

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 209 of 2021

Appellant :- State Of U.P. Thru. Prin. Secy. Civil Defence Lko And Others

Respondent :- Chhintar Mal Meena

Counsel for Appellant :- C.S.C.,

Counsel for Respondent :- Sharad Kumar Srivastava, Shobhit Mohan Shukla

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Attau Rahman Masoodi, J.

(Per: Arun Bhansali, CJ)

1. This special appeal is preferred by the State against the judgment and order dated 22.03.2021, passed in Writ Petition No. 26579/SS/2019, whereby the petition filed by the petitioner/respondent against the order dated 16.09.2019 dismissing him from the service has been allowed and the order impugned has been quashed. State respondents have been directed to allow the petitioner to continue on the post of Deputy Controller with all consequential benefits.

2. The facts of the case, as noticed by learned Single Judge, are that number of posts were advertised by the Directorate of Civil Defence, U.P. including five posts of Assistant Deputy Controller, Junior Scale on 08.09.1989. The petitioner/respondent applied in the category of Scheduled Tribe for the said post and after going through the selection process, he was declared successful and appointment letter dated 28.06.1990 was issued on 17.07.1990. He was confirmed in service vide order dated 26.08.1998 and thereafter, promoted on the post of Assistant Deputy Controller, Senior Scale on 11.01.2008 and was further promoted on the post of Deputy Controller on 31.07.2013.

3. A show cause notice dated 08.02.2019, i.e., after about 30 years of his appointment, was issued to the petitioner/respondent to explain as to why his services may not be terminated as he has wrongly taken the benefit of his

belonging to Scheduled Tribe in the State of Uttar Pradesh. He submitted his reply. Whereafter, impugned order dated 16.09.2019 was passed by the State respondents, *inter alia*, on coming to the conclusion that as the 'Meena' community is not notified as Tribe in the State of Uttar Pradesh, the selection made in the year 1990 was contrary to the Government Orders and therefore, the order dated 28.06.1990, appointing the petitioner was cancelled and he was dismissed from the service.

4. Feeling aggrieved, the petitioner/respondent filed writ petition. Learned Single Judge, after hearing the parties and referring to the judgment of the Division Bench, in **Writ Petition No. 22271(C) of 2000 (Sunil Kumar Vs. Life Insurance Corporation of India and others)**, decided on 24.04.2003, came to the conclusion that the petitioner/respondent could have sought employment on the basis of advertisement issued and the reservation could not be denied to him. It was further observed that the respondent had clearly indicated the fact of his being belonging to 'Meena' Community and the same was very much within the knowledge of the Appointing Authority, when he was selected, accorded appointment and in due course, got two promotions. It was not the case of the State respondents that any fraud or forgery was committed by him for getting the employment and consequently, set aside the order dated 16.09.2019 and directed as noticed hereinbefore.

5. Learned counsel for the State/appellant made vehement submissions that learned Single Judge was not justified in allowing the writ petition. Submission has been made that as, admittedly, the respondent did not fall within the notified Scheduled Tribes of State of Uttar Pradesh, he was not eligible to get appointment and therefore, when the said fact came to the notice, may be after 30 years, the order has been rightly passed. Reliance has been placed on **Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others: 2017(8) SCC 670**.

6. Learned counsel for the respondent made submissions that the respondent, at the time of seeking appointment, had disclosed his status as belonging to 'Meena' Community and had produced certificate in this regard.

There was no suppression worth the name, the State Authorities, themselves, finding him eligible and on standing in merit, accorded appointment. The respondent has served the State for 30 long years with dedication. He was accorded two promotions and in the said promotion, he was not accorded any benefit of his belonging to reserved category. Now, he has attained the age of superannuation on 30.06.2023 and therefore, for no fault of the respondent, he cannot be punished and the State respondents cannot seek to reverse the alleged mistake, which was committed 30 years back. Reliance was placed on **Dr. Shakuntala Mishra National Rehabilitation University Thru. Its Registrar and others vs. Dr. Rajendra Kumar Srivastava and another: Special Appeal No. 332 of 2023, decided on 30.01.2024, at Lucknow, Shivanandan C.T. and others vs. High Court of Kerala and others: 2023 SCC OnLine SC 994 and Md. Zamil Ahmed vs. State of Bihar and others: (2016) 12 SCC 342.**

7. We have considered the submissions made by counsel for the parties and perused the material available on record.

8. It appears that at the relevant time, when the appointment was accorded to the respondent, the issue as to whether a person belonging to Scheduled Tribes of other State was entitled to seek benefit of reservation in another State was not settled inasmuch as in **Sunil Kumar vs. Life Insurance Corporation of India & others (supra)**, a Division Bench of this Court held that if a person, belonging to Scheduled Tribe of other State, seeks employment on the basis of advertisement in another State, he cannot be denied the benefit of reservation. Though the position of law has since been cristalized by judgment of Hon'ble Supreme Court in **Ranjana Kumari vs. State of Uttrakhand and others: (2019) 15 SCC 664.**

9. However, the issue before this Court is whether the State/respondents, after 30 years of according appointment to the respondent, wherein, there has been no suppression worth the name, have any justification for putting an end to the appointment/employment on the ground that he was initially ineligible/lacked the qualification pertaining to his caste.

10. In the case of **Md. Zamil Ahmed Vs. State of Bihar (supra)**, Hon'ble Supreme Court, on coming to the conclusion that it was a conscious decision taken by the State for giving appointment and therefore, there was no justification on the part of the State to wake up after lapse of 15 years and terminate the services on the ground of qualification.

11. A Division Bench of this Court, in **Dr. Shakuntala Mishra National Rehabilitation University Thru. Its Registrar (supra)**, after taking into consideration large number of judgments on the issue, came to the following conclusion:

“(59) Thus, this Court is of the view that once a selection is duly made, then in case there is any shortcomings in the said selection which is of such a nature that the same cannot be condoned, action has to be taken expeditiously. In the present case, there is no allegation that the writ petitioner/private respondent had misrepresented about their educational qualifications or their experience or where in any manner misconducted themselves in obtaining selection in the University. In absence of any fraud or misrepresentation having been committed by the writ petitioner/private respondent, the selection cannot be cancelled after long period of seven years.”

12. Recently, Hon'ble Supreme Court, in the case of **Shivanandan C.T. and others Vs. High Court of Kerala (supra)**, which was a matter of selection of Judicial Officer in the State of Kerala, though came to the conclusion that the procedure adopted for selection was arbitrary, but refused to unseat the candidates on the ground of public interest, who had worked for six years.

13. In the present case, the respondent had worked for 30 years and had an unblemished career and therefore, in the light of the said judgments, for the alleged ineligibility, that also in a case where the legal position at the relevant time was uncertain, cannot be sustained.

14. Insofar as, the judgment, in the case of **Chairman and Managing Director, Food Corporation of India (supra)** cited by counsel for the appellant is concerned, the said case pertains to the candidates, who had obtained certificates of belonging to reserved category, though they did not belong to such category. Present is not a case, wherein, the respondent, at any stage, has made any kind of misrepresentation and therefore, the said judgment has no application to the facts of the present case.

15. In view of the above discussions, the judgment passed by the learned Single Judge, does not call for any interference.

16. The appeal has no substance and the same is, therefore, **dismissed**.

Order date: 06.03.2024

nd

(Attau Rahman Masoodi, J.) (Arun Bhansali, CJ)