
(2010) 12 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34552 of 1995

Tulsi Das Ahirwar

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 AHC CK 0149

Hon'ble Judges : S.P.Mehrotra, J and Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The present Writ Petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 24.2.1995 passed by the U.P. State Public Services Tribunal (Respondent no. 2), and further, for directing the respondents to permit the petitioner to appear in the examination/consider for promotion to the post of Class III employee (Constable) and to treat the petitioner to have been promoted along with other employees/candidates of December 1981 Batch and for payment of salary and other benefits to the petitioner accordingly.

2. It appears that the petitioner who belongs to a Scheduled Caste was appointed on 17.4.1975 as a Class IV employee on the post of "Mochi". In December, 1981, a demand for the post of constable came from respondent no. 4 to be filled up by promotion from amongst the qualified Class IV employees. It is averred by the petitioner that he fulfilled the eligibility criteria for promotion to Class III post of constable. However, in the meantime, by the order dated 1.4.1982, the services of the petitioner were terminated.

3. The petitioner filed a Claim Petition No. 154/F/V/1982 before the U.P. State Public Services Tribunal challenging his termination. By the judgment and order dated 8.4.1986, the U.P. Public State Services Tribunal allowed the Claim Petition filed by the petitioner, and the termination order dated 1.4.1982 was quashed. It was further directed that the respondents would treat the petitioner in continuous service as if the order of termination had not been passed. The

respondents were further directed to grant all benefits to the petitioner for his continuous service. Copy of the said judgment and order dated 8.4.1986 has been filed as Annexure1 to the Writ Petition.

4. Pursuant to the said judgment and order dated 8.4.1986, the petitioner was reinstated in service on 26.8.1986 on a Class IV post.

5. The petitioner made representation for his promotion to Class III post. By the communication dated 28.1.1987 (Annexure2 to the Writ Petition), the respondent no. 5 directed the petitioner as well as one Dhobi Lal to appear in the examination for promotion to Class III post, to be held on 30.1.1987 (Hindi Typing), 31.1.1987 (Hindi Essay and General Knowledge) and 1.2.1987 (Interview) at 10.00 a.m., on each of the said dates.

5. As per the case of the petitioner, copy of the said communication dated 28.1.1987 was received by him on 29.1.1987. It further transpires that the petitioner could not appear in the said examination held for promotion to Class III post. In the circumstances, the petitioner filed a Claim Petition before the U.P. State Public Services Tribunal being Claim Petition No. 273/F/V/1987. Copy of the said Claim Petition has been filed as Annexure SA1 to the Supplementary Affidavit filed on behalf of the petitioner in the present Writ Petition. In paragraph 14 of the Claim Petition, the petitioner stated as under:

"14 That the claimant along with above said application reached Allahabad on 30.1.87 for giving examination for promotion for the post of Constable (M) and went to police Head Quarters at about 9 A.M. The Office of the police Head Quarters told the claimant that he can not sit in the examination as he was out of service at the time of demand of the post. Then immediately approached the S.P. (Karmik) of the U.P. Police Head Quarter, but he did not permit the claimant to appear in the said examination for the post of constable (M). The claimant immediately gave an application and requested that the claimant may kindly be allowed to appear in the examination but he was not allowed to appear in the examination. A true copy of the letter dated 30.1.87 is being filed as Annexure No. 4 to this claim petition."

6. The respondents filed Written Statement/Counter Affidavit in reply to the Claim Petition filed by the petitioner before the U.P. Public State Services Tribunal. The averments made in paragraph 14 of the Claim Petition were replied to in paragraph 14 of the Written statement/Counter Affidavit. The said paragraph 14 of the Written Statement/ Counter Affidavit is reproduced below:

7. The petitioner did not file any Rejoinder Affidavit in reply to the Written Statement/Counter Affidavit filed on behalf of the respondents before the U.P. State Public Services Tribunal.

8. From the abovequoted paragraph 14 of the Claim Petition and its reply in paragraph 14 of the Written Statement/Counter Affidavit, it may be noticed that while the petitioner averred that he reached the examination centre for

appearing in the examination on 30.1.1987 at about 9 a.m., the version of the respondents is that in fact the petitioner reached on 31.1.1987 with the aforesaid letter of the respondent no. 5 dated 29.1.1987 with much delay after the commencement of the examination, and as such, he was not permitted to appear in the examination.

9. The U.P. State Public Services Tribunal in its impugned judgment and order dated 24.2.1995 accepted the version of the respondents that the petitioner reached late for appearing in the examination, and therefore, he was not permitted to appear in the examination taking note of the fact that the averments made in the Written Statement/Counter Affidavit filed on behalf of the respondents were not controverted by the petitioner by filing Rejoinder Affidavit before the Tribunal. In the circumstances, the Tribunal dismissed the Claim Petition filed by the petitioner.

10. We have heard Sri M.N.Singh, learned counsel for the petitioner, and the learned Standing Counsel appearing for the respondents, and perused the record.

It is submitted by Sri M.N. Singh, learned counsel for the petitioner that in view of the averments made in the Claim Petition filed by the petitioner before the Tribunal that he reached the examination center on 30.1.1987 at about 9 a.m., the respondents acted illegally in not permitting the petitioner to appear in the examination.

11. We have considered the submission made by Sri M.N. Singh, learned counsel for the petitioner, and we find ourselves unable to accept the same.

As noted above, the averments made on behalf of the petitioner in paragraph 14 of the Claim Petition were denied by the respondents. No Rejoinder Affidavit was filed on behalf of the petitioner before the Tribunal controverting the averments made in paragraph 14 of the Written Statement/Counter Affidavit filed on behalf of the respondents.

12. In the circumstances, we are of the opinion that the Tribunal rightly accepted the version of the respondents that the petitioner reached the examination center after great delay since the commencement of the examination, and therefore, he was not permitted to appear in the examination.

As the petitioner reached with much delay after the commencement of the examination, the respondents did not commit any illegality in not permitting the petitioner to appear in the examination.

The petitioner would have been entitled to be considered for promotion, had he appeared in the examination. As the petitioner did not appear in the examination, the claim of the petitioner for promotion to Class III post could not be considered.

13. We may further add that the question as to whether the petitioner reached the examination in time or he reached the examination late is basically a

question of fact. As the question of fact can not be made subject matter of the Writ Petition, it can not be examined under Article 226 of the Constitution of India.

14. In view of the above discussion, the Writ Petition lacks merit and is liable to be dismissed.

The Writ Petition is accordingly dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.