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Neutral Citation No. - 2024:AHC-LKO:57212

Court No. - 5/ In Chamber

Case :- WRIT - A No. - 9577 of 2006

Petitioner :- Brijesh Kumar Pandey

Respondent :- State Of U.P. Thru Secy. Home And 5 Ors.

Counsel for Petitioner :- Dr. L.P. Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Irshad Ali,J.

1. Heard Dr. L.P. Misra and Mrs. Nandini Pandey, learned counsel for the petitioner and Sri Shiv Ganesh Singh, learned Additional Chief Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner seeks to challenge the order dated 25.7.2006, passed by the respondent No.4 (Superintendent of Police, Sitapur). He has prayed as under :-

"(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 25-07-2006 (Annexure No. 1) issued by opposite party No. 4/ 5.

(ii) To issue a writ order or direction in the nature of mandamus commanding the opposite parties to accept the joining of the petitioner submitted on 29-06-94 and issue Identity Card, Proper dresses and requirements and treat the petitioner to be appointed as U.P. Police/Constable in continuous service from the date of the Hon'ble Governor's sanction vide Government order No. 4017/6-PU-10-94 dated 28-06-94.

(iii) To issue a writ order or direction in nature of mandamus commanding the opposite party No. 4 /5 S.P. Sitapur to issue self speaking appointment order in the light of Govt. order dated 17-06-94 & 28-06-94 and pay him salary with all allowances regularly day to day for the post of U.P. Constable with all consequential benefits of service.

(iv) To issue writ order or direction for payment of special damages at the rate of Rs. 2,00,000/- per

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year alongwith 22% interest per year in favour of the petitioner for making mentally, physically, socially and financially torture and spoiling the future and career of the petitioner as well as his dependents maliciously, willfully and arbitrary delaying in the matter for about 12 years without any fault of the petitioner with biased and harassing attitude by ignoring the clear-cut orders of Government as well as order of I.G. establishment and various orders of this Hon'ble court in the interest of justice.

(v) To issue writ order or direction to pay the cost of the petition in favour of the petitioner against the opposite parties.

(vi) To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the nature of the case may also be passed in favour of the petitioner and against the respondents."

3. Facts in brief are that in pursuance to an advertisement issued in the year 1994 for selection and appointment of Constables, the petitioner offered his candidature and appeared at Sitapur Center for consideration of his candidature vide Registration No.1897 on the date fixed. He was found short by 1 cm than the required measurement in the category of expanded chest. He made a representation to the State Government and a letter dated 15.06.1994 was issued by the State Government addressed to the Chief Medical Officer, Lucknow for getting his physical measurement done and to send report to the State Government. This letter is Annexure-3 to the writ petition.

Consequent upon the communication dated 15.06.1994, a copy of which was also endorsed to the petitioner, the Chief Medical Officer, Lucknow conducted a physical standard examination of the petitioner and reported that his chest on expansion was 88 cm which was more than the prescribed norms.

On receipt of the certification as made by the Chief Medical Officer, Lucknow, the State Government proceeded to issue an order dated 17.06.1994 (Annexure-5) directing the Superintendent of Police, Sitapur to take steps to appoint the petitioner against reserved category of Dependents of Freedom Fighter and Sports as

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he was found eligible as per physical fitness certificate issued by the Chief Medical Officer, Lucknow.

4. On receipt of the State Government's communication dated 17.06.1994, the then Superintendent of Police, Sitapur wrote a letter dated 19.06.1994 that the petitioner was found unfit in the physical verification and the physical verification made by the Chief Medical Officer had no relevance. Thereafter, the State Government issued a detailed letter dated 28.06.1994 addressed to the Director General of Police, U.P. at Lucknow and Additional Director General of Police, U.P., Police Headquarter at Allahabad, stating that the physical examination of the petitioner was done by the Chief Medical Officer, Lucknow on reference being made by the State Government and the same was done in accordance with the relevant rules prescribed for medical examination. The petitioner was a good player of Judo game and was grandson of freedom fighter and therefore, the State Government has taken a conscious decision that he should be appointed as a Constable. In this government order stands specifically mentioned that in peculiar facts and circumstances, a conscious decision has been taken by the State Government to relax all the rules and after selection the petitioner be sent for receiving training and the said letter shall not be treated as precedence for any other matter. The detailed government order is on record as Annexure-7 to the writ petition.

5. After issuance of the government order dated 28.06.1994, the petitioner submitted his joining report before the Superintendent of Police, Sitapur on 29.06.1994 after annexing a copy of the government order dated 28.06.1994. Another letter dated 27.11.1994 was issued by the State Government addressed to the Director General of Police, U.P., Lucknow that the relaxation from the prescribed procedure for recruitment of Constable was consciously granted by the State Government and there should not be raised any dispute and the selection and appointment of the petitioner as Constable be ensured. This document is on record as Annexure-9 to the writ petition.

Nothing was done and again the State Government issued a letter dated 22.03.2003 addressed to the Director General of Police, U.P., Lucknow and Additional Director General, U.P., H.Q.

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Allahabad, clearly stating that despite the directions having been issued in the government order dated 28.06.1994, negligence was shown by the Superintendent of Police, Sitapur and a compliance report be sent to the State Government.

The Inspector General of Police (Establishment), U.P. thereafter wrote a letter dated 31.03.2003 addressed to S.P., Sitapur that the compliance of the government order dated 28.06.1994 be communicated. This document is contained as Annexure-11 to the writ petition. Even then no action was taken by Superintendent of Police, Sitapur.

6. The petitioner being aggrieved against the inaction on the part of the Superintendent of Police, Sitapur preferred Writ Petition No.6143 of 2003 and vide judgment and order dated 14.10.2003 (Annexure-12) this Court required the petitioner to make a detailed representation before the State Government and required the State Government to take a reasoned decision within a period of 3 months from the date of such representation.

7. It appears that the representation made thereafter by the petitioner was processed and the Deputy Inspector General of Police (Establishment), U.P. Police H.Q., Allahabad wrote a letter dated 21.12.2003 communicating to the State Government that the appointment of the petitioner as a member of discipline force i.e. Police force would not be in the interest of Police Force and in the public interest and after due consideration of such a report, the State Government wrote back to Deputy Inspector General of Police (Establishment), U.P. Police H.Q., Allahabad that in view of government's letter dated 27.11.1994 and Police Headquarter's letter dated 31.03.2003, the report dated 25.12.2003 was not proper and in compliance of the judgment dated 14.10.2003 passed by this Court, proper and appropriate recommendations be made available to the State Government. The letter dated 21.05.2004 so written by the State Government is on record as Annexure-13 of the writ petition.

8. The record of the writ petition further reveals that no decision was taken within the time stipulated in the judgment and order dated 14.10.2003 passed by this Court in Writ Petition No.6143 of

2003 and the petitioner filed a Contempt Petition marked as Criminal Miscellaneous Case No.1722 (C) of 2004 and a notice was issued on the said contempt petition by this Court on 07.10.2004. After taking cognizance on contempt for non-compliance of the judgment dated 14.10.2003, the State Government passed an order dated 25.11.2004 (Annexure-15) rejecting the petitioner's representation and further cancelling the government orders dated 28.06.1994 and 27.11.1994 with immediate effect.

9. The petitioner filed Writ Petition No.1423 (S/S) of 2005 before this Court challenging the order dated 25.11.2004 passed by the State Government and the said writ petition was allowed vide judgment and order dated 21.02.2005, a copy of which is on record of the writ petition as Annexure-16. The operative portion of the judgment dated 21.02.2005 reads as under :-

"Consequently, the impugned order dated 25.11.2004/ Annexure 1 to the Writ Petition cannot be sustained and liable to be set aside.

In the result, the impugned order dated 25.11.2004/Annexure 1 to the writ petition passed by Secretary/Respondent no. 2 is hereby set aside, with a direction to the Petitioner to file additional Representation (if any) and a certified copy of this order before Principal Secretary/Respondent no. 1 to requisition the relevant record from the Secretary in question who shall decide the representation of the petitioner by passing order containing reasons, disclosing application of mind, in accordance with law and on the basis of material on record before it. Decision shall be taken by the respondent no. 1 within four weeks of the receipt of a certified copy of this order and its decision shall be communicated to the petitioner forthwith."

10. The petitioner communicated the certified copy of the judgment and order dated 21.02.2005 passed by this Court in Writ Petition No.1423 of 2005 and the State Government issued an order dated 08.04.2005, rejecting the representation of the petitioner on the premise that such representations were already rejected by the State Government. This order is annexed as Annexure-17 to the writ petition.

11. The petitioner preferred Writ Petition No.4331 (S/S) of 2005, challenging the order dated 08.04.2005, issued by the State Government, which was allowed by this Court vide judgment and order dated 12.04.2006. the relevant portion of the order is as under :-

"A numerous documents annexures-2 to 7 to the writ petition clearly indicate that the petitioner was recommended for appointment and training by the higher authorities but the appointing authority appears to be biased with the petitioner; hence did not appoint the petitioner ignoring the orders of the State Government and thus the petitioner is being harassed by the appointing authority.

In these circumstances the writ petition is allowed. The order dated 8.4.2005 passed by the State Government (annexure-1 to the writ petition) is hereby quashed and a writ of mandamus is issued to opposite party no.9, Superintendent of Police, Sitapur to consider the case of the petitioner for appointment in light of the observations made above within a period of two months from the date a certified copy of this order is produced before him."

12. After passing of the judgment and order dated 12.04.2006, the impugned order dated 25.07.2006 was passed by the Superintendent of Police, Sitapur which stands challenged in the present writ petition.

13. The record of the writ petition further reveals that after filing of the writ petition, the petitioner filed a contempt petition marked as Criminal Miscellaneous Case No. 2633 (C) of 2006 (Brijesh Kumar Pandey Vs. Sri Dawa Sherpa and others) on the ground that the order dated 25.07.2006, which stands impugned in the present writ petition was passed by the alleged contemnor in utter derogation of the directions issued by the writ court vide judgment and order dated 12.04.2006 passed in Writ Petition No. 4331 (S/S) of 2005. In exercise of the contempt jurisdiction, the Contempt Court passed an order dated 11.10.2007, requiring the Superintendent of Police, Sitapur to remain present in person before the Court on 12.10.2007 along with complete records from the Secretariat.

14. On 12.10.2007 the matter was examined by the Contempt Court in depth and it was observed that the case in hand was one of those glaring cases which depicts how the Government machinery

can harass an individual by taking resort to passing of file from one table to the other and referring the matter time and again to its various hands with no relief to an individual, apparently on account of non-fulfillment of demands of a petty clerk. The Government officers have not been bold and fair enough to take a stand and to take an appropriate decision.

15. After relevant considerations including the contents of the judgment and order dated 12.04.2006 passed by the writ court, the Contempt Court, as evident from the order dated 20.12.2007 (Annexure-4 to the petitioner's rejoinder affidavit dated 23.11.2021), required all the District Superintendents of Police, Sitapur who have remained posted during the last 13 years to be present before the Court for taking the charge. The contents of the order dated 20.12.2007 are quoted in verbatim under:-

"This is one of those glaring cases which depicts how the Government machinery can harass an individual by taking resort to passing of file from one table to the other and referring the matter time and again to its various hands with no relief to an individual, apparently on account of non-fulfillment of demands of a petty clerk. The Government Officers have not been bold and fair enough to take a stand and to take an appropriate decision. This contempt application was filed alleging willful disobedience and non-compliance of the judgment of this Court dated 12.04.2006 passed in Writ Petition No. 4331 (S/S) of 2005.

The applicant had appeared in the test for selection to the post of constable in Civil Police in the year 1993-94. On account of certain objections that the applicant did not fulfill the required standard of physical fitness, he was not selected. The applicant represented before the Hon'ble Governor of the State. He was re-examined by the Chief Medical Officer, Lucknow, who gave him a fitness certificate, certifying that the applicant fulfilled the requirements of physical fitness. Thereafter the Hon'ble Governor recommended that the applicant should be selected. The State Government issued an order dated 28.6.1994, addressed to the Director General of Police and also to the Additional Director General of Police Headquarters annexing the recommendation of the Hon'ble Governor relaxing eligibility condition for selection, and directing that the applicant may be selected/ appointed and may be sent for training

immediately. The said letter Issued by the Government also provides that the decision taken in the case of the applicant would not be treated as a precedent in future.

The directions of the State Government was not being complied with whereupon a second letter dated 27.11.1994 was issued by the State Government, this time signed by the Joint Secretary and addressed to the Director General of Police to appoint the petitioner as Constable in Civil Police and to send him for training without any delay. The applicant kept running from pillar to post but was not given the appointment. The State Government again on 22.3.2003 reiterated its stand and called for a report from the Director General of Police and also the Additional Director General of Police, Headquarters. Subsequently the Inspector General (Establishment) vide letter dated 31.3.2003 wrote to the Superintendent of Police, Sitapur directing him to take necessary action in accordance with law and to get the Government Order implemented.

When no orders were passed for the appointment of the petitioner he filed a writ petition before this Court, being Writ Petition No.6143 of 2003. The said writ petition was disposed of vide order dated 14.10.2003 directing the State Government to pass an appropriate reasoned order in the matter of the petitioner within a period of three months. Again when no action was taken the applicant filed a Contempt Application being Criminal Misc. Case No. 1722 (C) of 2004. Thereafter it appears that an order was passed on 25.11.2004. The applicant challenged the said order by means of Writ Petition No.1423 (S/S) of 2005. The said writ petition was allowed vide order dated 21.2.2005 and the order dated 25.11.2004 was quashed on the ground that it was non-speaking order and has been passed without application of mind, in contravention to the directions contained in the earlier order of this Court dated 14.10.2003. It was further directed that the Principal Secretary shall decide the representation of the petitioner by a reasoned order after application of mind on the basis of the material on record before it.

The State Government passed an order dated 8.4.2005 again rejecting the claim of the applicant. Against the said order the petitioner filed another writ petition being Writ Petition No. 4331 of 2005. The said writ petition was again allowed vide judgment dated

12.4.2006. This time the Court categorically held that the applicant has been recommended for appointment and training by the higher authorities

but the appointing authority was biased with the petitioner and, therefore, did not appoint him ignoring the orders of the State Government. This time while allowing the writ petition the Court quashed the order of the State Government dated 8.4.2005 and issued a writ of mandamus to the respondent no.7 in the writ petition, i.e. Superintendent of Police, Sitapur to consider the case of the petitioner for appointment in the light of the observations made in the judgment within a period of two months. The judgment of this Court dated 12.4.2006 is quoted as under :-

"Heard Dr. L.P. Mishra, learned counsel for the petitioner and learned Standing Counsel for the opposite parties.

By means of this writ petition the petitioner prays for quashing of the order impugned dated 8.04.05 by the State Govt. rejecting the petitioner's representation dated 25.2.05 for appointment as Police Constable as contained in Annexure to the writ petition.

The petitioner appeared before Superintendent of Police, Sitapur for appointment on the post of Constable but he was declared unfit. He approached the State Government, who directed the Chief Medical Officer of Lucknow for physical measurement and medical examination, who found fit in all respects and issued a certificate to that effect. The State Government was pleased to issue the direction on 28.06.94, 27.11.94 and again on 22.03.2003 for appointment and training of the petitioner, even then respondent no.9 did not comply with the aforesaid direction, hence the petitioner filed the Writ Petition No. 6143 (S/S) of 2003, which was disposed of with a direction to the respondents to decide the representation of the petitioner within three months. This order was also not complied with in right perspective. Thereafter another writ petition no. 1423 (S/S) of 2005 was filed by the petitioner which was allowed on 21.02.2005 setting aside the office memorandum dated 25.11.2004. But even then nothing was done hence the petitioner filed a contempt petition no. 835 (C) of 2005. Consequently feeling aggrieved with the petitioner and another office memorandum dated 8.04.2005 impugned in this writ petition has been issued, saying that the relaxation was done in the year 1994 of which no documents are available in the Govt. Office hence no comments could be made on the Govt. Orders dated 28.06.94 and 27.11.94.

A numerous documents annexures- 2 to 7 to the writ petition clearly indicate that the petitioner was

recommended for appointment and training by the higher authorities but the appointing authority appears to be biased with the petitioner; hence did not appoint the petitioner ignoring the orders of the State Government and thus the petitioner is being harassed by the appointing authority.

In these circumstances the writ petition is allowed. The order dated 8.4.2005 passed by the State Government (annexure-1 to the writ petition) is hereby quashed and a writ of mandamus is issued to opposite party no.9, Superintendent of Police, Sitapur to consider the case of the petitioner for appointment in light of the observations made above within a period of two months from the date a certified copy of this order is produced before him."

The petitioner submitted certified copy of the judgment dated 12.4.2006 before the Superintendent of Police, Sitapur along with the covering letter dated 21.4.2006. Superintendent of Police, Sitapur thereafter instead of passing appropriate order again referred the matter to the State Government vide letter dated 5.5.2006 seeking further directions from the State Government, instead of complying with the directions of this Court. This Court had already held in the judgment dated 12.4.2006 that despite the specific directions of the State Government, the Superintendent of Police, Sitapur has been delaying the matter and not complying with the same deliberately in order to harass the applicant. Yet again the same story was repeated. After waiting for sufficient time the applicant filed the present Contempt Application for punishing the opposite parties.

As the time passed on and as the Officers were transferred and new incumbent joined, impleadment applications were filed which have been allowed. The present incumbent Sri V.K. Dohare on the post of Superintendent of Police, Sitapur has also filed his affidavit in reply, to which a rejoinder affidavit has also been filed by the applicant. During the course of hearing on the previous date, a detailed order was passed and the original record available in the office of the Superintendent of Police, Sitapur and the U.P. Secretariat at Lucknow with regard to the applicant's matter were summoned and were produced before the Court. They have also been perused by the Court.

I have heard learned counsel for the applicant and also Sri Lalit Shukla, learned Addl. Chief Standing Counsel on behalf of the respondents.

It has been submitted on behalf of the applicant that he is being harassed for the last 13 years only on

account of a clerk in the office of the Superintendent of Police, Sitapur, dealing with the file of the applicant. According to the applicant this person has been continuing on the post for the last more than 15 years and has been dealing with the file of the applicant right from the beginning. He had made certain demands, which were not fulfilled by the applicant and, therefore, out of annoyance he has been harassing the applicant on account of malice. Right from 1994 the said clerk has been handling the file and has been making reports and notings which are not consistent with the record. The said clerk has also been impleaded in this Contempt application and notices were also issued to him. He has not filled any reply.

Having perused the record and also having gone through the affidavit filed by the Superintendent of Police, Sitapur in my opinion it would not be necessary to go into the question as to whether the Opp-party no. 4 Ibbadul Hag is guilty of manipulating with the record or not but disobedience is quite apparent and, therefore, for the reasons stated hereinafter in my opinion it is a case in which prima facie willful disobedience and non-compliance of the directions of this Court is established and the Opp-party must face charges for committing contempt of this Court.

From the original record it is apparent that the applicant had been pursuing the matter right from the beginning with the Superintendent of Police, Sitapur as also the State Government. On record is available the various letters written by the Superintendent of Police, Sitapur time and again right from 1994, and again in 1999 asking for clarification and directions. From the record of office of Superintendent of Police, Sitapur, it also appears that there are certain missing links as if certain correspondence was not produced before the court and some correspondence had been removed from the record. Further from the record of the State Government what appears is that that the State Government has not taken a stand that the orders issued on 28.06.1994 and 17.11.1994 were forged or fictitious. Even the subsequent letters issued by the State Government 22.03.2003 and 05.07.2005 which clearly mention that no further direction is required from the State Government and the Superintendent of Police, Sitapur may after obtaining legal opinion comply with the directions of the High Court. Despite such specific clear cut orders what compelled the Superintendent of Police, Sitapur to again write in May 2006 seeking further opinion of the State Government is not only

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a clear disobedience of the direction of this Court and of the State Government but shows the jugglery of the Government officers in not doing what they do not want to do and somehow or the other trying to scuttle the matter.

Along with the counter affidavit of the Sri V.K. Dohara, the Superintendent of Police, Sitapur dated 06.09.2007 is annexed an order dated 23.08.2007 rejecting the claim and representation of the applicant. This is again in contravention of the directions of this Court, which did not require him to test correctness of the Government orders but only required him to pass appropriate order for appointment in accordance with law. The liberty given to pass appropriate orders in accordance with law was not to test the correctness of the Government order or the recommendation to appoint the petitioner but this Court had only required the Superintendent of Police, Sitapur to pass orders for appointment in terms of the Government order. He had no business to again test as to whether the appointment could be issued or not.

Normally if an order was passed after a direction of this Court, it would be open to the applicant to challenge the same before the Writ Court submitted on behalf of the State Officers but in the present case what the Court notices is that despite the Court holding in the judgment dated 12.04.2006 that the Appointing Authority was biased and was not issuing the appointment letter ignoring the order of the State Government and thereby harassing the applicant, it is writ large that Superintendent Of Police, Sitapur is definitely harassing the applicant and not issuing the appointment order.

It is a fit case in my opinion in which suitable action should be taken not only against the present Superintendent of Police, Sitapur but also against the previous Officers posted as Superintendent of Police, Sitapur for substantial period and who have delayed the matter time and again, may be at the pretext or at the instance or at the false and incomplete reporting of the clerk Ibbadul Hag, Opp-party no. 4. The applicant has been running from pillar to post for the last 13 years. Officers who have harassed him will have to suitably compensate him.

List this matter on 22nd January, 2008 for framing of charges. The Opp-party no. 1, 4 and 5 shall remain present on the said date before the Court even if they have been transferred from Sitapur wherever they may be posted.

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Let a copy of this order be sent to the Director General of Police, U.P. to ensure presence of the Opp-party nos. 1, 4 and 5 on the next date.

16. Even after passing of such an order dated 20.12.2007, the opposite parties of the writ petition continued to drag their feet contemptuously and the judgment and order dated 12.4.2006 passed in Writ Petition No.4331 (S/S) of 2005 was not complied with in its letter and spirit and even the contents of the order dated 20.12.2007, as quoted hereinabove, were not shown the due regard, it is submitted by learned counsel for the petitioner.

However, after a lapse of about six years from the order dated 20.12.2007, the petitioner was appointed as Constable on May 26, 2013, a copy of which is filed as Annexure-1 to the rejoinder affidavit.

17. In view of the facts narrated above, submission advanced by learned counsel for the petitioner in challenge to the impugned order dated 25.07.2006 passed by Superintendent of Police, Sitapur is that the order has not only been passed illegally and arbitrarily, but patently suffers from perversity inasmuch as that the premise of the impugned order is that the government order dated 17.06.1994, 28.06.1994 and 27.11.1994 were cancelled by the State Government vide order dated 25.11.2004, ignoring the roaringly speaking circumstance that the government order dated 25.11.2004 stood already set aside by the High Court vide judgment and order dated 21.02.2005, passed in Writ Petition No.1423 (S/S) of 2005.

18. It is further submitted that once the order dated 25.11.2004, passed by the State Government, cancelling the earlier government orders was quashed and set aside by this Court, the necessary corollary is that the government orders dated 17.06.1994, 28.06.1994 and 27.11.1994 stood automatically revived and passing of the impugned order on the basis of the government order dated

25.11.2004 is nothing but a perverse approach for the reasons best known to the author of the impugned order.

The second reason assigned in passing the impugned order is that the petitioner did not complete the prescribed eligibility and did not complete the requisite examinations for which there were no provisions of relaxation. It is submitted that this reasoning is again not only arbitrary and perverse but audacious in nature for more than one reason.

It is submitted that in the year 1994 when the advertisement dated 31.03.1994 was issued, there were no statutory rules governing the recruitment of Constables in the State of U.P. and the recruitment, training and appointment as Constables used to be governed by the U.P. Police Regulations framed under the Police Act, 1861, an Act enacted with the assent of the Governor General of India and amended from time to time by various amending Acts. Paragraphs 409 to 415 of the U.P. Police Regulations read as under:-

"409. Enlistments of constables for the Armed and Civil Police.- *Enlistments of constables for the Armed and Civil Police will be made by Superintendents. No man who is less than 18 or more than 23 years old may be enlisted (or re-enlisted). In the case of candidates belonging to Scheduled Castes, the upper age-limit shall be greater by five years. Chaukidars of approved character and qualifications may be drafted into the Pradeshik Police up to the age of 30 years. Military pensioners may be enlisted as Constables in the Armed Police provided they are not more than 35 years of age. After appointment, they may draw their pay as members of the Police Force in addition to their Military pension subject to usual rules in this respect. The enlistment should be notified to the Controller of Military Accounts. Ex-soldiers who are neither reservists nor pensioners may be enlisted as ordinary recruits both in Civil and Armed Police provided they are not more than 35 years of age. The Director-General of Police will exercise powers of granting relaxation from the minimum / maximum age-limit*

only where in the interest of fair dealing or in the public interest, it is considered necessary under Notification No. 1129(5)/II-175-39, dated 4th July, 1941. In districts where recruiting is bad, Superintendent may apply to the Recruiting Staff Officer for pensioners or ex-soldiers other than reservists, Indian Armjed reservists and members of the Indian Territorial Force may not be enlisted in any branch of the Police Force, and no member of the Police Force (including clerical staff) is permitted to join the Indian Territorial Force or the Auxiliary Force, India.

410. Rules for ex-soldiers, who are enlisted as constable in U.P. Police.- *On their enlistment as constable in the Uttar Pradesh Police the exsoldiers of the following classes are entitled to count their previous military service for increments in the time-scale of pay of constables : (1) Ex-soldiers of the combatant units of the Indian Armed Forces, and (2) Ex-soldiers of the combatant units of the late I.S.F. and non-I.S.F. Provided that the military service of a military pensioner or gratuitant will not count for incremental pay if he continues to draw his pension, or unless he refunds any bonus or service gratuity that he may have received in lieu of pension or since discharge from military service in monthly instalments not exceeding thirty-six. The question of re-fixation of pay of such ex-military personnel will be considered only after the entire amount of the bonus/service gratuity has been refunded in full by them. The revised pay will, however, be allowed to them with retrospective effect, i.e., form the date of enlistment in the Police Force. Appendix XXVIII of Army Regulations, India, Volume II, should be consulted as regards the branches of military service which fall in the category of non-combatant services. The cases of men with previous service in units not mentioned in that appendix should be referred to the Inspector-General of Police for orders at the time of enlistment unless governed by rulings already generally notified. Indian Army Reservists whose military service was pensionable under military rules and who before they have earned a pension under such rules in respect of their military service are appointed after discharge from the reserve to the Police Force of Uttar Pradesh may, at the discretion of the Inspector-General, whether their military service included service, with the colours in addition to serve in the Reserve or was service in the Reserve alone, be permitted to count for increment of pay in the Police Force the whole of their service with the*

colours, if any, and half of their service with the Reserve, subject to the condition that they first refund any gratuity which they may have reserved in respect of their military service.

411. Physical requirement for a recruit.- No recruit shall be enlisted whose chest measurements is less than 34 inches expanded with a minimum expansion of 2 inches and whose height is less than 5 feet 9 inches. To this rule there are the following exceptions : (a) A recruit between 18 and 20 years of age who shown signs of growing, may be enlisted if his height is not less than 5 feet 5 inches and if his expanded chest is not less than 32 inches with a minimum expansion of 2 inches, provided that the Civil Surgeon certified that he is under 20 years of age, and that he is likely to attain standard measurements. (b) In the case of hillmen, the height may be not less than 5 feet 4 inches. (c) In the case of Tribal candidates, the chest measurement must not be less than 34" expanded with a minimum expansion of 2" and the height must not be less than 5'3".

Note.- (i) As far as possible tall and well-built men should be enlisted in the Police as constable as physical appearance and personality are important factors for efficient discharge of their duties.

(ii) Persons with bow legs, irrespective of the degree of bow present, shall not be recruited. Slight curvature of legs, is , however, to be treated as normal and should not lead to unnecessary rejections.

412. Medical examination of a recruit.- Before a candidate for recruitment is sent to the Civil Surgeon for medical examination his height and chest measurements must be accurately taken before the reserve inspector. The candidate must be measured round his bare chest with his arms raised. No candidate shall be enlisted without a health certificate in Form No. 29 signed by the Civil Surgeon on the district. Every candidate must also, before he is enlisted, sign an agreement in the following form : I.....son of.....of village.....thana district agree to undertake that on being enlisted as a candidate in the Uttar Pradesh Police Force, I will serve for two years in the said Uttar Pradesh Police, from the date of joining the force, unless I am discharged or dismissed or certified by a Civil Surgeon to be unfit for such service. If I resign before the expiry of the said two years I undertake and agree to forfeit a sum to be calculated according to the following rates: (a) Up to 3 months' service Re. 1 for each completed

month of service; (b) Over three months but not exceeding six months' service Rs.12 for each completed month of service subject to a maximum of Rs.10; (c) Over six months' but not exceeding one year's service Rs.3 for each completed month of service subject to maximum of Rs.25; (d) After one year's but within two years' service Rs.4 for each completed month of service subject to maximum of Rs.50.

413. Register of candidates for recruitment.- A register of candidates for recruitment shall be kept in every district (Form No. 355). Whenever a candidate is sent for examination to the Civil Surgeon the register will be sent with him, all the columns having been filled up except columns, 8, 13, 14, 15, 16 and 17. The Civil Surgeon will fill up columns 8 and 13. If the candidate is declared to be unfit the entry should be struck out with red ink.

414. All enrolled candidates furnish a certificate of having seen successfully vaccinated.- All candidates shall, as a necessary condition of their being enrolled, either furnish a certificate of having been successfully vaccinated, except in the event of their having had small-pox; or submit to be vaccinated by the Civil Surgeon; in the latter case, if the Civil Surgeon be not able to perform the operation at once, the recruit will be sent to him for the purpose on the first available opportunity, a memorandum being kept of all such recruits with a column showing the subsequent date of vaccination. Any member of the subordinate police service may be required to submit to re-vaccination when the Civil Surgeon of his district considers necessary. (The second clause will apply only to men enlisted or appointed after 18th July, 1930).

415. All recruits must possess the minimum physical qualifications.- All recruits must possess the minimum physical qualifications, be medically fit and of good character. In selecting candidates for enlistment, Superintendents of Police will accept those who are considered to be most suitable for Police Service. For the Civil Police, the candidate must have passed VIII class examination (Junior High School) or an equivalent examination recognized by Government for recruitment to the posts and services under Government and for the Armed Police the candidate must have passed VI Class examination or an equivalent examination recognized by Government. For both Civil and Armed Police, the candidates must also possess a working knowledge of Hindi. Any person including one of Nepalese origin, who is a citizen of India, shall be eligible for recruitment to the services and

posts under the rule-making control of Governor. Provided that in the case of a person of Nepalese origin the orders of Inspector-General of Police must first be obtained before such a person is considered for recruitment. When reporting cases to be Inspector-General of Police full details duly verified as to caste, resident, etc. must be intimated along with reasons for recommending the case. Note.- The revised sub-paragraph shall be deemed to have come into effect from March 21, 1959. Full publicity as regards the time and place of selection and the qualifications required should be given through tahsils Schools, Colleges, Panchayats, etc. before recruitment is started by the Superintendent of Police."

19. Paragraph 409 of the Police Regulations provides that no one who is less than 18 or more than 23 years shall be enlisted but with relaxation of 5 years in case of candidate belonging to Scheduled Caste. Paragraph 410 deals with the certain preferences in regard to candidates having rendered some military services which is not relevant for the purposes of the present case. Paragraph 411 further provides that a recruit should have chest not less than 34 inches expanded with a minimum expansion of 2 inches and whose height is less than 5 feet 9 inches. This further contains certain exceptions to the extent that a recruit between 18 to 20 years of age showing signs of growing may be enlisted if his/ her height is less than 5 feet 5 inches and if his expanded chest is not less than 32 inches with a minimum expansion of 2 inches provided that the Civil Surgeon certified that he is under 20 years of age and that he is likely to attain standard measurement. There are certain other exceptions mentioned in Para 411 which are not relevant for the purposes of the present case.

20. Paragraph 412 which has got an important bearing in the present case provides that before a candidate for recruitment is sent to the Civil Surgeon, now Chief Medical Officer, for medical examination, his height and chest measurement must be accurately taken before the Reserve Inspector (R.I.). The candidate must be

measured round his bare chest with his anus raised. This paragraph further envisages that no candidate was to be enlisted as recruit without a health certificate signed by the Civil Surgeon.

21. Paragraph 413 provides that a register of candidate for recruitment shall be maintained at the district level and the register so maintained shall be sent to the Civil Surgeon while referring the candidate for recruitment for physical measurement.

22. Undisputedly, on the date of physical measurement before the Reserve Inspector, the petitioner was of about 19 years of age in the age group of 18-20 years. In the writ petition the petitioner has specifically pleaded in Paragraphs 4 to 16 that when he was non-suited at the stage of physical fitness verification before the Reserve Inspector (R.I.) on the alleged ground of his expansion of chest being less than 1 cm from the prescribed measurement, he moved an application on 14.06.1994 itself before the then Superintendent of Police, Sitapur Sri Rajesh Pratap Singh, requesting for his physical measurement and verification by Chief Medical Officer, Sitapur in accordance with the provisions of Chapter-XXIX, Para 411(i)(a) of Police Regulations and when his request was not accepted and the petitioner was non-suited without being referred to Chief Medical Officer, Sitapur, then a representation was made by the petitioner before His Excellency, the Governor of U.P. and the Government order was issued requiring Chief Medical Officer, Lucknow for medical fitness measurement and, undisputedly, as per report submitted by the Chief Medical Officer, Lucknow chest of the petitioner was found more than the required measurement. In these paragraphs it has also specifically been mentioned that some hush money was being demanded and as the petitioner did not pay hush money, his case was not referred for physical measurement to

the Chief Medical Officer, Sitapur in utter derogation to the prescription made in Para 411 of the Police Regulations.

23. It is submitted that the averments made in paragraphs 4 and 5 of the writ petition have not specifically been denied by the respondents while replying such paragraphs in Para 6 of the counter affidavit. It has nowhere been stated in the counter affidavit that any hush money was not demanded from the petitioner nor any reason has been stated in the counter affidavit to indicate as to why after physical measurement before the Reserve Inspector, the petitioner was not sent to the Chief Medical Officer as provided under Para 412 of the Police Regulations.

24. That being the situation if the State Government referred the petitioner for physical verification to the Chief Medical Officer, Lucknow and there he was found fit, it cannot at all be said that the petitioner was not eligible. It is no body's case that except the chest measurement even at the stage of physical standard verification at the level of Reserve Inspector, the petitioner was short of any other eligibility criteria. The counter affidavit is also totally silent on non-eligibility of the petitioner except the chest measurement being found short by 1 cm which was found incorrect as per medical certification given by the Chief Medical Officer, Lucknow. Paragraphs 409 to 415 of the Police Regulations nowhere provide for any other eligibility and, needless to say, no other recruitment process stood statutorily prescribed for recruitment/enlistment as Constable.

In view of all these, it cannot be said at all that the petitioner lacked eligibility in any manner for the purpose of enlistment as a recruit for the post of Constable and accordingly for being sent to training. Not only this, the government order specifically granted relaxation to the petitioner and directed for his selection as

Constable in the category of Sportsman of eminence and in the category of dependent of freedom fighters. Thus, it is altogether fallacious to plead that the petitioner was not eligible for appointment.

25. A perusal of the judgment dated 12.04.2005 passed in Writ Petition No. 4331 (S/S) of 2005 makes it abundantly clear that a positive finding has been recorded that directions were issued by the higher authorities but the appointing authority was biased with the petitioner and by ignoring the orders passed by the State Government, the petitioner has been harassed by the appointing authority. The judgment dated 12.04.2006 further reveals that the directions were issued for consideration of appointment of the petitioner as Constable in the light of the observations made in the judgment.

26. In view of the aforesaid provisions contained under the U.P. Police Regulations in regard to recruitment of Constables, it was imperative that after the physical measurement at the level of Reserve Inspector (R.I.), the recruits belonging to the age group of 18-20 years, were to be referred to the Chief Medical Officer of the concerned district which was not done despite a specific demand having been made by the petitioner in that regard. In these circumstances, when the petitioner approached the State Government and the orders were passed for physical measurements of the petitioner by Chief Medical Officer, Lucknow, no exception could be taken by a Police Officer supposed to work under the control and supervision of the State Government.

27. However, apart from what has been stated hereinabove, all this matter cannot be re-agitated in the present writ petition in the face of the terms of the judgment and order dated 12.04.2006 passed by this Hon'ble Court in Writ Petition No. 4331 (S/S) of

2005, wherein a positive finding has been remitted that numerous documents contained in the writ petition clearly indicate that the petitioner was recommended for appointment and training by the higher authorities but the appointing authority appears to be biased with the petitioner and that the petitioner was being subjected to harassment by the appointing authority. Otherwise also, neither the impugned order nor the counter affidavit alleges about the requirement of any other examination. It is also worth mentioning that while giving appointment as Constable in the year 2013, the petitioner has not been required to undergo any other examination and there is also no complaint about his efficient functioning as a member of Police Force.

28. It was the order dated 08.04.2005 which was impugned in the Writ Petition No. 4331 (S/S) of 2005 and the statement as made in the present writ petition for appointment of the petitioner as Constable could cause an outrage was nowhere taken as a ground for rejection of representation of the petitioner vide order dated 04.07.2005 which was set aside by this Court as aforesaid.

29. On behalf of the respondents as a last limb of argument it has been argued that the orders dated 15.06.1994, 17.06.1994, 28.06.1994, 27.11.1994 and 22.03.2003 as also the government order dated 21.05.2004 were forged and a First Information Report dated 18.01.2008 was lodged against the father of the petitioner Sri Ram Naresh Pandey who was a Section Officer in the Home (Police), Section-10 in U.P. Civil Secretariat during the period of issuance of the aforesaid Government orders.

30. Lastly, learned counsel for the petitioner placed reliance upon two judgments, which are as under :-

(i) Union of India & others Vs. Pritilata Nanda [(2010) 11 Supreme Court Cases 674]. Relevant paragraph-23.

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(ii) **Union of India Vs. Mohan Singh Rathore & another [(1996) 10 Supreme Court Cases 469]**. Relevant paragraphs-7 and 33.

31. On the other hand, learned Additional Chief Standing Counsel made statement that the government orders issued by the State Government, as referred above were cancelled, therefore, the benefit granted to the petitioner on the basis of aforesaid government orders is not available to the petitioner and has wrongly been granted by the authorities. He further submitted that in paragraph-4 of the supplementary counter affidavit, he has taken the entire ground of non-availability of the benefit of government order referred hereinabove. It is further submitted that the impugned order is just and valid and does not suffer from any infirmity or illegality.

He next submitted that Special Appeal (Defective) No.38 of 2008 has already been filed against the judgment and order dated 12.4.2006, passed in Writ Petition No.4331 (S/S) of 2005, which is still pending and has not been decided. On the basis of the said facts, he made his submission that till the matter is *sub-judice* before the High Court, no benefit can be granted to the petitioner.

32. In view of what has been submitted by learned counsel for the parties, ground taken in the impugned order as also in the counter affidavit, as raised during the course of argument on behalf of the respondents, are wholly unsustainable and deserve an outright rejection.

33. Learned counsel for the petitioner placed reliance upon a judgment in the case of **Union of India & others Vs. Pritilata Nanda** (Supra), relevant paragraph-23 is being quoted below :-

"23. In the result, the appeal is dismissed. However, the operative part of the impugned order is modified in the following terms:

(1) The concerned competent authority of the South Eastern Railway shall, within a period of two weeks from today, issue order appointing the respondent

..24..

on a Class III post. The appointment of the respondent shall be made effective from the date person placed at Sl. Nos.12 in the merit list was appointed. The pay of the respondent shall be notionally fixed with effect from that date and she shall be given actual monetary benefits with effect from 5.9.2008 i.e., the date specified in the order passed by the High Court.

(2) The pay of the respondent shall also be fixed in the revised pay scales introduced from time to time and she be paid arrears within a period of four months.

(3) The seniority of the respondent among Class III employees shall be fixed by placing her below the person who was placed at Sl. No.10 in the merit list.

(4) If during the intervening period, any person junior to the respondent has been promoted on the next higher post, then her candidature shall also be considered for promotion and on being found suitable, she shall be promoted with effect from the date any of her junior was promoted and she be given all consequential benefits.

(5) The General Manager, South Eastern Railway is directed to ensure that the respondent is not victimised by being posted in a remote area.

(6) Since the respondent has been deprived of her rights for almost 21 years, we direct the appellants to pay her cost of Rs.3,00,000/-. The amount of cost shall be paid within 2 months from today."

He also placed reliance upon the judgment in the case of **Union of India Vs. Mohan Singh Rathore & another** (Supra). Relevant paragraph-7 is being quoted below :-

"However, the question is: what would be the relief that could be granted to the respondent. It is seen that the State Government did not forward the "no deterioration certificate" in relation to the respondent and after the retirement of the respondent the State Government had written a letter to the Union of India on February 21, 1989 stating as he was "well deserving" candidate. Nothing had prevented the State Government to send the "no deterioration certificate" of the respondent along with certificates in relation to other candidates when he was due to retire. It is seen that they forwarded the select list on April 11, 1988 to the Government of India and the respondent was due to retire on May 31, 1988. When such was the incumbency nothing would have prevented the State Government from forwarding the letter. Consequently, the respondent

had to lose the chance for being appointed to the IPS Cadre though he was found suitable and approved by the UPSC. Under these circumstances, we think that appropriate direction would be that the Union of India may include his name in the appointment notification dated October 4, 1988 as a select list candidate and give him order of appointment letter. Consequently, the respondent would be entitled to all the retirement benefits on that basis."

34. In the back-drop of the facts and circumstances of the case, it is more than apparent on the face of the record that the plea of all such government orders being forged one or being not genuine was never raised in the three round of litigation which took place between the parties before filing of the present writ petition, namely, Writ Petition No. 6143 of 2003 decided vide order dated 14.10.2003, Writ Petition No. 1423 (S/S) of 2005 decided vide judgment and order dated 21.02.2005 wherein government order dated 25.11.2004 cancelling the earlier Government order was set aside and the Writ petition No. 4331 (S/S) of 2005 decided vide judgment and order dated 12.04.2006. In none of these writ petitions the plea as raised during the course of arguments on behalf of the respondents was ever raised. Not only this, in the detailed counter affidavit filed on behalf of respondents, no such allegation in the present writ petition has also been made. Besides, such an allegation appears to be a subterfuge of avoiding the adherence of the government orders as also the terms of the judgment dated 12.04.2006 passed in Writ Petition No. 4331 (S/S) of 2005 and that too, after passing of a detailed order dated 20.12.2007 passed by this Court in exercise of the contempt jurisdiction in Criminal Miscellaneous Case No. 2633 (C) of 2006 as quoted hereinabove.

35. In the backdrop of what has been seen and discussed hereinabove, it is now apposite to see as to what relief should be granted to the petitioner, who has prayed for issuance of direction, as quoted hereinabove. In view of the submission advanced, the

Court is of the opinion that there could be no doubt that non-enlistment of the petitioner as a recruit Constable in the year 1994 when the other recruits of the same recruitment were enlisted and sent for training as Constable is wholly illegal, arbitrary, capricious and malicious, more particularly, in view of the judgment dated 12.04.2006, passed in Writ Petition No.4331 (S/S) of 2005 and the judgment dated 21.02.2005, passed by this Court in Writ Petition No.1423 of 2005.

36. On due consideration of overall facts and circumstances of the case, the Court is of the view that the impugned order is not sustainable in the eyes of law and are liable to be set aside. Accordingly, the impugned order dated 25.07.2006 is hereby set aside.

37. In view of peculiar facts and circumstances of the case, respondents are directed to pay a cost of Rs.3,00,000/- (Rupees Three Lakhs Only) to the petitioner within three months from today. However, the petitioner be treated in service as Constable from the date from which the selectees of 1994 recruits of district Sitapur as Constable have been appointed as Constables with all consequential benefits of continuance in service, fixation of pay, seniority and promotion etc.

It is further provided that pay of the petitioner should be fixed, calculated and refixed on the basis of revised scale of pay as made from time to time. Consequent to fixation, calculation and re-fixation as aforesaid, the petitioner be paid arrears of salary w.e.f. 12.04.2006, the date of judgment of this Court in Writ Petition No.4331 (S/S) of 2005. The petitioner be also given promotions against the quota of promotion to the next higher posts from the date, the Constable recruited after 1994 have been promoted.

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38. With the aforesaid observation and direction, the writ petition succeeds and is **allowed**.

Order Date :- 20.8.2024

Gautam