

(2006) 05 DEL CK 0070
In the Delhi High Court
Case No : LPA No. 2583 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Prakash Anthony

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 3(1), 4(16), 4(20), 4(4)

Citation : (2006) 130 DLT 6 : (2006) 144 PLR 35

Hon'ble Judges : T.S. Thakur, J; S.N. Dhingra, J

Bench : Division Bench

Advocate : K.L. Nandwani, for the Appellant; Ajit Pudussery, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—This Letters Patent Appeal arises out of an order passed by a learned single Judge of this Court whereby the writ petition filed by the respondent against an order of his removal from service as a measure of punishment has been allowed and the orders passed by the disciplinary and appellate authorities quashed.

2. The facts giving rise to the filing of the petition have been set out in detail in the order passed by the learned single Judge. The same need not, Therefore, be recalled over again. All that need be mentioned is that the respondent had been appointed as an Assistant Typist way back in the year 1987 against a vacancy reserved for a Scheduled Tribe candidate. Five years later, the respondent applied for promotion to the next higher post of Assistant Administrative Officer which claim was rejected on the ground that he did not belong to Scheduled Tribe community. He was, at the same time, called upon to show cause why action be not taken against him for having submitted false information regarding his caste. He was also asked to submit documentary proof in support of his claim that he belonged to Scheduled Tribe category. The petitioner, in response, produced a certificate issued by the Block Development Officer which was to the

following effect:

BLOCK OFFICE BETTIAH

CASTE CERTIFICATE

No. 208 Date : 23.3.1996

This is to certify that Shri Prakash Anthony S/o Shri M. Anthony Alexander is a resident of Mohalla Christian Quarters, Dargah, Police Station Bettiah, Distt. West Champaran, originally belonged to Lohar tribe but has embraced Christianity.

Block Development Officer Bettiah

West Champaran 23.2.1996

3. The certificate aforementioned notwithstanding, the appellants initiated disciplinary proceedings against the respondent in which the only charge against him was that he had furnished false information regarding his being a Scheduled Tribe candidate at the time of his recruitment in the year 1987. The petitioner was told that he had, by making such a false claim, failed to maintain absolute integrity under Rule 3(1)(i) and thereby committed misconduct within the meaning of Rule 4(4), 4(16) and 4(20) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975.

4. The inquiry culminated in a finding against the respondent eventually resulting in his removal from service as a measure of penalty. Aggrieved by the said order, the respondent appealed to the prescribed appellate authority who affirmed the view taken by the disciplinary authority and dismissed the appeal. That is precisely how the orders passed by the disciplinary authority as also the appellate authority were assailed before a single Bench of this Court in WP(C) No. 2856/2001. The said petition was allowed by the single Judge on three precise grounds. Firstly, it was held that the appellants having accepted the respondent's declaration that he was a Scheduled Tribe candidate on the basis of his claim made in the application form and the card issued by the Employment Exchange were estopped from turning around to assail the said position. The appellants could, observed the learned single judge, find fault with the certificate produced by the respondent at the time of his appointment if they nurtured any doubts about the correctness of the claim made by the respondents or the validity of the certificate. They could have even got the certificate verified suitably from the concerned authorities, but having failed to do so they could not question the status of the respondent years later.

5. Secondly, the learned single Judge held that the enquiries started nine years after the alleged false declaration made by the respondent was highly belated.

6. Thirdly and more importantly, the learned single Judge held that the respondents belonged to "Lohar Community" who had even according to the enquiry conducted by the appellant through a retired Deputy Superintendent of CBI, embraced Christianity. The report submitted to the appellants had further

stated that the Christian Converts from Scheduled Castes to any other Backward Classes were declared "as Other Backward Classes" as per the policy of the State Government. The Court noticed that although the Supreme Court had in *Shambhoo Nath v. Union of India* and *Anr. Civil Appeal No. 4631/1990* had declared that "Lohar Community" was a Scheduled Tribe from the date of the amendment of the list in 1976, the Bihar Government was not issuing the requisite certificates. The Court also referred to a Division Bench order passed by the High Court of Patna in *Bihar Rajya Lohar Janjati Sangharsh Morcha v. Union of India and Ors.* to the effect that members of Lohar or Lohara Community were covered by the Scheduled Tribe Order 1950 and that the Government ought to issue appropriate certificates to the members belonging to that community. Keeping in view the fact that there was no denial that respondents belonged to Lohar Community which was a Scheduled Tribe, the learned single Judge held that the order passed by the appellant removing the respondent from service was unconstitutional. The respondent was accordingly directed to be reinstated but without back wages.

7. Having heard learned Counsel for the parties at some length and having perused the record, we see no reason to take a view different from the one taken by the learned single judge. The enquiry initiated against the respondent in the present case was delayed by nearly nine years since he first secured the appointment. That apart, the certificate which the respondent had furnished in support of his claim did not certify him to be a member of the Scheduled Tribe community which aspect ought to have been noticed by the appellants at the time the documents were verified and the appointment offered. More importantly, the respondent belongs to Lohar Community, no matter he had embraced Christianity. That being so, the question is whether Lohar Community is a Scheduled Tribe. That issue stands answered by the Supreme Court in *Shambhoo Nath Case (supra)*. Taking note of the said decision, even the High Court of Patna has issued directions for grant of appropriate certificates to the candidates belonging the said community. If all these circumstances are given due weight, as we are bound to do, there is no manner of doubt that he does belong to a Scheduled Tribe and had Therefore, rightly claimed a vacancy reserved for the said category. The position may have been different if upon enquiry and verification of facts it was found as a fact that the respondent did not belong to either Lohar or any other community declared to be a Scheduled Tribe in Bihar. That, however, is not so. The enquiry conducted by the appellants and their investigator firmly establishes that the respondent does belong to Lohar community though presently a Christian and that Lohar Community is a Scheduled Tribe in Bihar according to the Presidential Order. The fact that the respondent has embraced Christianity is wholly besides the point . It is nobody's case that by doing so, the respondent could alter his status as a Scheduled Tribe candidate. 8. There is no merit in this appeal which fails and is hereby dismissed but in the circumstances without any orders as to costs.