
(2007) 03 AHC CK 0027
In the Allahabad High Court

Smt. Kiran Rai

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Citation : (2007) 4 ADJ 596 : (2007) 6 AWC 6444 : (2008) 1 UPLBEC 12

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—In response to an advertisement issued by the respondents for appointment of Aanganwari Karyakatri for the village in question, the petitioner as well as other candidates had applied. On the basis of the recommendations made by the Selection Committee, in terms of the Government Order dated 16.12.2003, the name of the petitioner was recommended for appointment and consequently by order dated 25.8.2006, the petitioner was given appointment as Aanganwari Karyakatri. By the impugned order dated 23.11.2006, the appointment of the petitioner has been cancelled on the ground that the income certificate of the petitioner appears to be doubtful and that it appears to be fabricated. Aggrieved by the said order, the petitioner has filed this writ petition.

2. I have heard learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents. Pleadings have been exchanged and with consent of the learned Counsel for the parties, this writ petition is being disposed of at the admission stage itself.

3. The submission of the learned Counsel for the petitioner is that the impugned order has been passed merely on conjectures and surmises and without there being any positive basis of arriving at the said conclusion. It has further been submitted that there was no complaint with regard to the income certificate of the petitioner and that no enquiry was ever got conducted in that regard. It has further been submitted that the enquiry, if any, was got conducted exparte

without any notice to the petitioner, which was in gross violation of the principles of natural justice.

4. Learned Standing Counsel has, however, submitted that the impugned order has been passed on the basis of the enquiry which was got conducted on the complaints filed by several persons and as such the impugned order is fully justified.

5. Having heard learned Counsel for the parties and considering the facts and circumstances of this case, in my view, the order impugned in this writ petition deserves to be set aside.

6. It is the categorical case of the petitioner that prior to the passing of the impugned order, no opportunity was ever given to the petitioner. It is well settled principle of law that in case if a right has accrued in favour of a person, the same can be withdrawn only in accordance with law, after giving opportunity to the person concerned. In paragraphs 12, 13 and 14 of the writ petition, it has categorically been stated that no opportunity was given to the petitioner at the time of the conduct of the alleged enquiry; nor any notice or opportunity of hearing was ever given prior to the passing of the impugned order; and that the impugned order has been passed for malafide reasons only to accommodate certain persons of the choice of the respondents.

7. There is no specific reply given by the respondents to the aforesaid averments made in paragraphs 12, 13 and 14 of the writ petition except for merely denying the same and stating that after the passing of the impugned order dated 23.11.2006 the petitioner did not file any reply. A perusal of the impugned order clearly shows that by the said order, the appointment of the petitioner as Aanganwari Karyakatri has been cancelled. The order does not contemplate any further action nor does it require the petitioner to file reply to the same.

8. Alongwith the counter affidavit, a collective enquiry report with regard to the appointments in several villages has been filed. The said report only gives the conclusion, without any discussion, which is in the form of an order, which has been communicated to the petitioner vide letter dated 23.11.2006. The individual enquiry report in the case of the petitioner has not been filed. With the counter affidavit certain complaints have been filed to show the basis on which the enquiry was got conducted. A perusal of the complaints go to show that the same related to the authenticity of the educational certificates filed by the petitioner. There is no mention in the complaints with regard to the income certificate filed by the petitioner. The order, by which the appointment of the petitioner has been cancelled, is on the basis that the income certificate appears to be doubtful and hence it is treated as fabricated. There is no mention of the educational certificates of the petitioner, regarding which complaints had been made. Although it has not been stated in the counter affidavit that the notice was ever given to the petitioner at the stage of enquiry, but an attempt has been made to show that there is an endorsement of the petitioner of having received

the complaint dated 31.8.2006 filed as Annexure-C.A.5 to the counter affidavit. Even though this Court is not inclined to accept that copy of the said complaint was given to the petitioner but even assuming that the same had been given, then too since the said complaint is with regard to the educational certificates of the petitioner and not with regard to the income certificate, as such, it cannot be said that the petitioner had any opportunity to reply with regard to the authenticity of the income certificate, on the basis of which the impugned order has been passed. As such, this Court is of the firm opinion that the impugned order has been passed in gross violation of the principles of natural justice.

9. For the foregoing reasons, the order cancelling the appointment of the petitioner as Aanganwari Karyakatri for the village in question is wholly unjustified, having been passed without any proper enquiry and without complying with the principles of natural justice and as such the same is liable to be set aside.

10. Accordingly, this writ petition stands allowed. The order dated 23.11.2006 passed by the respondent No. 2 is quashed. The petitioner shall be entitled to continue to function as Aanganwari Karyakatri for the village in question in terms of her appointment given on 25.8.2006. No order as to costs.