
(2012) 11 AHC CK 0078

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 3164 of 2000

Mohd.Aneesh Khan

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Nov. 2, 2012

Hon'ble Judges: Rajes Kumar, J

Final Decision: Dismissed

Judgement

Rajes Kumar, J.

Heard Sri Manas Bhargav, learned counsel for the petitioner and Sri Pankaj Rai, learned Additional Chief Standing Counsel for the respondents.

It is the case of the petitioner that in pursuance of the advertisement for the post of Constable in P.A.C., the petitioner applied and after qualifying various tests, he was sent for training at Sitapur IInd Battalion P.A.C. and thereafter he has been appointed. However, by the order dated 19.3.1999, the petitioner's service has been terminated by the Commandant, IInd Battalion, Sitapur on the ground that services of the petitioner are no more required further. No other reason has been given. Against the said order, the petitioner filed appeal, which has also been dismissed by the Deputy Inspector General 1, P.A.C., Bareilly Region, Bareilly vide order dated 16.7.1999. Being aggrieved by the said order, the petitioner filed the present writ petition. The writ petition has been entertained and an interim order has been passed staying the operation of the order dated 19.3.1999. However, it is not clear that whether the petitioner has joined or not.

Counter and rejoinder affidavits have been filed.

Learned counsel for the petitioner submitted that without giving any opportunity the impugned order has been passed merely on the ground that the services of the petitioner are no more required. The petitioner was the duly appointed Constable in pursuance of the advertisement after being successful in all the tests and, therefore, the termination of

services of the petitioner without giving any opportunity and without giving any reason that why the services of the petitioner are not required is wholly unjustified. He submitted that in the counter affidavit, stand has been taken that at the time of recruitment, an affidavit has been filed stating therein that neither any criminal case was filed against the petitioner nor any criminal case is pending while on making an inquiry about his conduct, it was found that two criminal cases, namely, Criminal Case No. 13 of 1995, under Sections 452/323/504/506 I.P.C. and Criminal Case No. 26A/95, under Sections 147/452/323/504/506 I.P.C. were filed against the petitioner in which the petitioner has been acquitted by the Court on 11.2.1998. While this fact has been concealed in the affidavit. He submitted that this fact has been controverted by the petitioner in as much as in the case of Ram Kumar vs. State of U.P. and others, reported in (2011) 4 UPLBEC 3366. The Apex Court has held that if a person has been acquitted in criminal charges levelled against him merely nondisclosure of such criminal case in the affidavit could not make the appointment illegal.

Learned Additional Chief Standing Counsel submitted that the petitioner's service was temporary and his service was terminated under the U.P. Temporary Government Employees (Termination of Service) Rules, 1975 on payment of one month's salary and allowances. Under the said Rules the services could be terminated forthwith without giving any notice. He further submitted that at the time of recruitment, the petitioner has given wrong information and has concealed the fact. The petitioner was involved in two criminal cases while such fact has not been disclosed rather he has stated that no criminal case has been filed against him. He submitted that though the petitioner was knowing about these two criminal cases still the petitioner has not disclosed such fact and on verification of the character it has been detected that against the petitioner two criminal cases were lodged, therefore, the petitioner is not entitled to continue. In support of the contention he relied upon various decisions:

1 State of U.P. and another Vs. Kushal Kishore Shukla, reported in (1991) 1 SCC 691.

2 Triveni Shankar Saxena Vs. State of U.P. and others, reported in AIR 1992 SC 496.

3 Parshottam Lal Dhingra Vs. Union of India, reported in AIR 1958 SC 36.

4 Jagdish Mitter Vs. Union of India, reported in AIR 1964 SC 449.

I have considered rival submissions and perused the record.

It is not in dispute that the petitioner has been appointed after undergoing various tests and has been sent for training. Though his appointment was temporary but since the petitioner was appointed as a regular employee the termination was not a termination simplicitor. The petitioner has been appointed along with several persons. The petitioner alone cannot be isolated and be terminated only on the ground that his service is not required without any reason that why his service was not required. At least some reason must have been given. In the counter affidavit, for the first time, it was stated that wrong

information has been given by the petitioner in the affidavit at the time of recruitment while such information was within his knowledge. This reason has not been given in the impugned order of termination. It is a new ground taken in the counter affidavit. In my view that in case where the selections are made in mass in pursuance of an advertisement following the proper procedure while terminating the services the reason should be informed and opportunity should be given. In case if this procedure would not be adopted it may lead to arbitrary exercise of discretion under the Rule.

In view of the above, I am of the view that let the matter be relegated back to the Commandant IInd Battalion P.A.C. Sitapur to pass a fresh order within three months from the date of presentation of certified copy of this order after giving opportunity of hearing to the petitioner informing the reason for termination and giving opportunity to the petitioner to file the reply. While deciding the matter afresh and dealing with the alleged affidavit, filed by the petitioner, the Commandant IInd Battalion P.A.C. Sitapur may examine that whether such two criminal cases were in the knowledge of the petitioner at the time of filing of the affidavit in which the petitioner has been acquitted and in the light of the law laid down by this Court Civil Misc. Writ Petition No. 38098 of 1994 Akhilesh Kumar @ Babloo Vs. Commandant, 47 P.A.C. Vahini (Task Force), Bareilly & others, decided on 3.8.2012. The impugned order of Commandant IInd Battalion P.A.C. Sitapur dated 19.3.1999 and the appellate order dated 16.7.1999 shall be subject to the fresh order which will be passed by the Commandant IInd Battalion P.A.C. Sitapur.

With the aforesaid observations, the writ petition is disposed of.