
(2013) 11 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 49213 of 2011

Vinod Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 3 ADJ 120 : (2014) 1 UPLBEC 674

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This is a glaring illustration of the audacity of the respondents-officers of Public Works Department going to the extent of even filing false affidavits before this Court and attempting to misrepresent and mislead this Court. The observations would stand demonstrated from the following facts borne out from the record. Petitioner claims to have obtained a driving license, valid for Motor Car and Light Motor Vehicle, from licensing authority, Motor Vehicle Department, Kanpur on 7.6.1984 which was renewed thereafter from time to time. He was engaged as Cleaner in the year 1990 and ultimately was regularized on the said post of Cleaner by order dated 17.7.2007 passed by Executive Engineer, Provincial Division, P.W.D. Fatehgarh, copy whereof is on record as Annexure 9 to the writ petition. Respondents proceeded to promote some daily wage Cleaners as Driver by order dated 27.6.2007 whereagainst petitioner made a representation on 29.6.2007 that he should also be considered for promotion to the post of Driver when his juniors have been promoted and then came to this Court in Writ Petition No. 54100 of 2007, which was disposed of finally vide judgment dated 14.2.2011 with the following order:

The grievance of the petitioner is that he is senior working as a daily wage Cleaner to respondents 5, 6 and 7 but without considering him for promotion though on daily wage basis as Driver, his juniors have been promoted.

By means of supplementary-affidavit he has also filed a copy of representation dated 29th June, 2007 ventilating his grievance regarding his non consideration for promotion to the post of Driver while his juniors have been promoted. In the counter-affidavit, respondents have not given any specific reason for not considering the petitioner for promotion to the post of Driver except of saying that order of promotion dated 27th June, 2007 promoting respondent Nos. 5 to 7 is in accordance with law.

In my view, let this matter be examined by higher authority in the Department, who shall pass a speaking order considering grievance of the petitioner and shall also examine validity of promotion of respondent Nos. 5 to 7 ignoring claim of the petitioner.

In the circumstances, without expressing any opinion on the merits of the issue, I dispose of this writ petition permitting the petitioner to make suitable representation before respondent No. 3 within a month from today and in case such representation is made alongwith certified copy of this order to the aforesaid authority, the same shall be considered and respondent No. 3 shall pass a speaking order after giving due opportunity of hearing to all concerned parties within two months thereafter. The impugned order of promotion of respondent Nos. 5 to 7 shall abide by such order passed by respondent No. 3.

With the aforesaid observation/direction, this writ petition stands disposed of.

2. It appears that pursuant thereto, the Superintending Engineer, Etawah Circle, Public Works Department, Etawah passed order dated 25.7.2011 rejecting petitioner's representation seeking promotion on the post of Driver on the ground that in the seniority list received from the Office of Engineer-in-Chief with respect to Group "C" employees, name of petitioner was not shown in the list of Cleaners, and, secondly that petitioner's initial appointment was on the post of Helper and there is no departmental rule for promoting Helper to the post of Driver. The present writ petition has been filed assailing the aforesaid order as also the direction issued by Chief Engineer by letter dated 15.6.2007 directing Superintending Engineer concerned to consider only those persons whose names are mentioned in the appended list at Sl. No. 236 to 265 working as Cleaner for promotion to the post of Driver. Petitioner has also challenged the order dated 27.6.2007 whereby respondents 6, 7 and 8 were promoted as Driver from the post of Cleaner.

3. In the counter-affidavit filed by official respondents in this writ petition, they have reiterated their stand that petitioner was engaged as daily wager in the department time to time on the post of "Helper" but was regularised as Cleaner on 17.7.2007. In para. 8, it is said that before 17.7.2007, he had worked as daily wage "Helper" from time to time. It is also said that those who were promoted as Driver had worked throughout as daily wage "Cleaner" and since petitioner came to be appointed on the post of "Cleaner" on being regularized on 17.7.2007, the others being senior to him, were promoted.

4. This Court has noticed self contradiction in the stand taken by respondents inasmuch in the earlier writ petition No. 54100 of 2007, respondents filed counter-affidavit stating therein that petitioner was initially engaged in 1984 as "Cleaner" on daily wage basis in the department and on 17.7.2007 he was appointed on regular basis on the said post of "Cleaner", while the stand taken by respondents in the counter-affidavit filed in the present writ petition is that petitioner was initially engaged in the department on daily wage basis as "Helper", and, came to be appointed on the post of "Cleaner", for the first time on being regularized as Cleaner on 17.7.2007, while others were already working as Cleaner on daily wage basis, and, thus, were treated senior to petitioner. It, however, has not been informed/pleaded as to when those, who were promoted as Drivers, were regularized as Cleaner. Whether they were actually ever regularized, and if yes whether it was after or before regularization of petitioner, even this is neither disclosed nor stated. A deliberate silence has been maintained in this regard. Hence, by order dated 28.1.2013, respondents were directed to file a supplementary counter-affidavit stating as to when those juniors, who have been promoted, were regularized.

5. Pursuant thereto, respondents have filed a supplementary counter-affidavit sworn by Sri Kiran Pal, Assistant Engineer, Construction Division, P.W.D. Farrukhabad and in para. 3 thereof while it is admitted that petitioner was regularized as Cleaner by order dated 17.7.2007, it has been specifically admitted in para. 4 thereof that Sri Chhote Lal, Khaleek Khan and Rakesh Kumar, respondents 6, 7 and 8 in this writ petition as also others daily wagers who have been placed in the seniority list from Sl. No 1 to 295 were all regularized by Superintending Engineer, Farrukhabad-Kannauj Circle, P.W.D., Farrukhabad by order dated 30.4.2011.

6. Even this statement is incorrect and false. From a perusal of order dated 30.4.2011 (Annexure 2 to the supplementary counter-affidavit), this Court finds that respondents 6, 7 and 8 and two others were directed to be regularized by Chief Engineer by order dated 11.3.2011 on the post of Driver and pursuant thereto, the order dated 30.4.2011 was passed regularizing them as "Driver". The aforesaid order has nothing to do with regard to regularization of all these persons on the post of "Cleaner", which was the information required by this Court vide order dated 28.1.2013.

7. It is really strange that respondents, despite clear order of this Court, have dared to furnish information which was not required at all and have concealed the information and still not disclosed by filing supplementary counter-affidavit, as was directed to them.

8. Now coming to the other aspect, whether petitioner was initially engaged as a Helper or Cleaner, I find that in the earlier counter-affidavit filed in Writ Petition No. 54100 of 2007, which was sworn by Chandra Shekhar Singh, Assistant Engineer, Construction Division, P.W.D. Farrukhabad, it was admitted in para. 3 and 5 thereof that petitioner was initially engaged as "Cleaner", on daily wage

basis and was regularized thereon by order dated 17.7.2007. The averments made in para. 5 of the earlier counter-affidavit reads as under:

5. That in reply to the contents of paragraph 3 of the writ petition, it is submitted that the petitioner was initially engaged as Cleaner on daily wage basis in the department concerned and thereafter, on 17.7.2007 he has been appointed on regular basis on the said post of Cleaner, which is evident from the official record. However, so far as Annexure-1 to the writ petition is concerned, the same is not available in the office hence the same is not admitted.

9. The same thing has been repeated in para. 17 of the counter-affidavit and it says that in seniority list, petitioner has been placed at his appropriate place, but the fact remains that in the impugned order dated 25.7.2011, specific stand of respondents is that since petitioner did not find place in the seniority list of Cleaner, therefore, he was not entitled to be promoted to the post of Driver.

10. Despite repeated query, learned Standing Counsel could not place any material before this Court to show that petitioner was engaged at any point of time, commencing from his initial engagement, as "Helper", till the date of his regularisation on the post of "Cleaner" on 17.7.2007. He also could not reply, if petitioner was engaged as Helper, how he could be regularized as Cleaner. Respondents have taken mutually destructive and inconsistent stands at different occasions without substantiating their stand in one or the other way. Since order dated 17.7.2007 is admitted throughout, I have no manner of doubt to hold that petitioner actually was engaged as "Cleaner" initially and has worked throughout on the said post, hence was regularized on the same post i.e. "Cleaner" on 17.7.2007. The stand taken by respondents otherwise is patently false, misleading and incorrect.

11. That being so and also considering the fact that respondents 6 to 8, who were sought to be promoted as Driver, were working as daily wage "Cleaner", by no stretch of imagination, petitioner could have been overlooked or ignored for promotion to the post of "Driver" when his eligibility, qualifications for promotion to the post of "Driver" are not in dispute.

12. In these facts and circumstances, in my view it is a fit case where a positive direction should be issued to the respondent-competent authority to promote petitioner on the post of Driver with effect from the date, his juniors working on the post of Cleaner, i.e. respondents 6, 7, and 8 were promoted, with all consequential benefits.

13. Further, considering the attitude of respondents and their deliberate intentional approach of going to the extent of misrepresentation and misleading this Court by filing false affidavits and taking inconsistent stand, going to the extent of even misleading this Court, and, also deliberate defiance of this Court's order dated 28.1.2013, whereby requisite information was sought, but not provided, in my view, here it is a fit case where writ petition deserves to be allowed with exemplary cost, which I quantify to Rs. 50,000/- (Rupees fifty

thousand).

14. Though it was a fit case where the persons, who have sworn counter-affidavit and supplementary counter-affidavit filed in the present writ petition, ought to have been prosecuted u/s 340 Cr.P.C. for filing false affidavits before this Court, but since the petitioner is being compensated by awarding exemplary cost, I am dropping this idea but direct respondent No. 1 to look into this matter and take appropriate disciplinary proceedings against the erring officials forthwith, and complete departmental enquiry, by passing final order within six months, from the date of receipt of a certified copy of this order, which shall be communicated to this Court for its perusal, and, only for perusal of compliance report, as directed above, this matter shall be listed after eight months.

15. The writ petition is allowed in the manner as above. Registrar General is directed to send a copy of this order to respondent No. 1 for information and compliance forthwith.