

Court No. - 18

Case :- WRIT - A No. - 24877 of 2021

Petitioner :- Kapil Muni

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Ors.

Counsel for Petitioner :- Pankaj Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard.

2. The present petition has been preferred for quashing of the impugned orders dated 09.08.2021 passed by respondent no.3 i.e. Commandant, P.A.C. 30 Battalion Gonda District Gonda by which representation of the petitioner has been rejected; the dismissal order dated 15.06.2011 passed by respondent no.3 and the appellate order dated 09.12.2011 passed by respondent no.2 i.e. Deputy Inspector General of P.A.C., Lucknow Region, Lucknow.

3. Learned counsel for the petitioner has submitted that the petitioner was selected for the post of Constable in P.A.C. district Raebareli in the year 1994. A complaint was made against the petitioner regarding his High School Mark-sheet. On the said complaint, a departmental enquiry was initiated against the petitioner and an order of dismissal dated 15.06.2011 was passed against him.

4. It is further submitted that the petitioner had approached this Court by filing Writ C No. 22305 of 2009 for issuing a direction to the respondents to declare his result of High School Examination, 1986 forthwith and to issue requisite certificate pertaining to Roll No. 0747995. The said petition was finally allowed by this Court vide its judgment and order dated 08.07.2020 holding that the petitioner has to be treated as having qualified Class-X examination for which he was issued a mark-sheet and quash the order dated 24.01.2009 i.e. the order of cancellation of the result of petitioner alongwith other candidates and directed the Board to issue the certificate to the petitioner pertaining to examination taken by the petitioner vide Roll No. 0747995 in furtherance of the mark-sheet issued to him.

5. It is further submitted that after the judgment dated

08.07.2020 the petitioner had made a representation on 22.12.2020 for recalling the dismissal order dated 15.06.2011. When no decision was taken by the respondents, the petitioner had again approached this Court by filing Writ Petition No. 6980 (S/S) of 2021 and the same has finally been disposed of vide judgment and order dated 16.03.2021 with a direction to the respondent no. 3 to consider and pass appropriate order on the pending representation of the petitioner after providing opportunity of hearing.

6. The respondent no.3 has passed the impugned order dated 09.08.2021 rejecting the representation of the petitioner in contravention of principles of natural justice and without considering the judgment dated 08.07.2020 which has specifically been pleaded as well as enclosed alongwith the representation.

7. It is further submitted that the representation of the petitioner has been rejected merely on the ground that in the Writ C No. 22305 of 2009, the respondents were not made party and as per their record the High School mark-sheet submitted by the petitioner was forged, hence the petitioner has rightly been dismissed from service.

8. On the other hand, learned Standing Counsel has submitted that mark-sheet submitted by the petitioner was a forged document as the examination was cancelled on the allegation of mass copying. It is further submitted that opportunity of hearing was provided to the petitioner prior to passing of impugned order dated 09.08.2021 hence there is no illegality in the same. It is further submitted that at the time of passing the dismissal order as well as appellate order, there was no judgment in favour of the petitioner.

9. After hearing learned counsel for the parties and going through the record of the case, it is found that the services of the petitioner were dismissed on the allegation that the High School mark-sheet submitted by the petitioner was a forged document as the examination was cancelled on the ground of alleged mass copying.

10. Against the said cancellation order dated 24.01.2009, the petitioner had approached this Court by filing Writ-C No. 22305 of 2009 which was allowed by a detailed judgment of this Court wherein it has been held that the petitioner has to be treated as having qualified class-X examination, for which he was issued mark-sheet and quashed the order of cancellation of mark-sheet of the petitioner. The judgment dated 08.07.2020 has not been challenged by anyone.

11. After the judgment dated 08.07.2020, the petitioner had made a representation to the authorities for withdrawing the dismissal order after the judicial finding in his favour by the High Court. When no decision had been taken, the petitioner again had approached this Court by filing Writ Petition No. 6980 (S/S) of 2021. The said writ petition was disposed of by the judgment and order dated 16.03.2021 with a direction to the respondent no. 3 to consider and pass appropriate order on the representation of the petitioner after providing opportunity of hearing to the concerned parties.

12. The respondent no. 3 had rejected the representation of the petitioner vide its impugned order dated 09.08.2021 without giving any finding on the representation of the petitioner. The respondent no. 3 had simply quoted the representation, the material available at the time of passing the dismissal order and had not dealt with the point raised by the petitioner for withdrawal of dismissal order after the judgment of this Court dated 08.07.2020 in which this Court has held that the petitioner has to be treated as having qualified Class -X examination and setting aside earlier order of cancellation of result. There is no whisper about the judgment dated 08.07.2020.

13. Even prior to passing of the impugned order just as an eye wash few lines had been added in the impugned order that an opportunity was given to the petitioner prior to passing of the order and in this regard the representation of the petitioner dated 06.08.2021 has been quoted in the impugned order but no discussion on the point has been held nor any finding has been given with regard to points raised by the petitioner in his representation. Such an opportunity is a mere formality and amounts to no opportunity by giving a reason that the authorities were not the party in Writ C No. 22305 of 2009 and as per their record mark-sheet provided by the petitioner was forged and there is no order for quashing the appellate order and dismissal order by the Court. Under these circumstances, the representation is liable to be rejected. It shows that the impugned order dated 09.08.2021 has been passed without application of mind.

14. Once the High Court given a detailed judgment which has not been challenged by anyone, in that circumstance, the authorities are bound by the same and cannot substitute the same by taking frivolous grounds as it has been taken in the present case while deciding the representation of the petitioner.

15. The authorities could not ignore the judgment passed by the High Court setting aside the order of cancellation of the result of the petitioner and holding him to be class -X pass. In that

writ petition the authorities who passed the impugned orders were not necessary parties since the lis was between the petitioner in that writ petition and examining authority/board which had cancelled the result of Class-X. The judgment of the High Court would be in the nature of judgment in rem and all those whom it would be relevant for any purpose would be bound by the judgment of the High Court treating him to have passed Class-X examination. The respondents authorities cannot avoid the judgment of the High Court that they were not parties in that writ petition.

16. In view of the facts, circumstances and the discussion made hereinabove, the petitioner was dismissed from services only on the ground that his High School mark-sheet was forged which was declared or held to be treated as genuine document by the High Court, thereafter nothing is left against the petitioner.

17. In view of the above, writ petition is allowed with all consequential benefits. The impugned orders dated 09.08.2021, 15.06.2011 and 09.12.2011 are hereby quashed.

Order Date :- 2.1.2024

Renu/-