

(2010) 11 AHC CK 0209

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No.57291 of 2008

Rahul Kumar Chaubey

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision: Nov. 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 16

Hon'ble Judges: Sudhir Agarwal, J

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard learned counsel for the parties and perused the record. As agreed by learned counsel for the parties, the writ petition has been heard and is being decided finally under the rules of the Court at the admission stage since pleadings are complete.

2. The order impugned in this writ petition is dated 19/20 September, 2008 passed by Senior Superintendent, Mandal/Zila Karagar, Azamgarh (Annexure 11 to the writ petition) whereby petitioner's appointment made on 18th December, 2004 on the post of Bandi Rakshak in Azamgarh Division has been cancelled on the ground that the Sport certificate submitted by the petitioner has been found forged, on the basis whereof the petitioner was selected for interview and in the ultimate merit list. The impugned order says that it is only on account of the marks earned by the petitioner on the basis of Sports certificate that he could get his position in the merit list to get appointment and since that basis i.e. Sports certificate has been found forged, his selection cannot stand.

3. The facts in brief, as stated in the writ petition, are that selection process for the post of Bandi Rakshak for Azamgarh Division was initiated in August, 2004. The petitioner Rahul Kumar applied as a general category candidate and was allotted Roll No.G670. Having qualified the physical test, he was called for interview on 14.12.2004 vide interview letter dated 02.12.2004. He was ultimately selected and by

appointment letter dated 18.12.2004 issued by the Senior Superintendent, Mandal/Zila Karagar, Azamgarh (respondent No.3), he was appointed as Bandi Rakshak in the scale of 30504590. The petitioner joined on 21st December, 2004 and thereafter was posted in District Jail Mau by order dated 29.12.2004. He completed his training on 7th May, 2005 and since thereafter is discharging his duties. While working at District Jail Mau, he received a notice dated 01.11.2007 issued by the respondent No.3 stating that the Sports certificate submitted by him at the time of appointment was sent for verification but it has been found that no such office in the name of which sports certificate was issued, exist, hence registered letter was received back and the Sports certificate could not be verified. He was, therefore, required to inform as to which institution had issued such certificate for further action. The petitioner replied on 12.12.2007 that he had not submitted any Sports certificate and his selection/appointment was made on the basis of general merit. Thereafter on 19th July, 2008, a show cause notice was issued to the petitioner stating that the Sports certificate of Uttar Pradesh Olympic Association, which he had submitted, was sent for verification to the Joint Secretary of Uttar Pradesh Olympic Association, Lucknow and by letter dated 9th June, 2008, he has informed that the said certificate is forged and fictitious, hence, the petitioner has apparently obtained appointment on the basis of a forged sports certificate. He was further required to show cause as to why his services may not be terminated and further legal action may not be initiated by lodging a report against him. This notice was replied by the petitioner on 11th August, 2008 stating that he had never submitted any Sports certificate, hence the question of submission of forged certificate does not arise. The respondent No.3 sent a further registered notice dated 23rd August, 2008 directing the petitioner to submit his reply with respect to the Sports certificate which was also replied by the petitioner on 29th August, 2008 and therein he categorically stated that in his application form, in para 8(Da), he has not mentioned or claimed his proficiency in sports and has not made requisite mark therein which clearly shows that he had not applied for appointment claiming proficiency in sports and had submitted only educational certificates in support of his claim. The respondent No.3, however, has passed the impugned order.

4. In the counter affidavit filed by the respondents they have placed on record the correspondence, they entered with the Secretary General, U.P. Olympic Association, Lucknow about verification of the Sports certificates of various candidates who have claimed appointment submitting sports certificates which included the name of the petitioner also and when it was informed by them that the certificate of the petitioner was not genuine, the termination order has been passed. It is also stated that the petitioner on the basis of his educational qualification could secure only 20 marks. He was awarded three marks on account of Sports certificate showing himself to be sportsman of State level and thus, had secured 23 marks in all. The candidates who had secured 21 marks and above were called for interview and since the petitioner in total had secured 23 marks therefore he was so called. Since the

certificate submitted by the petitioner was found forged, if the marks given to the petitioner based on the Sports certificate are deducted, he would have got only 20 marks and therefore, below the merit of the candidates who were called for interview. Hence he has rightly been terminated.

5. The copy of the sports certificate claimed to have been submitted by the petitioner is on record at page 41 of the writ petition and it shows that the petitioner therein has been shown to have participated in State Games held at Varanasi on 17th 18th and 19th February, 2004 and was second in the High Jump sports event.

6. The recruitment is governed by "The Uttar Pradesh Procedure for Direct Recruitment for Group "C" Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2002" (hereinafter referred to as 2002 Rules). It was amended by notification dated 21st June, 2003. Rule 5(3)(c) provides for marks to be awarded to sportsman candidate and therein for "State level sportsman", three marks and for University/College/School level sportsman, two marks are to be awarded. Annexure CA4 is an extract of the list of the candidates and at serial No.253 the name of the petitioner is mentioned. In the last column, factum about sport certificate is mentioned meaning thereby the petitioner had submitted a sports certificate. A photocopy of the aforesaid sports certificate has also been placed on record as Annexure C.A.4 (page 11 of the counter affidavit). Annexure C.A. 5 is the tabulation chart showing marks awarded to the petitioner in interview and educational qualification etc. which shows that the petitioner was awarded 38 marks in interview and 23 in additional qualification etc. and in total it was 61. A perusal of the entire list makes it clear that no candidate below 21 marks having obtained on educational qualification etc. has been interviewed by the respondents. It, therefore, cannot be doubted that if three marks, which are awardable on the basis of State Level Sport certificate, are taken out from the marks obtained by the petitioner, it will bring down to 20. Obviously, he could not have been called for interview.

7. The case of the petitioner, however, is that he had neither claimed any benefit of being a sportsman nor submitted the said certificate hence the termination is wholly illegal. The copy of the sports certificate clearly mention the name of the petitioner. About the chart, Annexure C.A.4, the petitioner in para 14 of the rejoinder affidavit has said that this is a doctored document, inasmuch as, the name of the petitioner is mentioned at two places namely 249 and 253. It is no doubt true that Rahul Kumar Chubey, Son of Narsingh Chaubey is mentioned at two places that is serial No.249 and 253 but at both the places roll number shown is different one is G20 and another is G670. In both the cases the submission of sports certificate is clearly mentioned. It is not necessary at this stage to examine as to how and what manner twice the name of the petitioner has been mentioned. The fact remains that in both the cases submission of sports certificate has been mentioned. C.A. 5, which is the combined list of the candidates who appeared for interview, no candidate with Roll No.G20 has been mentioned. The petitioner has not said in para 14 of the rejoinder

affidavit that the photocopy of the sports certificate filed as Annexure C.A.4 does not belong him but what he says that he had not filed the same at the time of his selection. This Court, therefore, has no reason to doubt that the petitioner did possess a sports certificate. Though he has claimed that neither in his application form he has mentioned any fact about the sport certificate nor he submitted any such certificate but in respect to the said certificate, which is available on record of the respondents, it is not the case of the petitioner, either in the writ petition, or in the rejoinder affidavit, particularly paras 16, 17 and 18 of the writ petition, and 17 of the rejoinder affidavit, that the certificate did not relates to him. If the marks awardable to sport certificate are deducted, it is also evident that the petitioner could not have been called for interview. Hence the appointment is clearly illegal. The mere fact that the sport certificate even if submitted by the petitioner is found to be invalid, but if otherwise his appointment would have been within the province of law, this Court may have taken a view in favour of the petitioner but where the selection of the petitioner appears to be clearly benefited by the sports certificate, the said certificate having been found forged and fictitious, nothing can come to rescue of the petitioner in a case where termination consequential to the above proof of forgery in sport certificate is assailed.

8. Moreover, this is a case which is squarely covered, in my view, with the judgment dated 20th July, 2010 in Special Appeal No.481 of 2010 (D) (State of U.P. Vs. Sudhir Kumar Singh) wherein almost in a similar circumstances, a Division Bench held that order of termination passed does not warrant any interference.

9. In view of the above discussion and also the exposition of law, particularly that the facts of the present case are almost similar to that as were involved in the case of Sudhir Kumar Singh (supra), I have no hesitation to hold that the petitioner is not entitled for any relief. Mere fact that the petitioner did not mention anything about sports certificate in his application or the fact that he did not submit sports certificate at the time of his appointment would not help him, when the sport certificate relating to the petitioner is available in the record of the respondent, and it is not the case of the petitioner that such certificate does not belong to him. It is inconceivable that any other person would have submitted sports certificate of the petitioner for extending some benefit to the petitioner.

10. One more aspect, however, needs to be considered. The petitioner submitted that he was awarded 23 marks on the basis of his educational qualification. The petitioner passed High School in the year 2002 in IIIrd division with grace having secured 251 marks out of 600, and Intermediate examination in 2004 in first division securing 309 out of 500. Rule 5(3)(a) of 2002 Rules, as amended in 2003, shows where the qualification is Intermediate, the incumbent having passed Intermediate with 60% marks shall be awarded 20 marks. The petitioner, therefore, being intermediate with more than 60% marks could be awarded 20 marks on the basis of his educational qualification. As already said, three marks he obtained on the basis

of sports certificate otherwise he could not have been called for interview. The learned counsel for the petitioner could not demonstrate as to how he could have been awarded more than 20 marks merely on the basis of his educational qualification of Intermediate under the aforesaid Rules.

11. As a whole, the facts and circumstances makes it clear that the petitioner is admittedly a beneficiary of a forged sport certificate and therefore, in my view, he is not entitled for any relief in equity jurisdiction under Article 226 of the Constitution, particularly in view of the Division Bench decision of this Court in Sudhir Kumar Singh (*supra*).

12. The writ petition lacks merit and is accordingly dismissed. No costs.