

Court No. - 33

Reserved

Case :- WRIT - A No. - 10782 of 2023

Petitioner :- Ghan Shyam Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Manas Bhargava, Nipun Singh

Hon'ble J.J. Munir, J.

1. This writ petition is directed against an order of suspension pending inquiry dated 21.06.2023 passed against the petitioner by the Executive Officer, Nagar Palika Parishad, Nahtore, District Bijnor.

2. The petitioner is an *Amin* in the employ of the Nagar Palika Parishad, Nahtore. A perusal of the suspension order shows that there are allegations against the petitioner of securing employment on the basis of forged educational testimonials, that have surfaced in an inquiry held by the Lokayukta, U.P. The Lokayukta has submitted a report dated 24.03.2023 to the State Government. In addition, the suspension order also refers to a charge against the petitioner that he forged tax records of the Nagar Palika Parishad, leading to the loss of revenue to the Local Body, of which he is an employee. It is on these charges that the Executive Officer has directed initiation of disciplinary proceedings.

3. Heard Mr. Ashok Khare, learned Senior Advocate, assisted by Mr. Kauntey Singh, learned Counsel for the petitioner, the learned Standing Counsel on behalf of respondent Nos. 1 and 2, Mr Nipun Singh, learned Counsel on behalf of respondent Nos.3 and 4 and Mr. Manas Bhargava, learned Counsel on behalf of respondent No.5.

4. It is pointed out by Mr. Ashok Khare, learned Senior Advocate that the petitioner was earlier charge sheeted *vide* charge-sheet dated 27th July, 2019, on the charge of securing a compassionate appointment, relying on forged educational testimonials, to wit, a bogus High School Certificate. The charge, which was in two parts, was inquired into by the Inquiry Officer, who held the charges fully proved, *vide* his report dated 27.09.2019. After service of a show cause notice dated 4th November, 2019 upon the petitioner, he was dismissed from service *vide* order dated 8th November, 2019 passed by the Executive Officer, Nagar Palika Parishad, Nahtore, District Bijnor, the Disciplinary Authority.

5. The petitioner appealed the said order to the Chairperson, Nagar Palika Parishad, Nahtore, District Bijnor *vide* appeal dated 13.11.2019. The Chairperson, Nagar Palika Parishad, Nahtore by an order dated 22nd November, 2019 allowed the appeal in part, reducing the petitioner's penalty from one of dismissal to stoppage of one increment and reinstated him in service with all consequential benefits. All arrears of salary, during the period of suspension and the time that he was out of service, were ordered to be paid.

6. The submission of Mr. Ashok Khare, learned Senior Advocate, on the foot of the aforesaid facts, is that the charge of securing employment on forged educational testimonials has been the subject matter of earlier proceedings and, therefore, the same cannot be the subject matter of a second disciplinary proceedings, once the earlier proceedings have run their full course and reached their logical conclusion. It is submitted that the petitioner, though punished with dismissal by the Disciplinary Authority in the earlier round of proceedings on the

same charge, the said order was set aside by the Appellate Authority and substituted by a minor penalty. It is urged that on account of the recommendations made by the Lokayukta, fresh proceedings on a charge, already inquired into, dealt with and disposed of in accordance with law, cannot be taken all over again.

7. It is argued by Mr. Khare that the Lokayukta in his report has proceeded on a misconception that the Chairperson herself had dismissed the petitioner, and, shortly thereafter, modified the dismissal order by reinstating him in service. The fact is that the petitioner was dismissed by the Executive Officer, acting as the Disciplinary Authority and the Chairperson modified that order in appeal, reducing the petitioner's punishment.

8. It is next submitted that the order of the Lokayukta is not a self-operating order. It is only a recommendation in the form of a report made to the State Government. It is urged that in the present case the State Government *vide* order dated 19.04.2023 (Annexure No.22 to the writ petition) has directed action against Smt. Firoza Khatun alone, the former Chairperson of the Nagar Palika Parishad, Nahtore. It is also submitted that the Lokayukta, in any case, has recommended recovery of the loss suffered, if any, by the Government and nothing more.

9. Mr. Nipun Singh, learned Counsel appearing for the Nagar Palika Parishad, on the other hand, submits that in the earlier round of proceedings, the Inquiry Officer held the petitioner guilty of securing employment on the basis of forged educational certificates, and after a show cause he was dismissed from service by the Disciplinary Authority. The then Chairperson illegally reinstated the petitioner with all

consequential benefits on the sole ground that the petitioner had worked for the last 22 years, though the finding of securing employment on forged educational certificates, held established by the Disciplinary Authority, was never disturbed by the Appellate Authority.

10. Mr. Nipun Singh submits that the Chairperson had committed a grave illegality in reinstating the petitioner. In the face of a finding that he had secured employment on forged educational testimonials, the Lokayukta was moved by a complaint and upon an inquiry made through the District Magistrate, the Lokayukta had come to conclusions that figure in his report, on the basis of which he recommended action against the petitioner and, of course, the others involved, including the Chairperson.

11. It is pointed out by Mr. Nipin Singh that the Lokayukta has clearly found in his report that the petitioner secured employment on the basis of forged educational certificates. It is, particularly, argued that apart from the charge of securing employment on forged certificates, the petitioner has done interpolation and forgery in the tax records of the Nagar Palika Parishad, causing substantial loss of revenue. It is next submitted that on 05.07.2023, a charge-sheet has been issued to the petitioner, carrying as many as seven charges, all serious, including the one where the petitioner was found guilty of securing employment on the basis of forged testimonials. The other charges are also grave in nature, which relate to the loss of revenue caused to the Nagar Palika Parishad by forgery in the Palika records done by the petitioner. Mr. Nipun Singh says that the Lokayukta's recommendations are confined to the allegation of forgery regarding the petitioner's educational

certificates that he has used to secure employment under the Nagar Palika Parishad. The Executive Officer, however, after coming to know of other serious allegations regarding forgery in the tax records, leading to loss of revenue, has passed the impugned suspension order, pending departmental inquiry.

12. This Court has heard the learned Counsel and perused the record. One issue, that has been much emphasized by Mr. Khare, is that the charges relating to the submission of forged educational testimonials, cannot be the subject matter of a second proceeding, the earlier proceeding relating to the same charge having run its full course and ended in an order of punishment that was reduced in appeal. No doubt, the submission is a potent one and cannot be discarded *in limine*, and, finally. But, on a reading of the orders made in the earlier proceedings, there are matters that do not meet the eye. The petitioner was held guilty of securing employment on the basis of his qualification being a matriculate, passing his High School Examination in the year 1979 from the D.S.M. Inter College, Kanth, Moradabad, a certificate that found forged. In fact, the petitioner had failed his Class IX in the year 1979 from the Jain Vidya Mandir Inter College. The petitioner was, therefore, held guilty of securing employment, in substance, on the basis of educational qualification being a matriculate, which he was not. It is on the said basis that the petitioner was awarded punishment of dismissal from service by the Executive Officer of Nagar Palika Parishad, Nahtore *vide* order dated 8th November, 2019.

13. This Court may remark, nevertheless, that the order of the Executive Officer dated 8th November, 2019, lacks necessary consideration of evidence and findings, which ought to have

been there in an order depriving a man of his service. But, what is more surprising is that in the departmental appeal carried from the said order by the petitioner, the Chairperson, Nagar Palika Parishad, Nahtore, District Bijnor has not at all disturbed the finding of guilt recorded by the Disciplinary Authority or the Inquiry Officer about the petitioner securing employment on the basis of a forged High School Certificate. The Chairperson of the Nagar Palika Parishad has, indeed, passed a strange order in appeal, where after recording remarks of sympathy, favouring the petitioner about the circumstances of his family, including the fact of there being a dependent wife and minor children, besides acknowledging 22 years of his service, has modified the order of dismissal, reducing punishment, in the circumstances to the perverse inadequate of withholding a year's increment alone. To the formidable submission by Mr. Khare that the appellate order has attained finality, this Court may only say at this stage, without expressing any opinion and leaving the point wide open to consideration, if and when it arises, before a competent forum, that forgery practiced regarding essential educational qualification testimonials to secure employment, would be an act of fraud, which goes to the root of the matter.

14. It is a well acknowledged principle of the law that if a fraud exists, it must be undone, wherever and whenever it is found. If the employment has been secured indeed by fraud, practiced by the petitioner, relying on forged educational testimonials, that ought to be undone. However, as said earlier, this is not at all a final expression of opinion on the point. There are many things that have to be investigated on facts and the legal position examined. The question must, therefore, be left open. All that is necessary for the present is, that in the

background of the charge and what appears, if it is a case of fraud, in securing public employment, it must be inquired into, the earlier proceedings notwithstanding. The principle of finality of the earlier order, may not be attracted to a case, if fraud in securing employment were established on the petitioner's part.

15. The other aspect of the matter is that the order of suspension is not founded on the charge of securing employment on the basis of bogus and forged educational testimonials alone. There is the other charge of interpolating tax records of the Nagar Palika Parishad, resulting in loss of revenue to the Local Body. A charge-sheet, detailing these two basic charges, marshalled into seven distinct charges, has been served upon the petitioner, though he is said to have been reluctant to receive it. We directed him to receive it while reserving orders in this case. The other charge about interpolation in the tax records of the Nagar Palika Parishad, leading to loss of revenue, if proved, is serious enough to lead to the imposition of a major penalty. Therefore, on the foot of the second charge, if not the first, the present order of suspension pending inquiry, cannot be assailed successfully.

16. This Court may clarify *ex abundanti cautela* that anything said in this order may not be construed as an expression on merits of the parties' case either way. All contentions will remain open to both parties to urge before the competent fora, including the Inquiry Officer, the Departmental Authorities, and later before a judicial forum, should occasion arise and the remedy availed. The remarks in this judgment are limited to the purpose of judging the validity of the suspension order and nothing more.

17. In the circumstances, there is no good ground made out to interfere with the impugned suspension order. It is, however, necessary to direct that the inquiry against the petitioner shall be caused to be expedited by the Executive Officer, Nagar Palika Parishad, Nahtore, District Bijnor and conclude **within three months** of the receipt of a copy of this order by the Executive Officer. The petitioner shall cooperate with the inquiry. It is further ordered that the petitioner's subsistence allowance shall be paid regularly, without obstructive objections being raised as to submission of the non-employment certificate during the period.

18. The writ petition is **disposed of** in terms of the aforesaid order.

Order Date :- 19.10.2023

Anoop