. Relying upon Vice Chancellor, Kendriya Vidyalaya Sangathan vs. Girdhari Lal Yadav 2005 SCC (L&S) 785 the Tribunal held that where the appointment is made on the basis of forged documents by playing fraud, the employer has got the right to make appropriate enquiry and the principle of natural justice cannot be applied for making such enquiry. The petitioner's conduct and character in producing false certificate did not entitle him to continue in employment in State Government.

7. In the present case, the petitioner's services were terminated under U.P. Government Servant (Termination of Services) Rules, 1975 after giving notice to the petitioner. After remand once again an enquiry was conducted in which the petitioner was given opportunity to explain. The petitioner's defence against the charges was not accepted.

8. We do not find any substance in the contention, that in such case the enquiry should have been held under the U.P. Government Servants (Discipline and Appeal) Rules, 1999. The departmental enquiry under the Rules of 1999 is held in the matter of misconduct. The provisions of the Rules of 1999 are not applicable where the appointment has been secured by playing fraud. The U.P. Temporary Government Servant (Termination of Service) Rules, 1975 were the appropriate rules applied in this case in which after giving notice to the petitioner recording finding of fraud the petitioner's services were terminated.

9. We do not find any error in the judgment of the Tribunal.

10. The writ petition is dismissed.