

State of U.P. and ors. Vs. Sunil Kumar

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Court : Allahabad

Decided On : Dec-17-2004

Reported in : 2005(1)ESC621

Judge : B.S. Chauhan and ;Dilip Gupta, JJ.

Acts : Uttar Pradesh Public Services (Reservation of Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994; [Constitution of India](#) - Articles 341 and 342

Appeal No. : Special Appeal No. 248 of 2003

Appellant : State of U.P. and ors.

Respondent : Sunil Kumar

Advocate for Def. : Vinod Sinha, Adv.

Advocate for Pet/Ap. : S.C.

Disposition : Appeal allowed

Judgement :

B.S. Chauhan, J.

1. This special appeal has been filed against the judgment and order, dated 7.10.2002, of a learned Judge, by which the petition filed by the respondent has

been allowed only on the ground that he had not been given an opportunity of hearing before cancelling his appointment/training on the post of Constable.

2. The facts and circumstances giving rise to this case are that the appellants issued an advertisement advertising 5225 vacancies of Constables in Civil Police. The petitioner-respondent applied in pursuance of the same. His candidature was considered and he was selected. However, he was not sent for training on the ground that he was not eligible to be selected in the reserved category of Scheduled Tribes for the reason that he belonged to the Meena community, which is a Scheduled Tribe in the State of Rajasthan, but not in State of Uttar Pradesh. Feeling aggrieved, he filed the writ petition which has been allowed by the learned Single Judge only on the ground that no show cause notice was given to him before cancelling his candidature. Hence, this special appeal.

3. Undoubtedly, in the instant case, petitioner had not been given any notice, or opportunity of hearing before passing the order of cancellation of appointment/training. In *S.L. Kapoor v. Jagmohan and Ors.*, AIR 1981 SC 136, the Hon'ble Supreme Court has observed that where on admitted, or undisputed facts, only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue the writ to compel the observance of the principles of natural justice, as it would amount to issuing a futile writ.

4. The Hon'ble Supreme Court in the case of *Aligarh Muslim University and Ors. v. Mansoor Ali Khan etc.*, JT 2000 (9) SC 502, also considered this aspect and held that if no other conclusion was possible on admitted or indisputable facts, then it was not necessary to quash the order passed in violation of the principles of natural justice.

5. Similarly, in *State of U.P. v. Om Prakash Gupta*, AIR 1970 SC 679, the Hon'ble Supreme Court has observed that the Courts have to see whether non-observance of any of the principles enshrined in statutory rules, or principles of natural justice have resulted in deflecting the course of justice. Thus, it can be held that even if in a given case there has been some deviation from the principles of natural justice, but the same has not resulted in grave injustice, or has not prejudiced the cause of the delinquent, the Court may decline to interfere.

6. The basic fact, therefore, which is required to be considered is whether the petitioner-respondent was eligible to be considered in the reserved category for the post of Constable in Civil Police and whether the show cause notice was required to be given. This is because in a given case, like this, we have to consider whether it was possible for the respondent to submit a reply that merely because his caste was included as a Scheduled Tribe in Rajasthan, but not in the State of Uttar Pradesh, he could still claim the benefit of reservation in the State of Uttar Pradesh. In our view, it was this issue which was required to be examined.

7. Shri Vinod Sinha, learned Counsel appearing for the respondent submitted that he is desirous that the issue may be resolved by this Court as it would not be possible for the authority concerned to decide the same. With the consent of the learned Counsel for the parties, we proceeded with the hearing of the case on merit only on that issue.

8. A Constitution Bench of the Hon'ble Supreme Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Ors.*, (1990) 3 SCC 130, considered the case of admission of students in a Medical College in Maharashtra on the basis of the Scheduled Caste Certificate issued by the State of Andhra Pradesh. The Hon'ble Apex Court rejected the contention observing that a person in one State may be Scheduled Caste/Scheduled Tribe, but he may not be entitled for the benefit in another State. Similarly, in *Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in State of Maharashtra and Anr. v. Union of India*, (1994) 5 SCC 244, the Hon'ble Supreme Court examined the issue as to whether the benefit and privilege to the Scheduled Castes and Scheduled Tribes in State of Maharashtra was also available to the persons belonging to other States and the Court held that it is for the State Government to choose whether to give the benefit of reservation, or not for the reason that the State Government is competent enough to restrict the benefit of reservation to the persons belonging to the reserved category provided they belong to the said State and may not extend the same to the candidates belonging to other States for many reasons. The aforesaid judgment clearly holds that a person belonging to reserved category in State 'A' may not be able to claim the benefit in State 'B' unless State 'B' also so provides. Reservation depends on a

large number of considerations including the social and financial status of a particular community, which may be restricted to a particular part of the State or even to a particular part of a District and a person belonging to the same community in a part of a District or a part of the State, may be denied the said rights in the other parts. Therefore, whether the reservation is to be provided or not, fall within the exclusive domain of the State and no one else has any right to so claim.

9. In *Union of India v. Dudh Nath Prasad*, AIR 2000 SC 525, the Hon'ble Supreme Court held that if a candidate belonging to a particular community has migrated at a very early age to another State where his community has been put under reserved category, he may be entitled for the benefit of the reservation policy.

10. Shri Vinod Sinha, learned Counsel for the appellant placed strong reliance upon a Division Bench judgment of this Court rendered on 24th April, 2004 in Writ Petition No. 22271 of 2000, *Sunil Kumar v. Life Insurance Corporation and Ors.*, in support of his submissions that the petitioner-appellant was entitled to the benefit of a Scheduled Tribe, even though the Meena Community had been declared a Scheduled Tribe in the State of Rajasthan and not in the State of Uttar Pradesh. A perusal of the aforesaid Division Bench judgment indicates that it had placed reliance upon another Division Bench judgment of this Court in the case of *Sanjay Kumar Singh v. State of U.P. and Anr.*, (2000) 1 UPLBEC 729.

11. We, however, find that the aforesaid decision in the case of *Sanjay Kumar Singh* (supra) has been set aside by the Hon'ble Supreme Court in the case of *U.P. Public Service Commission, Allahabad v. Sanjay Kumar Singh*, 2003 (4) ESC 411 : (2003) 7 SCC 657 and, therefore, it is not open to the petitioner-appellant to take the benefit of the decision given in the case of *Sunil Kumar* (supra). The Hon'ble Supreme Court in the said case considered whether it was open to the respondents to claim the benefit of reservation in public service in the State of Uttar Pradesh as a member of Scheduled Tribe though 'Naga' was not specified Scheduled Tribe in the State of U.P. and observed as follows :

'It may be noted that the reservation in favour of Scheduled Tribes to the extent of 2% is provided for by the U.P. Public Services (Reservation of Scheduled Castes,

Scheduled Tribes and other Backward Classes) Act, 1994. There is no particular definition of 'Scheduled Tribe' in the Act. However, the term 'Scheduled Tribe' can only be understood in accordance with the provisions of Article 342 read with the notifications issued thereunder as interpreted by this Court.....

The contention of the appellants should therefore be accepted and the appellant cannot be treated as a Scheduled Tribe candidate so as to qualify himself to claim reservation against the vacancy reserved for Scheduled Tribe in public services in the State of U.P. The view of the High Court cannot be sustained as it goes counter to the pronouncements of this Court. Hence it is set aside and the appeals are allowed without cost. However, in the peculiar circumstances of the case, the ends of justice would be met if the appellants are directed to consider the case of the respondent in general category and if in comparison with the general category candidates selected, the respondent had secured higher marks/grading, he should be offered appointment to an appropriate post against one of the existing vacancies.'

12. Thus, in view of the aforesaid observations of the Hon'ble Supreme Court, it has to be held that the petitioner-appellant cannot claim the benefit of reservation as a Scheduled Tribe on the sole basis that Meena caste had been declared as a Scheduled Tribe in the State of Rajasthan.

13. Reference may also be made to a decision of the Supreme Court in the case of State of Maharashtra v. Union of India and Anr., JT 1994 (4) SC 423, in which it was held as follows :

'It must also be realised that the language of Clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation to each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two Articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President after consulting the Governor of State A, it is difficult to understand how that specification made 'in relation to that State' can be treated, as specification in relation to any other State whose Governor the

President has riot consulted.'

14. The aforesaid judgment was followed by a Division Bench of this Court in the case of Satpal Meena and Ors. v. U.P. Public Service Commission and Ors., (2003) 1 UPLBEC 349, which related to Meena Caste and it was sought to be contended, as in the present case, that since the said caste was considered as a Scheduled Tribe in Rajasthan, it should also be considered as a Scheduled Tribe in the State of U.P. This plea was rejected by the Court.

15. In view of the law laid down by the Supreme Court, no other conclusion is possible and, therefore, in our opinion, the order impugned in the writ petition cannot be quashed solely on the ground that the principles of natural justice have not been complied with.

16. In view of the above, the special appeal deserves to be allowed and the order impugned is liable to be set aside.

17. The special appeal is, therefore, allowed and the judgment and order dated 7th October, 2004 of the learned Judge of this Court is set aside. However, as directed by the Hon'ble Supreme Court in the case of Sanjay Kumar Singh (supra), the appellants are directed to consider the case of the respondent in General Category and if in comparison with the General category candidates selected, the respondent had secured higher marks/grading, he should be offered appointment to an appropriate post against one of the existing vacancies if any. The parties shall bear their own costs.