
(2012) 2 ADJ 680

Allahabad High Court

Case No: Special Appeal No. 42 of 2004

State of U.P. and
Others

APPELLANT

Vs

Awadhesh Kumar
Bharti

RESPONDENT

Date of Decision: Feb. 1, 2012

Acts Referred:

Penal Code, 1860 (IPC) " Section 498A, 504, 506

Citation: (2012) 2 ADJ 680

Hon'ble Judges: Ritu Raj Awasthi, J; Pradeep Kant, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Hon. Ritu Raj Awasthi, J.

Heard learned Standing Counsel for the appellant as well as Sri S.N. Bhardwaj, learned counsel for the

respondent and perused the records.

2. The present special appeal has been filed challenging the judgment and order dated 16.9.2003 passed in Writ Petition No. 5093 (SS) of 2000;

Avadhesh Kumar Bhartiya Vs. State of U.P. and others whereby the cancellation of selection of the respondent as Recruit-Constable in PAC was

quashed by the learned Single Judge.

3. Learned counsel for the appellant submitted that the learned Single Judge has committed manifest error of law by not appreciating the fact that

the respondent-petitioner was not appointed on the post of Recruit-Constable in PAC and he was only short listed in the selection held for the post

of Constable. His name figured in the select list only and he was not appointed, therefore, the question does not arise for termination of service of

the respondent-petitioner under the U.P. Temporary Government Servant (Termination of Services) Rules, 1975.

4. It is further submitted that, in fact, by order dated 19.3.1999, the respondent-petitioner was informed that he has concealed the material fact

that a criminal case is pending against him at the time of submission of application for recruitment and that fact has come to knowledge of the

authority at the time of verification as such he has filed a wrong affidavit, therefore, his selection on the post of Recruit-Constable is cancelled.

5. The contention of the learned counsel for the appellant is that only the selection of respondent-petitioner was cancelled, however, the learned

Single Judge failed to appreciate that the respondent-petitioner was not appointed and as such there was no question of termination of service.

6. It is further contended that in the counter affidavit filed in the writ petition it was specifically averred by the appellant that the name of the

respondent-petitioner was placed in the tentative list of the select candidates and the respondent-petitioner was never appointed on the post of

Recruit-Constable. In the said selection in the list of tentative candidates, the name of respondent-petitioner was short listed. The said short listing

of the candidates was made in the ratio of 2:1 against the vacancies meaning thereby that in the tentative list, the short listed candidates were more

than double the vacancies and from that select list, the candidates were to be appointed on the post of Recruit-Constable after verification of

character and antecedents, etc. The respondent-petitioner was never appointed on the post of Recruit-Constable and as such there is no question

of termination of his service.

7. Learned counsel for the respondent on the other hand submitted that the respondent-petitioner had applied for appointment on the post of

Constable in PAC. Due to the personal rivalry, he was falsely implicated in a criminal case under Sections 498-A/504/506 IPC by in-laws of his

elder brother. In the said criminal case, he was acquitted on merit by judgment and order dated 19.11.1998. The respondent-petitioner after

acquittal had approached this Court by filing Writ Petition No. 1187 (SS) of 2000 whereby this Court by order dated 03.03.2000 directed the

authorities to consider the case of the respondent-petitioner for appointment.

8. It was thereafter that the Commandant, IIInd Battalion, PAC by order dated 15.5.2000 had rejected the candidature of the respondent-

petitioner on the ground that in the affidavit submitted by the respondent-petitioner, he had intentionally concealed the material information

regarding pendency of a criminal case against him. It was declared in the said affidavit that in case any information given by him is found to be

wrong, his candidature shall be liable to be cancelled. Since the selection on the post of Constable in PAC was held in the year 1998 and the

process of recruitment has been completed and selected candidates have already been sent on training, therefore, it is not possible to send the

respondent-petitioner on training.

9. Feeling aggrieved against the said order, the respondent-petitioner had filed Writ Petition No. 5093 (SS) of 2000 decided on 16.9.2003, which

order is under challenge.

10. It is contended that in the case of Awadhes Kumar Sharma Vs. Union of India and others; (2000) 1 UPLBEC (763), it has been held that

once the petitioner was acquitted by the criminal Court and the acquittal became final, it was to be treated as if he was not involved in any criminal

case as such there was no fault on the part of the respondent-petitioner in case he had not disclosed at the time of recruitment that he was earlier

involved in a criminal case. The authorities were not justified to terminate the service of the respondent-petitioner on that ground, that too without

affording opportunity of hearing.

11. The contention of the learned counsel for the respondent is that the learned Single Judge has rightly considered the pleas raised by the

respondent in the writ petition and had quashed the impugned order dated 19.3.1999.

12. We have considered the submissions made by the parties' counsel and gone through the records.

13. The perusal of the order dated 19.3.1999 as well as the order dated 15.5.2000 which were challenged in the writ petition clearly indicates that

the appellant had given reasons for cancellation of selection of the respondent-petitioner on the post of Constable in PAC. In the counter affidavit

filed in the writ petitioner by the appellants, it was their specific case that the respondent-petitioner was never appointed on the post of Recruit-

Constable and he was only short listed in the selection held for the post in question.

14. The learned Single Judge while deciding the case failed to appreciate the aforesaid pleas of the appellants and has wrongly observed in the

impugned judgment and order that: "It was only on 19.3.1999 that the impugned order of termination from service was passed and subsequently

served on the petitioner. In this order the grounds of termination have not been disclosed. It is said that his services are no more required.

15. In fact, the perusal of the orders dated 19.3.1999 and 15.5.2000, which were under challenge in the writ petition clearly indicates that the

reasons were disclosed for cancellation of the selection of the respondent on the post of Recruit-Constable in PAC.

16. The law laid down by the Division Bench of this Court in the case of Awadhes Kumar Sharma (supra) would be of no assistance to the

respondent, as he was not appointed on the post of Recruit-Constable. In fact, the respondent was only short listed in the selection held for the

post in question and he was yet to be appointed.

17. Learned counsel for the respondent has failed to satisfy us as to whether the respondent-petitioner was sent on training after the said selection

and whether he was working on the post of Recruit-Constable at the time of passing of the impugned judgment and order dated 19.3.1999.

18. In this view of the matter, we are of considered opinion that the judgment and order dated 16.9.2003 passed in Writ Petition No. 5093 (SS)

of 2000 is not sustainable in the eyes of law. Accordingly, it is hereby set aside.

19. The special appeal is allowed.