SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jagdish Kumar Vs. State of J and K

Jagdish Kumar Vs. State of J and K

SooperKanoon Citation : sooperkanoon.com/901640

Court : Jammu and Kashmir

Decided On : Nov-18-2003

Reported in : AIR2004J& K105,2004(2)JKJ47

Judge : S.K. Gupta, J.

Acts : Constitution of India - Article 226

Appeal No. : SWP No. 1134/2002

Appellant : Jagdish Kumar

Respondent : State of J and K

Advocate for Def. : A.H. Qazi, AAG

Advocate for Pet/Ap. : Rakesh Kumar, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. By means of this petition, the petitioner seeks quashing of the report of respondent-2 bearing No. 418-420/RPC/RSP dated 24-10-2002, by issuance of a writ in the nature of certiorari in alleging that the report has been based on deep rooted conspiracy. It is further stated that the document produced by the petitioner

with regard to proof of his being permanent resident of the State is genuine, but yet respondent-2 made a false and frivolous report contrary to the record and tainted with mala fides, illegality and arbitrariness on account of old enmity with the family of the petitioner because of a land dispute between them. That respondent-2 has played a mischief by misplacing facts, on the basis of which permanent resident certificate was issued, with a purposive intent to harass and humiliate and harm the petitioner, who has been selected and appointed as a teacher and, at present, working in Government Primary School, Kotli Mirdian, R.S. Pura.

2. Respondent-2 in his reply has taken a stand that the petitioner on selection by the Service Selection Board was appointed as a teacher vide order dated 13-05-2002. It is stated that the petitioner submitted a certificate showing that certificate of permanent resident of the petitioner is under process before Tehsildar, R.S. Pura. This was, however, valid for one month. Subsequently, a certificate produced by the petitioner, shown to have been issued by the Additional Deputy Commissioner, Jammu vide order No. 213 dated 02-07-1997, to the Chief Education Officer who in turn made a request to the Deputy Commissioner, Jammu to verify its genuineness. A copy of the under process certificate dated 28-3-2002 was also enclosed with the request made by the Chief Education Officer, Jammu to the Deputy Commissioner, Jammu for verification. Respondent -2 was endorsed a letter by the Deputy Commissioner for verification of the certificate of Jagdish Kumar, petitioner. It is stated that on verification from the record, it was found by respondent -2 that no certificate under File No. 213/RPC on 2-7-1997 has been issued in favour of the petitioner. This file pertained to the certificate of permanent resident issued in favour of Badri Nath S/o Sain Dass R/o Chaula Tehsil R.S. Pura. Accordingly, report No. 418-20/PRC dated 24-10-2002, impugned in the writ petition, was sent to the Zonal Education Officer, R.S. Pura, for information and necessary action. It is further stated by the respondent No. 2 that no Permanent Resident Certificate under File No. 213/PRC/1987-88 dated 2-7-1997 has been issued in favour of the petitioner. By providing this information, on enquiry as to the genuineness of the Permanent Resident Certificate by the Zonal Education Officer, R.S. Pura, no right much less fundamental, statutory or legal right, of the petitioner has been violated, so as to entitle him to maintain this writ petition. According to the respondents, for the post of teacher, the petitioner

succeeded in getting his application form accepted on the basis of fake permanent resident certificate allegedly shown to have been issued under File No. 1450/PRC/83-84 dated 7-6-1984, as disclosed to the respondent by the State Service Selection Board, Jammu. Verification report has been issued by the respondents, after inspection and perusal of the official record relating to the issuance of the Permanent Resident Certificate. The verification report, being factually correct and based on the inspection of the relevant record, does not violate any right of the petitioner, so as to invoke the extraordinary writ jurisdiction of the Court.

3. I have heard the learned counsel appearing for the respective parties and also persused the record.

4. It may be pointed out at the first flush that the writ of certiorari can be issued only if in recording a finding of fact the Authority has either acted on inadmissible evidence or has refused to admit admissible evidence, or the finding is not supported by any evidence at all; such errors are errors of law. The writ jurisdiction extends only to cases, where the Authority has acted in excess of jurisdiction or refused to exercise jurisdiction or acted illegally or improperly in the exercise of its jurisdiction, thereby causing grave miscarriage of justice. Certiorari will lie in respect of orders/reports marked as errors of law apparent on the face of the record and violation of principles of natural justice. A petition for writ of certiorari may lie where the impugned order on the face of it, is erroneous or infringes the petitioner's Fundamental Rights. The jurisdiction of the Court for issuance of a writ of certiorari can be invoked, where the decision or report of the Authority contravenes Fundamental Rights, or where the law under which it has acted in making a report or arriving at its decision is ultra vires or violative of a Fundamental Right. It must be established that the impugned order has resulted in manifest injustice.

5. In this case, the petitioner Jagdish Kumar, is aggrieved of the report of respondent-2, Additional Deputy Commissioner, Jammu, with regard to the verification of his Permanent Resident Certificate after the perusal of the Office record pertaining to the issuance of Permanent Resident Certificate has been

issued in favour of Jagdish kumar, petitioner, vide File No. 213/PRC/1987-88 dated 2-7-1997. It is not in dispute that the record pertaining to issuance of Permanent Resident Certificate is maintained in the Office of Additional Deputy Commissioner, Jammu. It was the Chief Education Officer, who requested the Deputy Commissioner, to verify the genuineness of the Certificate in respect of the petitioner being Permanent Resident of Jammu and Kashmir State produced by him, after having been selected by Service Selection Board as Teacher. The photocopy of the Permanent Resident Certificate of the Petitioner was shown to have been issued by the Office of the Additional Deputy Commissioner in File No. 213/PRC/1987-88 dated 2-7-1997. The Deputy Commissioner, Jammu, however, endorsed this letter to respondent-2 for verification as to its genuineness. It was under these circumstances that a report with regard to the Permanent Resident Certificate in respect of Jagdish Kumar, Petitioner, came to be submitted by respondent-2 to the Deputy Commissioner, Jammu, after verification of the Office records, particularly File No. 213/PRC/1987-88 dated 2-7-1997. It has been vehemently urged by the learned counsel appearing for the petitioner that no opportunity of being heard was given to the petitioner by respondent-2 before submitting the report dated 24-10-2002 with regard to the genuineness of his Permanent Resident Certificate.

6. It is significant to point out that report is not a decision given by respondent-2, for which opportunity of being heard was required to be afforded to the petitioner, Certiorari will lie only, where a judicial or quasi-judicial authority has violated the principles of natural justice, even though the authority acted within its jurisdiction. Submission of a report with regard to issuance of Permanent Resident Certificate in favour of the petitioner, after verification from the official record, is not a decision taken by respondent-2. Such an opportunity is required to be given only, where the Competent Authority has taken a decision on the basis of such a report. In this case, no decision has been taken, but only a report has been submitted, which does not necessitated that an opportunity be given to the petitioner and, thus, principles of natural justice cannot be said to have been violated by the respondent in this case. The contention raised by the petitioner is, therefore, without substance and cannot be accepted. Report submitted by respondent-2, being not a decision, certiorari will not be available to the petitioner. There is no

statutory right or obligation involved and the matter is simply one of report with regard to the issuance of Permanent Resident Certificate after verification from the official record of the Additional Deputy Commissioner, Jammu. No prima facie case has been carved out, of violation of legally enforceable statutory or fundamental right, so as to invoke the writ jurisdiction of the Court.

7. In this view of the matter, there is no merit in this writ petition and is, accordingly, dismissed at the preliminary stage of admission.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com