

Mohd. Saleem Vs. State

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Court : Rajasthan

Decided On : Feb-12-2002

Reported in : RLW2003(1)Raj364; 2002(3)WLN410

Judge : N.N. Mathur and; Harbans Lal, JJ.

Appeal No. : D.B. Special Appeal (Writ) No. 732 of 2001

Appellant : Mohd. Saleem

Respondent : State

Advocate for Def. : M.R. Singhvi, Adv.

Advocate for Pet/Ap. : I.R. Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. This special appeal is directed against the judgment of the learned Single Judge dated 1.8.2001, dismissing the writ petition.

2. The short facts giving rise to the instant appeal are that the petitioner was appointed on the post of Urdu Teacher Grade-III by order dated 24.3.2001. However, before he could settle down with one and half month he was removed

from the service by order dated 7.5.2001 on the ground that there was some typographical error in the mark-sheet of B.Ed. Examination June, 1997 produced by him which has brought him down in the merit. It was clearly mentioned in the order of removal that there was a mistake in preparation of the merit list because of calculation mistake in the mark-sheet, as much as the grand total was shown as 554 instead of 454. Taking 454 marks in the merit list for selection of 30 Grade-III teacher he should have been ranked at Sl. No. 44-A. He was wrongly given higher merit in preference of persons of actual higher merit because of clerical calculation mistake in the mark-sheet. In the opinion of the learned Single Judge, it was the case of rectification of mistake, as such no notice was required to be given.

3. It is contended by Mr. I.R. Choudhary that once the petitioner was given appointment, he could not have been removed without notice and as such the order of removal dated 7.5.2001 suffers from serious illegality and is liable to be quashed. The learned counsel has placed reliance on the judgments of this Court in *Ganesh Sen v. Union Bank of India and Ors.* (1), *Sahi Ram and Ors. v. State* (2), *Smt. Aruna Puri and Ors. v. State and Ors.* (3) and *Shrawan Kumar Jha v. State* (4), In *Ganesh Sen v. Union Bank of India* the services of the petitioner were terminated without notice on the ground that he had not submitted the caste certificate. Apparently it was not a case of rectification of mistake. If the notice would have been given, he could have satisfied the authority that he was rightly selected and given appointment against the reserve vacancy and he would have also produced the caste certificate. He could contend that merit can not be elbow out on technicalities. The case in hand is just reverse, as petitioner want to take advantage of technicalities to elbow out person of higher merit. In *Sahi Ram's* case the authority formed an opinion that District Education Committee committed grave and serious illegalities and irregularities in making the selections. The services of the teachers were terminated having found the illegalities in the selection process. Obviously it was also riot a case of rectifying the mistake. The terminated teachers were definitely entitled to satisfy the authority that there was no illegality in the process of selection for which they were required to be given notice. In *Smt. Aruna Puri's* case the appointment made after a due process of selection were reversed on the basis of some decision relating to the different selection process, subsequently rendered by the Court holding a similar process adopted for

selection of such candidates to be illegal. The order of termination without notice was held to be illegal, as party affected was required to be heard on the question process of Selection. The another case relied upon by the petitioner is Shrawan Kumar's case. In the said case appointments were cancelled by the Government on the ground that District Superintendent of School had no authority to give appointment. The services were terminated without giving notice. The Apex Court held that the opportunity ought to have been given to the teachers to satisfy as to whether the appointments were validly made. Obviously it is also not a case of rectification of mistake. Thus, none of the case cited by the learned counsel advance the case of the appellant.

4. In the instant case, the original mark-sheet issued by the Kota University for the B.Ed, examination June, 1997, of petitioner Mohd. Saleem has been placed before us. The total shown is $325+129=554$, there is an apparent mistake as $325+129$ can not be 554 but only 454. Thus, it is clearly case of rectification of mistake. The Apex Court in Board of Mining Examination v. Ramjee (5), has observed that the natural justice is no unruly horse, no lurking land mine, nor a judicial cure- all. The Court further observed that unnatural expansion of natural justice, without reference of the administrative realities in other factors of a given case, can be exasperating. In this context the reference may also be made to the decision of the Apex Court in S.L. Kapoor v. Jagmohan and Ors. (6), wherein it is held that court shall not issue its writ to compel the observance of natural justice where on the admitted or undisputable facts only one conclusion is possible and under the law only one penalty is permissible.

5. Thus in our view the requirement of principal of natural justice is not attracted in the instant case.

6. We find no informity in the order of the learned Single Judge dismissing the writ petition. The special appeal is rejected.