courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2011) 12 AHC CK 0315

Allahabad High Court

Case No: Writ - A No. - 13309 of 2008

Ram Kumar	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: Dec. 23, 2011

Citation: (2012) 2 ADJ 250 : (2012) 132 FLR 1066

Hon'ble Judges: P.K.S. Baghel, J

Bench: Single Bench

Final Decision: Allowed

Judgement

P.K.S. Baghel, J.
By way of the present writ petition, the petitioner has challenged the order of the District Basic Education Officer, Kannauj dated 23.2.2008 whereby his services as Assistant Teacher in a Primary School has been terminated on the ground that he obtained appointment on the basis of a fabricated mark sheet.

2. Heard Sri G.K.Singh learned counsel for the petitioner, Sri K.Shahi learned counsel for the respondent no.3 and Sri Neeraj Tewari learned counsel for the respondent no.4.

3. The short facts are these, in the year 2004, an advertisement was issued for selection of Assitant Teachers in Primary Schools run by the Board. The petitioner states that he had essential qualifications mentioned in the Advertisement and relevant rules. He submitted his application in response to the Advertisement and was found suitable. Thereafter, on 30.12.2005 he was selected and appointed as Assistant Teacher in Prathmik Vidyalaya Chatorapur, Vikas Khand Haseran district Kannauj. Since then he was working as Assistant Teacher.

4. However, to his utter shock and dismay he received a show cause notice dated 8.1.2007 (Annexure-4 to the writ petitin) wherein it was alleged that at the time of his appointment he had submitted forged mark sheet of B.A. As stated by the petitioner he

did his B.A. in the year 1994, from the Chatrapati Shivaji Sahuji Mahraj University, Kanpur. It appears that the respondents verified the mark sheet of the petitioner from the University. On verification the University informed the respondents that petitioner has secured 425 marks and not 439 marks. However, in the mark sheet submitted by him the marks have been shown to be 439 marks. The petitioner submitted his reply to the show cause notice on 15.1.2007 wherein he has stated that the Registrar of the said University has informed him that in Military Science 2nd paper the Examiner had erroneously awarded him 22 marks under the wrong impression that the total marks of the said subject was 50, whereas the said paper was only of 33 marks. The Examiner had committed inadvertent mistake in respect of all the students and as such the proportionate marks have been reduced of all the students including the petitioner.

5. Earlier the petitioner was awarded 22 marks, however, after the correction his marks has been reduced to 15 marks. Thus the total marks which in the mark sheet was shown to be 439 was corrected to 425. Without taking into consideration petitioner''s reply the BSA has passed the impugned order 23.2.2008 whereby, his appointment has been cancelled on the ground of fraud and a recovery for the salary was issued and a further order was issued for lodging an First Information Report against him.

6. The University has filed a counter affidavit wherein it is stated that the maximum marks in Military Science paper was 33 but the Examiner treating the same to be 50 marks has awarded 22 marks to the petitioner. Paragraph 4 and 5 of the counter affidavit of the University is extracted hereunder below:

That in the year 1996 in B.A. 3rd year examination the maximum marks in Military Science second paper was 33, but the examiner treating the same to be 50 marks, has awarded 22 marks to the petitioner and accordingly mark sheet on 30.11.1994 was issued, which is Annexure-3 to the writ petition. After some time this mistake was found and the same was rectified by the decreasing the marks of the petitioner treating total marks to be 33 and accordingly the second mark sheet was issued to the petitioner.

That this fact was also sent to the District Basic Education Officer vide letter dated 12.7.2007, which is Annexure-6 to the writ petition. It is further relevant to mention here that the petitioner is not at fault at any stage and due to bonafide mistake of the examiner, this controversy has arisen and the petitioner was earlier issued mark sheet on 30.11.1994 which is in dispute.

7. The District Basic Education Officer, Kannauj has also field a counter affidavit and the stand taken by the University has been reiterated. However, in the counter affidavit no allegation of fraud has been made against the petitioner.

8. On a close perusal of the pleadings exchanged by and between the contesting parties I am of the firm view that in this case the petitioner has been made to suffer without of his fault. To my judgment there was was no fault of the petitioner much less any fraud on his

part. The inadvertent mistake of the Examiner has been corrected by the University. However, from the stand taken by the University in its counter affidavit it is evident that the University did not take any steps to inform the concerned College and the students regarding the correction made by it. Thus, the concerned College VSSD College,Kanpur where the petitioner was a student of B.A. as well as the students of that College had no knowledge that the University had corrected their mark sheet. From the facts it is clear that the action of the University authorities was casual.

9. Another important aspect of the matter is that the petitioner belongs to a Schedule Caste category and he applied for the post on the basis of his unamended mark sheet in which he secured 285.5 Quality Point Marks. The cut of marks for the Schedule Caste category candidate was 280.03 marks. After the reduction of his marks his Quality Point Marks is 285.20. Thus his Quality Point Marks even after reduction of his marks in Military Science is much above the cut of marks. It was obligatory on the part of the District Basic Education Officer, Kannauj that when the petitioner has stated correct facts in his reply and there was no allegation of fraud by the University, he was not justified in using the strong words like fraud, forgery etc. in the impugned order while terminating the services of the petitioner.

10. Termination of service of an Assistant Teacher ensue a serious civil consequences as it deprives a person of his source of livelihood. The BSA before passing the impugned order ought to have consider the explanation submitted by the petitioner and other materials objectively, which he has miserably failed to do so. In my judgment the District Basic Education Officer, Kannauj has acted in most casual manner by terminating the services of the petitioner on the ground of fraud and further directing to recover the salary paid to the petitioner.

11. In these above mentioned background, the impugned order dated 23.2.2008 passed by the District Basic Education Officer, Kannauj is set aside. Petitioner will be entitled for all the benefits including salary from the date of his termination till his reinstatement.

12. The writ petition is allowed with cost assessed to Rs.5,000/-.