

Kumer Singh Vs. Union of India and Ors.

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Court : Delhi

Decided On : Jan-22-2015

Judge : Pradeep Nandrajog

Appellant : Kumer Singh

Respondent : Union of India and Ors.

Judgement :

\$~9 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : January 22, 2015 + W.P.(C) 4032/2014 KUMER SINGH Represented by: Petitioner Mr.Vardhman Kaushik, Advocate with Mr.N.D.Kaushik, Advocate versus UNION OF INDIA & ORS. Represented by: Respondents Mr.Ankur Chhibber, Advocate Mr.Arvind Sharma, Dy.Cmdt., BSF CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

(Oral) 1. The instant writ petition brings to the fore a tale of a member of the society who seeks to find the lost foothold in the society; both in the economic sense and the social sense.

2. Kumer Singh, is domiciled in village Moroli, Tehsil Sikrai, District Dausa, Rajasthan and belongs to the Gujjar Community; a backward class in the State of Rajasthan, forefathers of which community used to earn their livelihood rearing cattle and members of the community continue to earn their bread rearing cattle.

In the social hierarchy in the State of Rajasthan the Gujjars are quite a few notches above their lesser born brethren : the members of the scheduled caste, whose primary source of livelihood, regrettably stated, was limited to and even today continues to be limited to the most menial jobs required to be performed in a society : to satisfy the wants of the society, one of which job is to sweep the streets and residences of humans; a job which for ages was conceived to be untouchable by the so called forward classes of the society.

3. Employment in the rural areas is scarce. No figure can be more pathetic to the human eye than that of the strong, abled worker, crying plaintively for charity. He seeks the privilege of a small reward for his labour : just about enough money to fill his empty belly and silence the cry of his family for food. When this is not given to him, he cries for charity and begs in the streets.

4. To find a foothold in the society, this humble village beau is drawn to the city, hoping that the prayer to the Heavenly Father : Give us day by day our daily bread is answered by a job which clads him and his family warmly, gives a healthy house, and if not three, at least two square meals a day. For most the prayer is either unfulfilled or fulfilled by the devils agency : the proceeds of a crime or the earnings of a vice, because most fail to find the bread to eat because the society has no work for them to do. They are even deprived the benediction of the divine curse : in the sweat of thy brow thou shall eat thy bread, for whatever be the sweat in their brow, they get no bread to eat.

5. But, for the petitioner his prayers to the Lord were responded to, when he managed to get employment with the Border Security Force as a sweeper on May 01, 2011. He accepted the offer notwithstanding having a bachelors degree, because this was only what society could offer him.

6. He claims that he had to hide the shame of the source of his livelihood from his community members, who would have looked down upon him, if he told them that he was cleaning the toilets in the barracks where the personnel of the Border Security Force resided, thus he simply told the village folks that he was employed with the Border Security Force. He never told them what job he performed.

7. When on sixty days leave with effect from January 09, 2013 till March 10, 2013, he learnt that there was a vacancy to the post of Constable (Kahar) with the Border Security Force. He thought that if he could get the job of a Constable (Kahar) it would enhance his social standing because a Constable (Kahar) performs the job of a water carrier. He applied and was blessed with a letter offering appointment issued to him on February 14, 2013. He completed the enrolment formalities, and while filling up the enrolment form, withheld giving information that he was already employed as a sweeper with BSF. Against the relevant column in which he was called upon to state whether he was employed with the Government or any Armed or Para Military Force of the Government, he responded in the negative, and thus he was made to join duty as a Constable (Kahar).

8. Sanctioned sixty days leave which expired on March 10, 2013, when the petitioner did not report back to the Commandant of the 60 th Bn. to which he was attached as a sweeper, call up notices were issued by the Commandant of the 60th Bn. calling upon the petitioner to report for work.

9. Joining as a Constable (Kahar), little did the petitioner know that a reference would be made to the District Magistrate at Dausa to forward the character and antecedent information to the BSF Authorities. This being done, the District Magistrate at Dausa informed that the petitioner was already serving as a sweeper in the 60th Bn. and was overstaying leave.

10. The petitioner was immediately sent to the 60th Bn. BSF, where the Commandant took cognizance of an offence report against the petitioner : the offence being of overstaying leave granted to him and of voluntarily giving false information at the time of the second enrolment concerning he being already employed with BSF. After hearing the petitioner the Commandant directed Record of Evidence to be drawn up by the Deputy Commandant of the Battalion, who did so and placed the same before the Commandant who, after considering the Record of Evidence directed the petitioner to be tried before a Summary Security Force Court. Two charges were framed against the petitioner : the first of overstaying leave, and the second of giving false information when enrolled for the

second time in BSF as a Constable (Kahar). The petitioner pleaded guilty at the trial and prayed for mercy. After complying with the provisions of Rule 142 of the BSF Rules, noting that the petitioner was aged 24 years and had served BSF for 7 months, during which period his conduct was satisfactory, the Commandant levied the penalty of dismissal from service upon the petitioner with effect from December 16, 2013, requiring petitioner to be struck off from the strength of BSF, both as a sweeper and as a Constable (Kahar).

11. The petitioner prays to this Court that he should be reinstated in service and the proceedings against him be quashed, and for which learned counsel for the petitioner at the hearing today concedes, that except for seeking mercy, the petitioner has no other prayer to make to the Court, for the reason there is enough evidence to bring home both charges. The mercy sought by the petitioner, is to be levied a penalty of a kind where he does not lose the job as a Constable (Kahar), and for which the only argument advanced is the young age of the petitioner; the societal shame which he wanted to hide by not disclosing to his community members that he was working as a sweeper in BSF and thus when he got an offer for being appointed as a Constable (Kahar), he hid the truth, not for any material gain for himself but on account of his compulsion to hide his shame.

12. When asked, learned counsel for the respondent concedes to the point that had the petitioner requested the Commandant of the 60 th Bn. BSF to forward his application when applications were invited from eligible candidates to be appointed as Constable (Kahar), the Commandant of the 60th Bn. BSF was obliged in law to have forwarded the said application. Meaning thereby, it being the right of the petitioner to be considered for appointment as a Constable (Kahar) in BSF, he had nothing to gain by not sending his application through the proper channel.

13. This fact weighs with us to draw the conclusion that the petitioner did not act with any mala-fide intent nor did his act confer any benefit upon him, much less caused prejudice to any eligible person. He withheld the truth, to hide his shame, when he directly applied to BSF for being appointed as a Constable (Kahar). Having applied directly and not through the proper channel, when he was selected as a Constable (Kahar), it became the compulsion of the petitioner to withhold the

truth by answering against the relevant column of the enrolment form that he was not employed anywhere.

14. This Court cannot overlook the harsh reality of life concerning employment in the rural areas. Influenced by the thoughts which we have penned in paras 3 and 4 above, opining that the instant case cries for justice, we dispose of the writ petition quashing the penalty of dismissal from service inflicted upon the petitioner, while maintaining the two indictments against him, holding further that it would be sufficient penalty upon the petitioner to stop two increments without cumulative effect, which penalty we impose.

15. The petitioner shall be reinstated in service as a Constable (Kahar) but without any back wages or any other consequential benefits. He shall suffer the penalty of stoppage of two increments which shall commence when the petitioner rejoin service i.e. the two years period for which the two increments shall be stopped would relate to the date when the petitioner would have otherwise earned the increments. The period interregnum shall not be counted towards pension or seniority. Petitioners seniority as a Constable (Kahar) would be with effect from the date he rejoin service and for which we direct the DG (BSF) to pass a necessary order within six months as to which Battalion should the petitioner join so that armed with the order the petitioner can report to the Commandant of the Battalion concerned.

16. No costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE
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