

Court No. - 10

Case :- WRIT - A No. - 6533 of 2008

Petitioner :- Rakesh Kumar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Surendra Kumar Mishra, Jaswant Singh, Ram Sajivan, Rishabh Kesarwani, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Vinod Kumar Mishra, learned counsel for the petitioner and the learned Standing Counsel for the State-respondents.

2. The only ground challenging the order impugned is that though the petitioner has been dismissed from service by invoking Rule 8(2)(b) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, no reason has been assigned in the order impugned as to why it was not reasonably practicable to hold inquiry against the petitioner.

3. The case of the petitioner is that his actual date of birth being 05.01.1967 was somehow incorrectly entered as 01.01.1973 as stood revealed at the level of the department and the department came up with a stand that since the petitioner's father, namely, Komal Singh, died on 14.09.1971, the petitioner could not be born after two years from the death of his father and, therefore, the petitioner fraudulently obtained appointment on compassionate ground in the year 1991.

4. The submission is that had the petitioner been provided opportunity to participate in the inquiry which was admittedly not held, he could have justified the position with respect to entry of his date of birth in different records.

5. Learned counsel has placed reliance upon following judgments of this Court:-

"(i) Deepak Kumar Singh Vs. State of U.P. through Additional Chief and 3 others in Writ-A No.14422 of 2021, decided on 08.12.2022;

(ii) Ram Babu Singh Constable 362 C.P. Vs. State of U.P. and 2 others in Writ-A No.53857 of 2015, decided on 09.03.2018;

(iii) Rakesh Kumar Jaiswal Vs. State of U.P. and others in Writ-A No.53912 of 2010, decided on 24.03.2021;

(iv) State of U.P. and others Vs. Danish Ansari, Constable in Special Appeal Defective No.1029 of 2011, decided on 28.02.2011."

6. Placing reliance upon the aforesaid authorities, it is argued that this Court has successively held that when punishment order is passed by invoking Rule 8(2)(b) of the Rules, the authorities have to specifically record reasons as to why it was not reasonably practicable to hold inquiry and in the present case neither a single word has been made about this nor has inquiry been held.

7. Learned Standing Counsel has vehemently opposed the writ petition and by referring to the provisions of Indian Evidence Act, it has been argued that illegitimacy is attached to the birth of the petitioner and, therefore, the department was justified in dismissing him from service as the records were clear before the department in which the date of birth is recorded as 01.01.1973 in High School Examination Certificate. Learned Standing Counsel, however, could not dispute the fact that except preliminary inquiry, full fledged inquiry was not conducted in the present case. Learned Standing Counsel has however placed reliance upon the averments made in the counter affidavit which are supported by the inquiry report dated 13.11.2007 and submits that the order of dismissal is in accordance with law.

8. I have perused the entire record of the writ petition as well as the counter affidavit along with the preliminary inquiry report. The said inquiry report is based upon the proceedings held by the department at its own level without even issuing notice to the petitioner. It further appears that various documents were produced before the department which were taken into consideration and a recommendation for dismissing the petitioner was made by the inquiry officer.

9. I find that the law in relation to invoking Rule 8(2)(b) of the Rules, 1991 is well settled and once the Court is satisfied that no circumstances existed whereunder holding of inquiry was not reasonably practicable, I find that the order of dismissal without conducting any inquiry is unsustainable.

10. The writ petition is **allowed**.

11. The order impugned dated 19.11.2007 passed by the

respondent no.3 (Commandant 15th Battalion, P.A.C., Agra) is **quashed**.

12. The respondents are at liberty to initiate inquiry proceedings against the petitioner and shall conclude the same strictly in accordance with law within a period of **six months** from the date a certified copy of this order is produced before the concerned authorities.

13. The status of the service of the petitioner shall be dependent upon the order to be passed after holding inquiry.

Order Date :- 31.10.2023

AKShukla/-