

Court No. - 34

Case :- WRIT - A No. - 11088 of 2023

Petitioner :- Surendra Kumar Maurya

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Atipriya Gautam, Arvind Kumar Pandey, Rishabh Kesarwani, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Vinod Kumar Mishra, learned Advocate holding brief of Sri Atipriya Gautam, learned counsel for the petitioner and Sri R.S. Umrao, learned Standing Counsel for the State.

2. Petitioner, who was the applicant for the post of Constable in Civil Police against the advertisement issued in the year 2015, 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 if taken in his OBC certificate and the last cut off marks for selected candidate in OBC category. Petitioner has been terminated on 01.12.2022 and subsequently order dated 26.12.2022.

3. As per the instructions obtained by respondents, petitioner secured on 147.79695 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 in employment ought to have been subjected to action as per the Service Rules.

6. This Court noticed the argument of learned counsel for the petitioner on the last date and passed following order on 24.08.2023:

"1. Instructions have been placed before the Court, in compliance of the last order of this Court and the same is taken on record.

2. As per the instructions, petitioner got placed in the merit list of Scheduled Tribe (for short 'S.T.') candidate for the simple reason that he had been shown in this category in the relevant column of his application form, however, he had annexed his caste certificate belonging to Other Backward Category (for short 'O.B.C.'). The instructions further reveal that the cut off marks of last selected candidate in the O.B.C. was 211.88718, whereas the petitioner had secured 147.79695, thus as per the instructions, the petitioner does not qualify to be placed in the merit list of the candidate belonging to O.B.C. The petitioner despite this fact has been given appointment and only reason for that was that he was taken to be a candidate belonging to S.T. category. Upon a complaint, matter was enquired into and when this above fact surfaced out, petitioner's services have been dispensed with under the order passed by the Chairman of the Recruitment Board dated 01.12.2022. Along with instruction application form of the petitioner is also appended and placed, in which the petitioner has been shown to be a candidate belonging to S.T. category but with caste certificate with number entered, was of OBC category.

3. Learned counsel for the petitioner states that he has not been served with any opportunity of hearing in the matter, for which he was entitled to being a confirmed employee. It is well settled law that the principles of natural justice are not to be taken as straight jacket formula to be made necessarily applicable in every case. It may be a case where sending the matter back for affording opportunity of hearing could change the conclusion other than what has already been arrived at, but I find this case to be not one of those cases. However, in the interest of justice, copy of the instructions is directed to be supplied to learned counsel for the petitioner, who shall file a supplementary affidavit to meet out the points raised in the instructions regarding his status as a candidate in the relevant selection, in which he had applied and had been placed in the merit list as a S.T. candidate. The opportunity of filing supplementary affidavit is being given to the petitioner to meet the factual position and legal aspects that emerge in the present petition.

4. Put up this matter on the top of the board on 06.09.2023."

7. Learned counsel for the petitioner today has sought to again 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.

8. 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 to the post in question.

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

10. Petition lacks merit and is accordingly **dismissed**.

Order Date :- 26.10.2023

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