
(2014) 08 AHC CK 0127
In the Allahabad High Court
Case No : Special Appeal No. 723 of 2014

Sushil Kumar Garg

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 8 ADJ 327 : (2015) 2 AWC 1540

Hon'ble Judges : Rakesh Tiwari, J;Attau Rahman Masoodi, J

Bench : Division Bench

Advocate : Yogesh Agarwal, Advocate for the Appellant

Judgement

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Attau Rahman Masoodi, J.—Heard learned counsel for the parties and perused the record. This intra-Court appeal has been preferred challenging the validity and correctness of the impugned judgment and order dated 30.4.2014 passed in Civil Misc. Writ Petition No. 19578 of 1999, Sushil Kumar Garg v. State of U.P. and others, whereby the aforesaid writ petition was dismissed.

2. Brief facts giving rise to the instant appeal are that initially the appellant was appointed on the post of Typist in Collectorate Mathura. A seniority list was prepared in which his name was found above the names of respondent Nos. 4 to 8, namely, S/Sri Ved Prakash Sharma, Anand Mohan Saxena, Som Nath Gupta, Vishnu Kant Garg and Nanua Lal, who were juniors to the appellant. However, respondent Nos. 4 to 8 were given promotion whereas claim of the appellant had been ignored. It appears that an adverse entry was awarded to the appellant vide order dated 13.1.1989. He preferred an appeal before the Commissioner, Agra, Division, Agra, challenging the entry which was dismissed vide order dated 10.5.1989. Aggrieved, the appellant moved a representation before the Board of Revenue, which was also dismissed vide order dated 11.2.1998. He then preferred Civil Misc. Writ Petition No. 19578 of 1999, Sushil Kumar Garg v. State

of U.P. and others, which was rejected vide judgment and order dated 30.4.2014. It reads thus:

"1. Writ petition has been restored to its original number vide order of date passed on review application. As requested by learned counsel for the parties, the same is taken up for hearing and is being disposed of finally.

2. Heard Sri Yogesh Agarwal, learned counsel for the petitioner and perused the record.

3. Petitioner's claim for promotion from the date when his juniors were promoted has been rejected on the ground that there exist several adverse material considering thereof petitioner was not given promotion from the date when his junior were promoted and his request to revoke those adverse material has also been rejected.

4. Learned counsel for the petitioner could not substantiate any argument to show any error in the impugned orders so as to warrant interference under Article 226 of the Constitution.

5. The writ petition is accordingly dismissed. Interim order, if any, stands vacated."

3. The contention of learned counsel for the appellant is that the order of reprimand is not a punishment in view of the Government Orders dated 29.7.89 and 20.8.89, hence it was not liable to be included in the character roll of the appellant for consideration and denial of promotion to him. Therefore, there was no reason at all for superseding the appellant on the basis of the reprimand order/adverse entry dated 13.1.89, which reads:

4. Learned counsel for the appellant also submits that there was only one adverse entry in his entire service period as stated above except in the year 1989, as such the Writ Court has wrongly observed in the impugned judgment that there was adverse materials against him; that the break in service of Ved Prakash Sharma from 15.6.1976 to 30.6.1977, who was junior to the appellant, has not been condoned as such he was not entitled for promotion.; that the appellant could not substantiate any argument to show any error in the impugned orders of the Commissioner as well as the Board of Revenue, hence, in these circumstances, the impugned judgment of the Writ Court is liable to be quashed.

5. After hearing learned counsel for the parties and on perusal of record it appears that the appellant had typed the caste certificate of Sri Rajvir Singh son of Guljari Lal showing him as Baheliya caste under the signature of Tehsildar whereas in fact he belonged to Aaheria caste, on account of which he was awarded adverse entry. He was not given promotion due to aforesaid adverse entry. His appeal as well as representation respectively were rejected by the Commissioner and the Board of Revenue. The break in service of Ved Prakash Sharma, who was junior to the appellant, had been condoned. The appellant

could not point out any illegality or infirmity in the orders of the Commissioner and the Board of Revenue before the learned Single Judge.

6. A perusal of the aforesaid G.Os. dated 29.7.89 and 20.8.93 shows that they are in no manner helpful to the appellant. The appellant has not been able to show us from the relevant entry for that year i.e. 1989-90 on the basis of which it could be presumed that the order of reprimand was not to be considered for want of adverse entry in that year as per para-2 of the G.O. dated 29.7.89 while his candidature alongwith the juniors was considered for promotion. Sometimes a Government servant seems to be good and he might have been awarded lenient punishment but consequences may have wider implication. For example, an ineligible person with the issuance of wrong caste certificate would become entitled not only for the benefit of reservation but also the benefits from the policies of State Government and the Union of India applicable to such category of persons. Not only this, his progeny may also get the benefit of the same unless it is detected that the caste certificate issued to such person was invalid. It is clear from the record that the appellant was a person who deliberately typed the caste certificate wrongly for giving benefit to the appellant. It was got issued under the signature of Tehsildar. Thus, complicity of the appellant is doubted. Though the conduct of the appellant was reprimanded but the consequence which flows from such an act is also a vital consideration and this aspect of the matter cannot be ignored by the Court. The appellant who was working on the post of Typist, could not maintain his honesty. He was reprimanded for his act, which in our considered opinion and in the facts and circumstances could not be ignored while considering his candidature for promotion. The appellant has failed to place any material before us that his entry could not be looked into. We find that there appears to be no illegality or infirmity in the impugned judgment of the learned Single Judge, hence no interference is required by this Court. Accordingly, the special appeal is dismissed.