

Court No. - 20

Case :- WRIT - A No. - 8825 of 2023

Petitioner :- Sushil Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Dept. Lko.
And 3 Others

Counsel for Petitioner :- Deepak Dwivedi, Sheshnath Bhardwaj Advoc

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.
2. Petition has been filed challenging show cause notice dated 1st November, 2023 as well as inquiry report dated 31st October, 2023. Further prayer has been made seeking a direction to opposite parties not to pass any order or take any action in pursuance of impugned show cause notice.
3. Learned counsel for petitioner submits that it would be quite evident from the inquiry report that petitioner has taken a plea that the proceedings initiated against petitioner were without jurisdiction inasmuch the petitioner who is working on the post of Constable (Driver) could have been suspended or inquiry initiated against him only by the Superintendent of Police, Logistics, Lucknow who is appointing/disciplinary authority of petitioner whereas the charge sheet dated 7th April, 2023 has been issued by the Deputy Commandant/Commandant, U.P., P.A.C., 10th Battalion, Barabanki. It is also submitted that even otherwise the inquiry proceedings are against various judgments on the point that disciplinary inquiry can not be proceeded against where the criminal proceedings are pending on the same set of facts and evidence.
4. It is submitted that in the present case, inquiry has been initiated against petitioner on the ground that he submitted a forged caste certificate for purposes of seeking employment with the department. Attention has been drawn to the fact that case crime No. 627 of 2022 under sections 419, 420, 467, 468 and 471 IPC has been registered against petitioner with regard to same allegations and evidence.
5. It has also been submitted that even otherwise inquiry proceedings against petitioner are not in accordance with service rules applicable upon petitioner inasmuch as the inquiry report were actually an ex parte report without affording any opportunity to petitioner to adduce any evidence or even to

cross examine the witnesses produced by the department.

6. Mr. Neeraj Chaurasia learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission the the present petition is the 4th writ petition filed by writ petitioner against aforesaid proceedings and has drawn attention to judgment and order dated 21st July, 2023 passed in Writ A No. 11082 of 2023 filed earlier by petitioner. He has submitted that in the aforesaid petition also petitioner had challenged the show cause notice issued earlier to petitioner in pursuance of charge sheet dated 7th April, 2023. It is submitted that aforesaid submissions as being raised in the present writ petition were also raised in earlier writ petition which were rejected but the petition was disposed of only on the ground that inquiry had not been held and therefore the show cause notice was incorrectly issued. It is submitted that in pursuance of such directions, now inquiry proceedings were held with submission of inquiry report whereafter a show cause notice has been passed.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is undisputed that earlier as well petitioner had filed writ petitions. The judgment and order dated 21st July, 2023 also indicates the fact that earlier petitioner had filed writ A No. 2295 of 2023 which was dismissed as withdrawn without grant of any liberty to file a fresh petition vide order dated 11th August, 2023. Subsequently petitioner filed Writ A No. 6362 of 2023 challenging show cause notice dated 15th March, 2023 which was also dismissed as withdrawn in view of the fact that the show cause notice was withdrawn by the department itself. Writ A No. 11082 of 2023 was thereafter filed challenging show cause notice issued again in pursuance of the charge sheet dated 7th April, 2023.

8. A perusal of the aforesaid judgment and order dated 21st July, 2023 clearly indicates the fact that in paragraph 8 of the judgment, plea taken by petitioner regarding bar of simultaneous departmental and criminal proceedings has been adverted to and rejected. The judgment has clearly indicated that present case is not of a kind where evidence could not have been led independently of the trial or in any manner departmental witness as to filing of caste certificate. It has been further held that departmental proceedings in the present case are therefore clearly distinguishable as to verification of caste certificate wherein petitioner is to contest the tehsildar report. Judgments adverted to learned counsel for petitioner in earlier writ petition were found to be distinguishable on facts.

9. It is admitted by learned counsel for petitioner that judgment and order dated 21st July, 2023 has thereafter attained finality since no appeal thereagainst was filed.

10. So far as the question of jurisdiction is concerned, in the considered opinion of this Court, the said ground was available to the petitioner to be taken in the earlier writ petition and as per admission of learned counsel for petitioner was in fact taken in the writ petition but has not been adverted to.

12. Considering aforesaid admission by learned counsel for petitioner, it being evident that such a plea was taken by the petitioner in the earlier writ petition but has not been dealt with, even otherwise the said aspect would bar fresh ground for such a plea on account of principles of constructive res judicata. In case such a ground had been taken by petitioner, which was not adverted to, it was obviously open him to have filed an appeal or review against aforesaid judgment, which having not been done, in the considered opinion of this court can not be raised as a ground again in the 4th round of litigation.

13. Considering the aforesaid discussion, the petition being devoid of merits is dismissed at the admission stage itself.

Order Date :- 9.11.2023
prabhat