

(2005) 09 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33026 of 1995

Sri Shiv Kumar

APPELLANT

Vs

The Managing Director, U.P. Financial Corporation

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Citation : (2005) 6 AWC 6012 : (2006) 1 UPLBEC 264

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : G.D. Srivastava, H.S. Srivastava, Manoj Misra and Ganga Prasad, for the Appellant; V.B. Singh, P.S. Baghel, Pradeep Kumar and Shashank Shekhar Singh and S.C., for the Respondent

Judgement

Shishir Kumar, J.—The present writ petition has been filed for quashing the order dated 4.11.1995 (Annexure 12 to the writ petition) passed by the respondent. Further prayer is for issuing a writ in the nature of mandamus directing the respondents to treat the petitioner in service.

2. The facts arising out of the present writ petition are that the petitioner was serving as Assistant Grade-II in the U.P. Financial Corporation. An advertisement was made for the post of Assistant Grade-II in the Financial Corporation. The petitioner being a scheduled caste candidate has made an application for the post, mentioning his qualification, category and a certificate of scheduled caste. Along-with the application a certificate dated 13.8.1981 was appended which was issued by the Tehsildar Tehsil Kanpur Sadar certifying that the petitioner belongs to Majhhar caste in terms of Government Order dated 27.7.1987. The petitioner was selected for the post of Assistant Grade-II giving benefit to the petitioner as scheduled caste candidate and the petitioner was given an appointment on 28.10.1989 and joined the post on 7.11.1989.

3. There was some uncertainty regarding the issuance of the certificate. The District Magistrate sent a letter to Manjhwar Samiti for certifying that the petitioner belongs to a scheduled caste. It has also been submitted that the

Census of 1991 includes the Manjhar community as scheduled caste. Another certificate was directed to be submitted by the petitioner for the petitioner's residence as the earlier certificate, which was submitted by the petitioner was issued from District Kanpur. As the original residence of the petitioner was at Tehsildar Bilgram, District Hardoi, as such, the petitioner has applied for issuance of a certificate from Bilgram and after due enquiry the certificate was issued, that the petitioner belongs to a scheduled caste candidate and Manjhar is a scheduled caste community. The said certificate was deposited with the respondent. It is also submitted that the petitioner was made confirmed on the said post. It appears that after a lapse of five or six years on the basis of some unanimous complaints, which were received by the District Magistrate, alleging that the petitioner belongs to "Kisan" caste, which was a backward community and the certificate, which has been obtained by the petitioner is not correct. The said complaint was sent by the District Magistrate to the U.P. Financial Corporation. Copy of the same has been annexed as Annexure 8 to the writ petition. It has further been submitted that a copy of the complaint has never been given to the petitioner nor has been disclosed the name of person, who has sent a complaint against the petitioner. It appears that on the basis of the aforesaid letter of the District Magistrate, Hardoi a show cause notice was issued to the petitioner stating therein that after enquiry it has been found that the petitioner does not belong to scheduled caste community and petitioner belongs to "Kisan" category, which is as per Government Order dated 26.3.1986 comes under the backward class. The reliance has been placed upon the report of the District Magistrate dated 20.4.1995. The petitioner has submitted his reply of the show-cause notice. A reply to the show-cause notice has been annexed as Annexure 10 to the writ petition. In the defence the petitioner has submitted his certificate issued by the Tehsildar, Kanpur and certificate of Tehsildar Bilgram, District Hardoi, testifying that the caste of the petitioner is Manjhar.

4. The further submission of the petitioner is that the petitioner has clearly stated in his defence that there are two conflicting reports from the same authority, therefore, proper investigation be made and unless and until the earlier certificate issued in favour of the petitioner is cancelled, it cannot be treated that the certificate which has been issued in favour of the petitioner is by misrepresentation or any fraud has been played by the petitioner. But the reply of the petitioner has not been considered and by order dated 4.11.1995 the services of the petitioner has been terminated on the ground that petitioner is guilty of committing an act of concealment facts, criminal breach of trust and cheating the Corporation and as such, cannot be retained in service.

5. It has been submitted on behalf of the petitioner that the petitioner at any point of time was never informed regarding the complaint, which was from an unknown person and when it being exposed to any contest or challenge by the petitioner, it cannot be taken into consideration. The petitioner at no point of time was ever supplied the copy of the complaint and he should have been given an opportunity of contesting the contents of the complaint It has not being

disclosed as to how the investigation was made and on what basis the petitioner has been described belonging to "Kisan" caste. The "Kisair is a term of wide amplitude and anyone who carries on agricultural operation and whose vocation is agriculture, he is in, common parlance describes as "Kisan". The earlier certificate issued by the Tehsildar of two Districts Kanpur and Hardoi were certified by the District Magistrate then under what circumstances the said certificate has become false. It has also been submitted on behalf of the petitioner that the action of the respondent terminating the services of the petitioner is against the principle of natural justice as the petitioner has not been given any opportunity of being heard on the basis of unknown complaint, which is the foundation of the order of termination.

6. Reliance has been placed by the petitioner upon the judgment of the Apex Court State of Andhra Pradesh and others Vs. Nagam Chandrasekhara Lingam and others, and has submitted that the Apex Court has held in Paragraph 5 of the said writ petition as no opportunity to the affected person have been given, therefore, it cannot be said that it is a fair enquiry. Therefore, he has submitted that the order passed by the respondents cannot be sustained.

7. A counter affidavit has been filed. It has been stated that at the time of entrance of service the petitioner has disclosed that he belongs to scheduled caste category and on the basis of the complaint received by the District Magistrate, the petitioner was given a show cause notice and the services of the petitioner has been terminated as it was found after due investigation that petitioner does not belong to scheduled caste as the petitioner has disclosed, a wrong information, therefore, the services of the petitioner have been terminated. It has further been stated that as the petitioner belongs to District Hardoi, therefore, the investigation was handed over to the District Magistrate, Hardoi and he conducted an enquiry and has stated that petitioner's caste is "Kisan, who comes under the category of the backward class and the petitioner has submitted a wrong certificate, therefore, after issuance of show cause notice the services of the petitioner has been terminated. It has also been stated that the petitioner was found guilty of committing an act of concealment of true facts, therefore, the services of the petitioner have been terminated.

8. I have heard learned counsel for the petitioner and the counsel for the respondents and have perused the record.

9. From the record it is clear that a document of Census of India 1991 has been annexed as Annexure 3 to the writ petition, which is the list of scheduled caste and scheduled tribes candidates. At Serial No. 53, the Manjhwari caste is mentioned. Subsequently, a certificate issued by the District Magistrate, Hardoi was also submitted by the petitioner in the year 1991. The Tehsildar of District Hardoi has sent a letter in the year 1992, stating therein that after due enquiry by the supervisor Khanoongo and village Lekhpal, it has been found that on the basis of some unanimous complaints, the District Magistrate Hardoi has made some investigation and has submitted a report to the office of the respondent

that petitioner is not of Manjhar community and relying upon the said letter dated 26.4.1995 after giving a show cause notice the services of the petitioner have been terminated. A specific averment has been made in the writ petition that the petitioner has never been supplied any copy of the anonymous complaints and the petitioner does not belong to Manjhar community and the certificate, which has been submitted by the petitioner regarding his caste is correct and there is no concealment. If the respondent No. 1 was of the opinion on the basis of the letter dated 26.4.1995 issued by the District Magistrate, Hardoi, the petitioner should have been given an opportunity to submit before the authorities that the certificate, which has been submitted by the petitioner was correct and the petitioner belongs to Manjhar community. The copy of the complaint has not been supplied to the petitioner. The District Magistrate Hardoi before sending the letter and coming to the conclusion that the petitioner does not belong to scheduled caste community has not given any notice and opportunity to the petitioner. It is not the case of the respondent that the certificate, which has been issued earlier in favour of the petitioner, has been cancelled by the relevant authority. It is also clear from the record that only a show cause notice has been given to the petitioner and on the basis of his consideration of the reply of the petitioner, the services of the petitioner have been terminated. The petitioner being a confirmed employee of the Corporation was entitled for a proper opportunity or the proper procedure should have been followed by the respondent before passing the order of termination, which has not been done, therefore, in my opinion, the order passed by the respondent dated 4.11.1995 (Annexure 12 to the writ petition) cannot be sustained.

10. In view of the aforesaid fact, the order dated 4.11.1995 (Annexure 12 to the writ petition) is set aside. As the order dated 4.11.1995 has been set aside the petitioner will be reinstated in service and will be entitled for his seniority. As regards the payment of salary during this period is concerned, as about 10 years have been passed and there is nothing on record to show that whether the petitioner was anywhere gainfully employed or not, therefore, I am of the opinion, that by paying 25% of the total salary from the date of termination till the date of reinstatement be made as compensation to the petitioner. The aforesaid exercise be made by the respondent preferably within a period of six weeks from the date of production of the certified copy of the order. It is, however, open to the respondent to make an enquiry and to pass appropriate order after giving full opportunity to the petitioner as required under law.

11. The writ petition is disposed of accordingly.

12. There shall be no order as to costs.