

Court No. - 2

Case :- WRIT - A No. - 17837 of 2018

Petitioner :- Rishi Pal Singh

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

Counsel for Petitioner :- Moti Chand Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard.

2. Having heard learned Counsel for the parties and having perused the records, what comes out is that the petitioner was appointed as Constable in the Provincial Armed Constabulary (hereinafter referred to as 'PAC') in State of U.P. on 01.07.1981, however, during service it came to light that he had submitted the relevant educational testimonials of Class-VIII wherein his date of birth was mentioned as 20.01.1962 along with his application form for recruitment on such post though he had already done his high school and in the high school certificate, his date of birth was 02.01.1961. Most important, if the date of birth had been disclosed correctly as 02.01.1961 then he was overage on the date of his recruitment and he would not have been appointed. Therefore, he was charged vide charge sheet dated 16.02.2009 under Section 14 (1) of Uttar Pradesh Police Officers of the Sub-ordinate ranks (Punishment and Appeals) Rules 1991 for imposing a major punishment. After consideration of the reply and enquiry a dismissal order was passed on 18.08.2008, however, in appeal the said order was set aside on the ground that the enquiry had not been properly conducted. This led to a re-enquiry in the matter, but the result was the same and ultimately on 12.10.2009 he was dismissed from service. He filed an appeal which was also rejected,

thereafter he filed a revision before the State Government which was also rejected and then he filed a claim petition before the Tribunal bearing Claim Petition No.2082 of 2012. The said claim petition has been dismissed by the impugned judgment dated 04.04.2018.

3. The only argument advanced by Shri Moti Chand Yadav, learned Counsel for the petitioner is that the petitioner had submitted the document, copy of which is annexed as Annexure No.1 to this petition wherein his date of birth is mentioned as 02.01.1962, at the time of seeking recruitment/appointment on the post of Constable in the PAC way back in 1981 and this is the document which was provided to him. He also asserted that this was the high school marksheet. The argument appeared quite attractive and we perused the document annexed with the petition as also the typed copy filed with it, but we find that this is not a high school marksheet/certificate and in fact it is a marksheet pertaining to Class VIII and pertains to the academic year 1975-76.

4. Shri Indrajeet Shukla, learned Additional Chief Standing Counsel has invited our attention to the high school certificate of the petitioner and in his high school certificate his date of birth was mentioned as 02.01.1961 and high school was the minimum educational qualification required for the said post. The relevant documents pertaining to his high school were concealed by the petitioner and he got the appointment on the basis of alleged marksheet of class-VIII wherein the date of birth was incorrectly mentioned. An extensive enquiry was conducted by the Enquiry Officer by visiting the college on 28.04.2009 from where the petitioner had completed his high school. The Principal of the College was examined with opportunity to the petitioner to cross examine which he

dispensed with. Thereafter the Enquiry Officer visited the office of the Madhyamik Shiksha Parishad U.P., Allahabad on 11.08.2009 and recorded the statement of Smt. Prabha Tripathi and Shri Ayodhya Prasad Pandey, Assistant Secretary, Madhyamik Shiksha Parishad, U.P. with opportunity to the petitioner to cross-examine the same on 12.08.2009. Further the Enquiry Officer examined Shri Dharma Singh, Sahayak Senanayak and the petitioner cross-examined him. The petitioner was thereafter called for to adduce the evidence in his defence. He submitted his response on 11.09.2009 to the Enquiry Officer. After considering the facts and evidence, the Enquiry Officer submitted his report on 16.09.2009 and based on the aforesaid enquiry, he found that the petitioner had concealed the high school marksheet wherein his date of birth was mentioned as 02.01.1961 instead he had submitted a class-VIII marksheet. Shri Shukla, learned Additional Chief Standing Counsel has also invited our attention to the supplementary counter affidavit filed along with application dated 29.04.2019 wherein facts have been stated in detail in this regard and various documents have been annexed therewith.

5. As regard the contention of the petitioner's Counsel that for the same charge a criminal case was lodged against the petitioner and after filing of the charge sheet, as the charges were not proved, therefore, he was acquitted. Though Counsel for the State has submitted that against the acquittal there is an appeal pending, the Tribunal has considered this aspect of the matter and referring to various decisions of Hon'ble Supreme Court has opined that departmental and criminal proceedings could go on simultaneously as the standard of proof in the same is different. While in a criminal proceeding standard of proof is beyond reasonable doubt; in civil or departmental proceeding it is preponderance of probabilities. Moreover, the Tribunal has

noticed incongruous findings recorded by the trial Court leading to the appeal. The Criminal Court has also opined that on the date of appointment the accused was overage, however, as per its findings he had not committed any forgery. Learned Counsel for the State submitted that this judgment has no bearing on the disciplinary proceedings for the reason here it is a case of concealment of relevant document, i.e. the high school marksheet/certificate wherein the date of birth of the petitioner was correctly mentioned as 02.01.1961 instead the class-VIII marksheet was submitted mentioning the date 02.01.1962 as the date of birth, but for this incorrect fact and concealment of fact the petitioner would not have been appointed as he had already overshoot the maximum age, a fact which has not been denied by Shri Moti Chand Yadav, learned Counsel for the petitioner.

6. As regards the high school marksheet annexed as part of annexure 1 at page 22 to the writ petition which is dated 18.07.1979, it does not bear any date of birth. The Counsel for the petitioner has misread the documents annexed as part of annexure 1. There are two documents annexed, one is class-VIII marksheet wherein date of birth is mentioned as 20.01.1962, the other is the alleged high school marksheet wherein he could not point out the date of birth, if any, mentioned therein.

7. We have gone through the record and have also perused the judgment of the Tribunal. There is no such high school marksheet or certificate on record wherein the date of birth of the petitioner may have been mentioned as 02.01.1961. The petitioner does not deny the fact that he had completed the high school prior to 1981. The only insistence of learned Counsel for the petitioner is that whatever document was provided by the school was annexed with the application form and that was the document pertaining to class-VIII marksheet, however, he

has no explanation to offer as to why he did not submit the high school marksheet wherein the date of birth was mentioned as 02.01.1961 if that was the minimum qualification. Of course, a logical corollary is as to how the petitioner was appointed in the first place when the minimum requirement was high school, but that is not the ground raised by opposite party. The fact is that the maximum age for such appointment had been crossed by the petitioner and he secured the appointment somehow by not presenting the correct document in this regard, rather concealing it. The charges have been proved in disciplinary proceedings on the basis of evidence on record with adequate opportunity to the petitioner to cross-examine the witness and defend himself as has been held by the Tribunal and we also do not find any procedural error or perversity in the judgment of the Tribunal nor in that of the dismissal order or the appellate/revisional order passed. It may also be mentioned that consequent to his dismissal, no order of recovery of the emoluments/salary already paid to the petitioner, has been passed.

8. We accordingly see no reason to interfere in the matter.
Dismissed.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 21.5.2024
Anand Sri./-