
(2003) 05 PAT CK 0071
In the Patna High Court
Case No : C.W.J.C. No. 1265 of 2003

Tulsi Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : (2003) 05 PAT CK 0071

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In this writ application filed under Article 226 of the Constitution of India prayer of the Petitioner is to quash the order dated 28.12.2002, whereby the Petitioner has been visited with the penalty of dismissal from service. Further prayer made by the Petitioner is to quash the report of the enquiry officer dated 28.12.2001 (Annexure-2) holding the Petitioner guilty of misconduct alleged against him.

2. Short facts giving rise to the present application are that the Respondent-Bihar Public Service Commission (for short the Commission) for conducting the ad hoc examination sanctioned a post of Routine Clerk. On the post so sanctioned, Petitioner was appointed as Routine Clerk for a period of four months by order dated 5th of July, 1973 (Annexure-1). Later on by order dated 18th of December, 1973 Petitioner was appointed as Lower Division Clerk on purely temporary basis with a further stipulation that his service can be terminated without any notice. The commission published a gradation list dated 26th of June, 1989 and the Petitioner's name finds place at SI. No. 11 of the list of Junior Selection Grade Assistants. It is relevant here to state that the Petitioner at the time of his initial appointment did not claim that he belonged to Scheduled Tribe but in the year 1989 he claimed himself to be belonging to Kharwar caste which is a Scheduled Tribe and by order dated 26.4.1991 (Annexure-9) he was promoted to the post of Section Officer, on a post reserved for a member of the Scheduled Tribe.

3. Controversy arose as to whether the Petitioner in fact belongs to Scheduled

Tribe or not and to ascertain that Commission by its letter dated 24.1.2001 asked the District Magistrate, Rohtas to make available the caste certificate of the Petitioner. In response to the aforesaid letter the District Magistrate sent a report dated 15.2.2001 in which he has stated that the Petitioner is Kahar (Chandravanshi) which is included in the list of extremely backward class. Petitioner claims to be belonging to Kharwar caste which is a scheduled tribe. On receipt of the aforesaid report the Commission by its order dated 9.8.2001 (Annexure-11), placed the Petitioner under suspension. On the said date itself the Commission appointed the conducting officer and issued the memo of charge. Misconduct alleged against the Petitioner was that on enquiry he is found to be belonging to Kahar (Chandravanshi) caste which is in the list of extremely backward class but on the basis of a false certificate of belonging to Kharwar, a scheduled tribe, Petitioner got promotion to the post of Section Officer and the Administrative Officer.

4. The conducting officer submitted his report dated 28.12.2001 (Annexure-2) holding the Petitioner guilty of misconduct. While holding the Petitioner guilty, the conducting officer had observed that the certificate given by district administration governs the issue which is based on the State record. He further observed that local district administration had found the Petitioner to be belonging to Kahar caste and not Kharwar. On receipt of the aforesaid report the Commission by its letter dated 24.10.2002 (Annexure-16) asked the Petitioner to show cause as to why he be not dismissed from service in the light of the finding of misconduct recorded by the conducting officer. Petitioner thereafter asked for a copy of the enquiry report which was made available to him and ultimately he submitted his reply. The Commission on consideration of the report of the conducting officer and the show cause filed by the Petitioner passed the impugned order inflicting the penalty of dismissal from service.

5. Mr. Ram Balak Mahto, Senior Advocate appearing on behalf of the Petitioner submits that the finding recorded by the conducting officer is without consideration of the documents produced by the Petitioner and the same renders the finding perverse in law. In this connection Mr. Mahto has drawn my attention to the explanation dated 21.8.2001 (Annexure-15) submitted by the Petitioner, in which he has referred to 41 documents to show that the Petitioner belongs to Kharwar caste, a scheduled tribe. I do not find any substance in this submission of the learned Counsel. It is trite that this Court does not act as a Court of appeal against the finding of the enquiry officer and interferes with the finding only when it is shown that the finding recorded is perverse meaning thereby the finding has been recorded without consideration of the relevant material or on consideration of the irrelevant material or the finding recorded is such that no reasonable person duly instructed in law shall come to that finding. It is equally well settled that it is not the quantity of the evidence which is material but its quality. Reference in this connection can be made to a decision of the Supreme Court in the case of Lalit Popli Vs. Canara Bank and Others, and paragraph 17 of the judgment which is relevant for the purpose reads as follows.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

6. True it is that the Petitioner had relied on a large number of documents to show that he belongs to Kharwar caste, a scheduled tribe and the conducting officer relying on the report and the certificate of the district administration found the Petitioner belonging to Kahar (Chandravanshi) caste and not Kharwar. Thus the finding of misconduct has been arrived at on consideration of the relevant material and hence it cannot be termed as perverse so as to call for interference by this Court in exercise of its writ jurisdiction.

7. Mr. Mahto then submits that even if the misconduct alleged against the Petitioner is proved, the Respondents ought to have cancelled his promotion made against the vacancy of reserved category and ought not to have dismissed him from service. He points out that initial appointment of the Petitioner is not against the vacancy of reserved category and as such the order of dismissal from service is absolutely uncalled for and illegal.

8. Mr. Kaushal Kumar Jha appearing on behalf of the Commission submits that the Petitioner had committed misconduct of grave nature and as such the order of dismissal has been passed. He submits that making a false claim of belonging to Scheduled Tribe is a serious misconduct and as such the Respondents had decided to inflict the penalty of dismissal from service.

9. Having appreciated the rival contention, I find substance in the submission of Mr. Jha. True it is that initial appointment of the Petitioner is not on a post reserved for the member of Scheduled Tribe. In fact at the initial stage the Petitioner did not claim his appointment on the ground that he belongs to reserved category. It is only when the post of Section Officer fell vacant, Petitioner got promotion claiming himself to be belonging to Kharwar caste. The claim made by the Petitioner has been found to be false, which is a serious misconduct and the Petitioner having committed the serious misconduct visited with the penalty of dismissal from service, I do not find any error in the same.

10. Mr. Mahto lastly submits that the punishment of dismissal from service is excessive. I do not find any substance in this submission of Mr. Mahto. It is trite that this Court interferes with the quantum of punishment only when it is shown that the same is disproportionate to the gravity of allegation or in other words shocking to the conscience of the Court. Petitioner is functioning in a constitutional body, whose duty is to make recommendations for appointment. Petitioner happens to be an employee of such an authority who obtained promotion by making a claim that he belongs to reserved category which has been found to be false. This is a grave misconduct in which, in my opinion, the punishment inflicted cannot be said to be disproportionate to the gravity of

allegation. To be candid, it does not shock my conscience at all.

11. In the result, I do not find any merit in this application and it is dismissed accordingly.