

Court No. - 34

Case :- WRIT - A No. - 6517 of 2023

Petitioner :- Nipendra Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jayant Prakash Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Jayant Prakash Singh, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

2. Petitioner, who was the applicant for the post of Constable in Civil Police against the advertisement issued in the year 2018, came to be selected/ appointed on 01.12.2019 and placed in merit list due to inadvertence by the respondents in the Scheduled Tribe category, whereas, petitioner was an applicant of OBC category and had also filed his OBC certificate. Later on during the enquiry it transpired that petitioner got wrongly placed in ST category in merit list, whereas, he obtained much less marks even if his OBC certificate is taken into consideration as the last cut off marks for selected candidate in OBC category. Petitioner has been terminated on 01.12.2022.

3. As per the instructions obtained by respondents, petitioner secured on 163.6509 marks as OBC candidate, whereas, the last cut off marks for OBC category was 211.88718 and hence on merits petitioner could not have claim selection as Constable in the OBC category. Petitioner's placement in Scheduled Tribe category was therefore, questionable being void selection and therefore, the selection and appointment of the petitioner stood *void ab initio*.

4. Upon such facts being surfaced out, he has been visited with the order of termination from service.

5. Petitioner claims that he was not accorded any opportunity of hearing and that he having already been in employment ought to have been subjected to action as per the Service Rules.

6. Learned counsel for the petitioner has though sought to assail the order but could not place any judgment or authority in support

of his contention that even if his appointment is *void ab initio* such an appointee deserves the right of being prosecuted under the relevant service Rules.

7. In my considered view, this is not a case where petitioner has been visited with any order of penalty. Here is, instead, a case where his selection and appointment itself is *void ab initio* and so resultantly such void appointment cannot create any kind of lien or right in favour of the petitioner against the post in question.

8. In the circumstances, therefore, I do not find any good ground to interfere in the order terminating the services of the petitioner.

9. Petition lacks merit and is, accordingly, dismissed.

Order Date :- 2.12.2023

Atmesh