

(2009) 04 AHC CK 0342

In the Allahabad High Court

Case No : Writ Petition No. 7270(S/S) of 2007 connected with Writ Petitions No. 6595, 7786, 7754, 6263, 6947, 6558, 7373, 6978, 6910, 6212, 6408, 6974, 6359

Samarjeet Tiwari and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 311

Uttar Pradesh Police Regulations, 1948 — Regulation 541

Citation : (2009) 04 AHC CK 0342

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Mr. S.K. Kalia, learned Senior Counsel, assisted by Mr. Sameer Kalia, Mr. Amit Bose, Mr. Vinod Kumar Singh, learned Senior Counsel assisted by Mr. Ashutosh Singh, Mr. Rajeev Singh, Mr. I.P. Singh, Mr. Shishir Jain, Mr. R.K. Upadhyay, learned counsel appearing for the petitioners and Mr. Jai Deep Narayan Mathur, learned Addl. Advocate General for the respondents and perused the record.

2. In these bunch of writ petitions, common question of facts and law are involved and decided by present common judgment.

3. From the argument advanced by the learned counsel for the parties, it borne out that in the year 2006, selections were done to fill up large number of vacancies of Constables in the police department in the State of U.P. 19000 candidates and odd were selected in different divisions of the State of U.P. by different committees and selectees were appointed accordingly. Under the U.P. Police Regulations, appointments are done on probation with due training.

4. It has been submitted by Mr. S.K. Kalia, learned Senior Counsel that the facts, enumerated in the impugned memorandum are false and incorrect. It has been further submitted that the selection of the year 20052006 was challenged in this

Court and its validity was upheld by Hon''ble Single Judge vide judgment and order dated 23.8.2005, passed in writ petition No.2809(S/S) of 2005 Harendra Singh versus state of U.P. and others. It has also been submitted that the decision taken by the respondents to terminate the services of such large number of police recruits was politically motivated and is based on unfounded facts. The submission is that a committee was constituted in pursuance to the order, passed by the Director General of Police, headed by Shri Shailaja Kant Mishra, Addl. Director General of Police(in short, Shailja Kant Committee). According to the petitioners'' counsel, the Committee has acted for extraneous reasons and in a very unfair manner recorded a finding that the entire selection was bad in law and suffers from arbitrary exercise of power. It is also submitted that while submitting report, the Shailaja Kant Committee has given instances which pinpoints with regard to alleged irregularity in selection of certain individuals. It has been submitted that the entire report of the Committee is farce and sham. The alleged irregularities detected by the Committee with regard to few candidates do not make out a case to terminate the services of all 19000 police personnels who were appointed by different Committees in the State of U.P. and the petitioners are some of them.

5. It has also been submitted on behalf of the petitioners that in the case in hand, no fraud or concealment of fact has been attributed to the petitioners and accordingly, the termination of service is bad in law. Supplementing his arguments, learned counsels further submit that under U.P. Police Regulations, a constable shall be deemed to be on probation and service career of the probationer shall also be protected by Art. 311 of the Constitution of India. Regulation 541 of the U.P. Police Regulations provides that before terminating the services of a probationer, it shall be incumbent upon the State Government to serve a notice and only after receipt of reply and on finding the reply unsatisfactory, the services may be terminated. Fresh appointments were done against regular vacancies in accordance with rules. The State Government was not justified to enmass terminate the services of the petitioners by stroke of pen only by the change of government. This Court's attention has been invited to the judgment and order dated 14.1.2009, passed in writ petition No.7700 of 2007 where the constitution of committee headed by Shailaja Kant Mishra was impugned. The Division Bench of this Court has recorded a finding that the Director General of Police was not competent to constitute the Committee to make scrutiny with regard to appointments done in the year 2006. However, the Division Bench's judgment of this Court is subject matter of a special leave petition pending in the Hon''ble Supreme Court.

6. While admitting these bunch of writ petitions in writ petition No.7270(S/S) of 2007, following questions were framed on 6.11.2007 for adjudication :

1. Whether without application of mind by the appointing authority to individual cases of selectees against the regular vacancy, the order of termination can be passed on the basis of the report submitted by the State Government ?

2. Whether the present controversy is also covered by the Harendra Singh's case and it is not open for the State Government to sit in appeal over the judgment of this Court and the controversy in question which relates to Moradabad is also covered by the Harendra Singh's case ?
3. Whether it was not open for the State Government to hold de nova enquiry in the present controversy in case it is found to be settled by Harendra Singh's case, adjudicated by this Court ?
4. Whether it was incumbent on the State Government or the appointing authority to consider the individual cases before passing the impugned order of termination in pursuance to the enquiry report ?
5. Whether in the absence of any material against the petitioners which may affect their service career, selection, appointment or in case it is found that the petitioners fulfil all required condition for appointment on the post of Constable in the police department, the termination of their services is an act of abuse of power by the State Government ?
6. Whether the petitioners' services could have been terminated by the respondents in absence of any allegation relating to commission of fraud, concealment of fact or undue influence during the course of their selection and appointment and the services can be terminated without complying with the principles of natural justice ?
7. Whether the order of termination can be passed without application of mind by the appointing authority ?
8. Whether the State action suffers from mala fide and amounts to abuse of power ?

However, it is not necessary to deal with each and every question because of the fact that squarely identical writ petitions have been allowed by Hon''ble Single Judge of this Court at Allahabad by judgment and order dated 8.12.2008, passed in writ petition No.45645 of 2007 Pawan Kumar Singh versus State of U.P. and others. The judgment of Hon''ble Single Judge has been reaffirmed in Special Appeal No.244 of 2009 State of U.P. versus Pawan Kumar Singh and others and connected appeals. However, though the final outcome of the judgment or Hon''ble Single Judge has been affirmed by the Division Bench, but while affirming the judgment, Hon''ble Rakesh Sharma, J by a separate judgment has opined that the State should segregate the tainted and untainted candidates by considering the cases individually.

7. In view of the judgment of Hon''ble Single Judge (supra) as well as Division Bench in Special Appeal, present writ petitions deserve to be allowed. However, I wish to add some additional reasons while allowing the writ petitions.

8. It is settled provision of law that a probationer also enjoys protection guaranteed by Art. 311 of the Constitution of India. Moreover, right to livelihood

is a fundamental right and the State or its instrumentalities have got no right to deal with the persons who have been selected against permanent post in an arbitrary manner without holding regular enquiry on the basis of the allegations without due compliance of the principle of natural justice. Since the petitioners were selected against regular vacancies in P.A.C., Wireless and Civil Police and they were on probation, in view of law settled by Hon"ble Supreme Court in the cases reported in (1999)2 SCC 21 Radhey Shyam Gupta versus U.P. State Agro Industrial Corporation Limited, (2000)5 SCC 152 Chandra Prakash Shahi versus State of U.P. and (2002)1 SCC 520 P.N. Verma versus S.G.P.G.I., the respondents should have issued chargesheet or showcause notice before passing the impugned order of termination from service. Moreover, right from Maneka Gandhi's case (Smt. Maneka Gandhi Vs. Union of India and another, AIR 1978 SC 597), the principle of natural justice is held to be part and parcel of Article 14 of the Constitution of India. A person appointed in government service in accordance with rules cannot be deprived of his source of livelihood in violation of the principle of natural justice.

9. The U.P. Police Regulations contain specific procedure for termination of services of the police constable. In the case of Chandra Prakash Shahi (supra), Hon"ble Supreme Court observed as under :

"33. Where, therefore, the services of a probationer are proposed to be terminated and a particular procedure is prescribed by the Regulations for that purpose, then the termination has to be brought about in that manner. The probationer Constable has to be informed of the grounds on which his services are proposed to be terminated and he is required to explain his position. The reply is to be considered by the Superintendent of Police so that if the reply is found to be convincing, he may not be deprived of his services."

"34. If this procedure is followed and the services are terminated thereafter, it would not amount to a punitive action. The rule being mandatory in nature, compliance therewith would not alter the nature of the order pass3090(M/B)/09ed against the probationer. This aspect was considered by this Court in two decisions, namely, State of Orissa v. Ram Narayan Das and Ramendra Chandra Banerjee v. Union of India in terms of Rule 55B of the Civil Services (Classification, Control & Appeal) Rules, which, in all respects, is akin to para 541 of the U.P. Police Regulations quoted above. The relevant portion of Rule 55B which was extracted in the case of State of Orissa versus Ram Narayan Das is quoted below :

"Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment."

"35. Immediately after quoting the Rule, the Court observed :

"Notice to show cause whether the employment of the respondent should be terminated was, by Rule 55B made obligatory."

10. It is also settled provision of law that in case the government wants to do something or wants to take any action, then that should be done in the manner provided by the Act or statute and not otherwise vide *Nazir Ahmed Vs. King Emperor*, AIR 1936 PC 253; *Deep Chand Versus State of Rajasthan*, AIR 1961 SC 1527, *Patna Improvement Trust Vs. Smt. Lakshmi Devi and others*, AIR 1963 SC 1077; *State of U.P. Vs. Singhara Singh and other*, AIR 1964 SC 358; *Barium Chemicals Ltd. Vs. Company Law Board* AIR 1967 SC 295, (Para 34) *Chandra Kishore Jha Vs. Mahavir Prasad and others*, 1999 (8) SCC 266; *Delhi Administration Vs. Gurdip Singh Uban and others*, 2000 (7) SCC 296; *Dhanajay Reddy Vs. State of Karnataka*, AIR 2001 SC 1512, *Commissioner Of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others*, 2002 (1) SCC 633; *Prabha Shankar Dubey Vs. State of M.P.*, AIR 2004 SC 486 and *Ramphal Kundu Vs. Kamal Sharma*, AIR 2004 SC 1657, *Taylor Vs. Taylor*, (1876) 1 Ch.D. 426; *Nika Ram Vs. State of Himachal Pradesh*, AIR 1972 SC 2077; *Ramchandra Keshav Adke Vs. Govind Joti Chavare and others*, AIR 1975 SC 915; *Chettiam Veettil Ammad and another Vs. Taluk Land Board and others*, AIR 1979 SC 1573; *State of Bihar and others Vs. J.A.C. Saldanna and others*, AIR 1980 SC 326, *A.K.Roy and another Vs. State of Punjab and others*; AIR 1986 SC 2160; *State of Mizoram VS. Biakchhawna*, 1995 (1) SCC 156; *J.N.Ganatra Vs. Morvi Municipality Morvi*, AIR 1996 SC 2520; *Babu Verghese and others Vs. Bar Council of Kerala and others*, AIR 1999 SC 1281; and *Chandra Kishore Jha Vs. Mahavir Prasad* (1998) 8 SCC 266.

11. In the present case, procedure contained in U.P. Police Regulations has not been followed while passing the impugned order.

12. Accordingly, the petitioners being police recruits, the respondents should have invoked the procedure contained in the U.P. Police Regulations, coupled with the U.P. Police Act while passing the impugned order of termination. The State or its authorities cannot be permitted to act de hors the Rules. The decision taken in violation of the statutory provisions is ante thesis of rule of law. Even keeping in view the gravity of the offence, the State or its authorities have got no right to take action in violation of the statutory provisions. The offence or irregularity, howsoever grievous may be, the State has to act in accordance with the Constitutional mandate and statutory provisions. That is the basic concept and minimum requirement for the survival of democracy in a country.

13. Moreover, once Hon"ble Single Judge of this Court in the case of *Harendra Singh*(supra) has finally adjudicated the controversy and recorded a finding that there was no illegality found in the selection process, then the State does not seem to be justified to reopen the issue without adhering the judgment of Hon"ble Single Judge of this Court in the case of *Harendra Singh*. It is not open

for the State to review through administrative process the judgment and order of this Court which has attained finality and reopen the issue. The only option before the State was to challenge such judgment and proceed in accordance with law. Unless the judgment in the case of Harendra Singh(supra) is set aside by higher forum, the State is bound by the verdict (supra). The observation made in the judgment of Harendra Singh shall be binding on the State and it shall not be open to it to proceed in a manner which is contrary to the findings recorded by this Court. However, there appears to be no doubt that in the event of commission of fraud or forgery, State may deal with such situation with due compliance of principle of natural justice.

14. From the evidence on record, there appears to be no material which may reveal that the petitioners were involved in commission of any fraud or concealment of facts. In case the petitioners appeared before the duly constituted Selection Committee and were selected and served for more than a year, then there appears to be no justification on the part of the respondents to terminate the petitioners' services by the stroke of pen, more so when it is trite in law that the right to livelihood is a fundamental right and administrative or quasi judicial authorities have got no right to deprive a person from the source of livelihood without following due process of law.

15. Long back, Hon''ble Supreme Court in the case of A.K.Kraipak and others Vs. Union of India and others, AIR 1970 SC 150 followed by another Constitution Bench judgment reported in A.I.R. 1991 SC 101, Delhi Transport Corporation Versus D.T.C. Mazdoor Congress and others held that difference between the administrative and quasijudicial authorities or even a judicial authority has been obliterated. The State or its authorities have got no right to proceed in an autocratic manner to deprive a person or persons from their source of livelihood. The minimum requirement of the compliance of principle of natural justice is must keeping in view the mandate of Art. 14 of the Constitution of India. The manner in which the State authorities proceeded and dispensed with the services of such large number of police constables in hurried manner immediately after change of government does not inspire confidence in the fairness of action.

16. In the case reported in 2008 Vol. 4 SCC 619 Sadananda Halo and others versus Momtaz Ali Sheikh and others where 5500 posts of police constables were filled up and recruitment process was challenged on certain irregularities, Hon''ble Supreme Court ruled that the validity of recruitment could not be judged on the basis of microscopic details. Their Lordships of Hon''ble Supreme Court held that it shall not be proper to get sample survey of successful and unsuccessful candidates.

17. Hon''ble Supreme Court by a catena of judgments warned the statutory authority from time to time that while discharging their statutory and constitutional obligation, they must adhere with the statutory provisions as well as constitutional mandate. The decision taken by the State Government should be fair, just and proper without being influenced by political or vested interest.

Needless to say that whenever, a decision is taken or finding is recorded on political motivation or for some extraneous reasons, depriving the citizens from their source of livelihood or from their properties or curtailing liberties, then gradually such actions become counterproductive in due course of time and ultimately in case justice is not done from the Courts, the unscrupulous element and antisocial elements come into picture and peoples takes law into their own hands through these musclemen for redressal of their grievance. This fact may be noticed in many countries where the democracy is taking its last breadth. It is not only the Courts to impart justice. Justice is imparted by executive also in the decision making process. Justice should not only be done but it must seem to be done. This principle is equally applicable to Executives and Legislatures that the decision should not only be taken in just and fair manner but that seems to be taken in just and fair manner without being influenced by extraneous considerations. Once the peoples lose their faith in any wing of the government, then in due course of time, anarchy shall prevail in the society and it shall not be possible to check problem which may arise in such a situation.

18. Hon''ble Supreme Court in the case, reported in AIR 1975 SC 226 Smt. Indira Nehru Gandhi versus Raj Narain observed as under :

"205. Rule of Law postulates that the decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the rule of law".

19. Even otherwise, discretion of the government cannot be absolute and unjustifiable. The authorities have to pass the test of reasonableness and the action should not lack bona fide and made a colourable exercise of power. If an order of the State or its instrumentality lacks bona fide, then it shall amount to colourable exercise of power vide AIR 1998 SC 477 Amarnath Ashram Trust Society versus Governor of U.P., 1993(3) SCC 634 Hansraj H. Jain versus State of Maharashtra and others, AIR 1980 SC 319 State of Punjab and another versus Gurdial Singh and others.

20. Keeping in view the findings recorded by the Hon''ble Single Judge at Allahabad as well as the Division Bench in special appeals (supra) and for the reasons, discussed hereinabove, the impugned orders seem to be violative of statutory provisions, principle of natural justice. The decision has been taken hurriedly depriving the police constables from their source of livelihood. Such action on the part of the authorities is not expected in the society which is governed by the rule of law run by a democratically elected government.

21. In view of the above, the writ petitions succeed. A writ in the nature of certiorari is issued quashing the impugned orders with consequential benefits. A writ in the nature of mandamus is issued directing the opposite parties to restore the petitioners in service forthwith with due back wages within a period of one

month from today with liberty to proceed afresh in accordance with law subject to availability of material. The learned counsel for the respondents shall communicate the order, passed by this Court to the Principal Secretary, Home and the Director General of Police forthwith for compliance.

The writ petitions are allowed accordingly. No order as to costs.