

Kishan Kumar Vs. State of U.P. and Others

Kishan Kumar Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/918104

Court : Allahabad

Decided On : Dec-01-2010

Judge : Shishir Kumar, J.

Appeal No. : WRIT - A No. - 38959 of 2008

Appellant : Kishan Kumar

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : A.K. Rai; Vishnu Kr. Singh, Advs

Judgement :

1. This writ petition has been filed for quashing the order impugned dated 25.10.2007, Annexure-1 to the writ petition as well as the order dated 24.6.2008, Annexure-2 to the writ petition. Further prayer is for issuing a writ in the nature of mandamus commanding the respondents to make payment of salary to the petitioner along with arrears.

2. The facts arising out of the present writ petition are that on the basis of advertisement made by the respondents for the purpose of recruitment of constables in the State, the petitioner applied in response to the aforesaid advertisement and was selected and was sent for training. After completion of the training, he was posted as constable in district-Agra on 4.12.2007. In the mean

time, the Superintendent of Police, Agra has issued an order by which the services of the petitioner has been dispensed with on the ground that he has concealed the material facts and has not disclosed that a criminal case was filed against him under Sections 323, 324 and 307 IPC. The petitioner aggrieved by the aforesaid order filed a writ petition but the said writ petition was dismissed on the ground that the petitioner has an alternative remedy by way of filing an appeal under Rule 20 of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules 1991. In pursuance of the orders of this Court, the petitioner filed an appeal which too has been rejected by the order dated 24.6.2008. Hence, the present writ petition.

3. Learned counsel for the petitioner has submitted before this Court that the main ground for terminating the services of the petitioner was that he has concealed the material facts while filing an affidavit at the time of his selection and has not disclosed the fact that an First Information Report was lodged against him under Sections 323,324 and 307 IPC and in pursuance of the First Information Report a case was tried before the Sessions Court. It has further been mentioned that the petitioner was honourably acquitted by the criminal court on 1.10.2004. A copy of the same has been filed as Annexure-5 to the writ petition. The petitioner, in the bona fide belief, was under the impression that once he has honourably been acquitted by the criminal court, then the natural consequence would be that there was no criminal case against him. In the appeal filed by the petitioner, the petitioner has clearly stated that at the time of recruitment in the year 2006, he was only required to sign a proforma and the contents of the said proforma was not shown to him. The act of the petitioner in not disclosing the aforesaid fact cannot be said to be deliberate and it cannot be termed as concealment of fact. The affidavit filed on behalf of the petitioner concealing this fact cannot be said to be deliberate being the fact that there was no column showing therein that no criminal case was ever lodged against him. Further a submission has been made that before passing the order of termination, no notice and opportunity of hearing was ever afforded to the petitioner by the Senior Superintending of Police, therefore, the order impugned is in clear violation of the principles of natural justice. The appeal too has been rejected without considering the contentions raised on behalf of the petitioner. Before passing the order of termination no

inquiry was ever conducted neither any show cause notice was ever given to the petitioner.

4. Learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court reported in 2009 SCCL. COM.3241, Kamal Nayan Mishra v. State of Madhya Pradesh and others. Placing reliance upon the aforesaid judgment learned counsel for the petitioner submits that dismissal, removal and reduction in rank of an employee of the Union or State, if he has been charge-sheeted in a criminal case and was acquitted, then in that case if that information has not been furnished, it cannot be said to be concealment. Further a person being the holder of a civil post can be terminated from service after affording an opportunity of meeting the charges against him. Further reliance has been placed upon a judgment of this Court in Writ Petition No.51282 of 2007, Sanjay Kumar Singh v. State of U.P. and others decided on 27.1.2010 in which this Court has taken a view that in case if a person was acquitted prior to the date of submission of the form and there is no column in the form of declaration that this fact is to be mentioned in the case in which a person was tried and acquitted, then in that case there was no requirement of the said declaration. The petitioner in good faith has not mentioned the fact of the criminal trial in which the petitioner has already been acquitted in 2004. Further submission has been made that the petitioner has not been afforded any opportunity in view of para 541 of the Police Regulations which provides that if the appointing authority is of opinion that in case the service of the police officer is to be dispensed with, then a notice and opportunity to that effect and the ground of charges have to be supplied and an opportunity to that effect has to be given. As no notice and opportunity has been given to the petitioner, therefore, the order is bad and is liable to be quashed.

5. A counter affidavit has been filed on behalf of the respondents. The only submission made by the learned Standing Counsel is that the petitioner was involved in a criminal case because in spite of the fact that he has been acquitted, a declaration to that effect in the affidavit, was to be given, if the same has not been given, it amounts to concealment and in such circumstances, if the respondents, after due investigation, have come to the conclusion that this fact has been concealed by the petitioner, therefore a presumption will be that he has

obtained appointment by concealing the fact regarding the criminal case, though he was acquitted in the year 2004.

6. I have heard the learned counsel for the parties and perused the record. As the counter and rejoinder affidavits have already been exchanged, therefore, with the consent of the parties, this writ petition is being disposed of finally.

7. As regards the submission made by the petitioner to this effect that as there was no clause regarding the fact that if a person who is going to be appointed on the basis of recruitment, if there was a criminal case in past and he has been acquitted, this fact was to be mentioned in the declaration form. As there was no clause to that effect, therefore, the petitioner in good faith has not declared this fact regarding acquittal of the petitioner in the year 2004. In my opinion if there was no clause to this effect regarding any criminal proceeding in past, then there was no obligation on the part of a person concerned to declare. In my opinion it cannot be held or stated that it was intentional. In case the criminal case was pending and this fact has been concealed by a person for the purpose of getting an appointment, in that case, an inference can be drawn that there is concealment of this fact. The order follows an exparte inquiry and cast an aspersion on the petitioner.

8. The Apex Court in Chandra Prakash Shahi v. State of U.P. & others reported in 2000 (1) SCC Page 152 has held that such an order amounts to dismissal, therefore, a notice and opportunity was necessary. It has gone to hold that notice is also required under Para 541 of the Police Regulations. Recently a Division Bench of this Court has dealt the issue in Paras Nath Pandey v. Director, North Central Zone, Cultural Centre, Allahabad reported in 2008 Vol. (10) ADJ 283 that such order passed by the authority concerned can not survive.

9. Further admittedly as the petitioner has been given appointment and he was working on the post, therefore, he was entitled to notice and opportunity. It is an admitted case of the respondents that prior to the order impugned terminating the services of the petitioner, no notice and opportunity has been given to the petitioner. In my opinion if a person is working on the post, a civil right accrues and notice and opportunity is necessary. But as that has not been done, then order can

be treated to be violative of principles of natural justice. Further as there is no compliance of Regulation 541 (2) of the Police Regulations, therefore, in my opinion, the orders passed by the respondents terminating the services of the petitioner 25.10.2007 Annexure-1 to the writ petition as well as dated 24.6.2008, Annexure-2 to the writ petition are not sustainable in law and are hereby quashed. The petitioner be reinstated forthwith with continuity of service and is entitled for all the consequential benefits.

10. The writ petition is allowed accordingly.

11. It is however, open to the respondents to take any action against the petitioner, if so advised strictly in accordance with law after following the proper procedure as provided in the Police Regulations.

12. No order is passed as to costs.

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