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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 3502/2018**

BIRENDRA BHADUR S. Petitioner

Through: Mr Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr Sanjeev Uniyal with Mr Dhawal
Uniyal, Advocates for UOI/R-1 to 3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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11.03.2019

Dr. S. Muralidhar, J.:

1.The challenge in the present petition is to an order dated 16th March, 2017 passed by the Senior Commandant, in the Office of the Additional Director General, Central Industrial Security Force ('CISF'), removing the Petitioner, who was working as a Constable, from service. The challenge is also to the subsequent order dated 12th September, 2017 passed by the Appellate Authority ('AA') confirming the aforementioned order and to an order dated 4th January, 2018 passed by the Revisional Authority dismissing the revision petition filed by the Petitioner.

2. The background facts are that the Petitioner had applied for the post of Constable (General Duty) in the CISF under the 'OBC Category'. He was selected in the rank of Constable (GD) on 12th October, 2008. After completion of training, he was posted at the Airport at Lucknow from 2009

to 2013. Thereafter, he was posted to the Kolkata Airport.

3. An anonymous complaint is stated to have been received by the Respondents against the Petitioner on 15th January, 2015 along the lines that he had fabricated his personal information as submitted to the Respondents. The Petitioner was issued a charge memorandum dated 24th September, 2016. The two Articles of Charge stated that the Petitioner had produced an OBC certificate dated 27th March, 2009 issued in the Kannada language and attested by the Tehsildar, North Taluk, Bangalore mentioning an address in Bangalore without submitting the necessary documents needed for such a certificate. Similarly, he had also been issued a domicile certificate of the same address dated 17th July, 2014.

4. It is stated that from the website of the relevant authority in Karnataka, it appeared that for the purposes of obtaining a caste or domicile certificate, a number of documents had to be produced which included (i) school records from 1st to 10th standard, (ii) ration card of original identity card, (iii) driving license or PAN card or passport. It is stated that as per the statement given by the Petitioner on 2nd July, 2015, he was not having the election identity card, ration card, driving license, PAN card and that without having those required documents, the submission of domicile and caste certificates tantamounted to “gaining appointment in CISF through wrongful means”.

5. In the enquiry that ensued, several witnesses were examined on behalf of the prosecution of which two were particularly relevant. One was Umesh Kumar Gautam, an Assistant Commandant (AC)/Exe who had been detailed as an Enquiry Officer to meet the family of the Petitioner. From his

evidence, it transpired that the Petitioner's father had left Uttar Pradesh and had come to Bangalore and was working as daily labour. He used to work at different places. This officer i.e. Umesh Kumar Gautam, AC/Exe also found out that the OBC and the domicile certificates were attested by District Authority and the Competent Authority at Bangalore. The concerned School confirmed that the Petitioner indeed had completed Class 10 there.

6. The other important witness was R N Sudhanshu Inspector/Exe. He had been detailed as an Enquiry Officer to enquire about the residential address of the Petitioner. Although he could not locate the address as given in the service records, it had been revealed that the address was 7 to 8 years old; the area was a fast developing one and the chances were "that the owner could have sold the property or it could have been developed as residential society". The enquiry revealed that the parents of the Petitioner "were performing the duties of casual labour", they were residing in a shed and therefore it was difficult to locate the address. The Petitioner's school record at Bangalore revealed that "he had completed studies in class nine and ten in the year 2002 and 2004 from Dhanraj Phool Chand Hindi High School, Bangalore. "The same had been verified by the school authorities". Additionally, both the domicile certificate as well as the OBC caste certificate had been verified by the Tehsildar at Bangalore.

7. Therefore, there was clear cut evidence available to the Enquiry Officer which showed that the Petitioner had completed his 9th and 10th classes at Bangalore; his parents were eking out their living as casual labour while living in a shed in Bangalore and most importantly that the caste certificate

and domicile certificates produced by the Petitioner were both genuine documents. The Enquiry Officer came to the following definite conclusions:

“After carefully examining the statements of prosecution witness, the defense version and the exhibits produced by the prosecution and defense and taking all the relevant documents pertaining to the case it is clear that the charged official CISF No. 082303763 Const/GD Birendra Bahadur S, Domicile and caste certificate produced by the charged official at the time of applying for the post of Const/GD in CISF were genuine and the same were verified and attested by the Bangalore North Taluk Tehsildar and his Character and antecedents were verified by the Bangalore Police. But the length of period of stay at the Bangalore| address by the charged official having doubts. The individual states that he stayed at Bangalore from 1998 in his attestation form, the character and antecedents verified by the Bangalore police shows the period from 2002 to 2008 September which appear to be a realistic one considering the fact that he studied at Anand Kanchan Ketuki Jalsar Etah UP till 2002 the same were supported by the mark sheet and certificate issued by the Head Master of the school.”

8. Once there was a clear finding that both the domicile and the caste certificates were genuine documents, the Enquiry Officer could not have gone behind those documents into ascertaining whether the documents that were necessary for obtaining such certificates had in fact been submitted or not by the Petitioner. That was not the scope of the enquiry. As the charge itself reveals, it was sought to be proved that the Petitioner had used ‘wrongful means’ to obtain the caste and domicile certificates. There was no material available to the Enquiry Officer to come to such a conclusion.

9. As long as the domicile certificate and the caste certificate had been verified as genuine by the authorities who had issued the said certificates,

there was no question of any adverse order being passed against the Petitioner. The Respondents have not been able to dispute the principal contention of the Petitioner that at the time that these certificates were issued to him, there was no requirement that the Petitioner had to produce an election card, the PAN card, passport or any such identification card for issuance of the same. Had that been the requirement, it would be logical for the authorities issuing the domicile and caste certificates to cancel such certificates or not issue them at all. However, that was not the case. Even in 2015, when an officer was detailed by the Respondents to make the relevant enquiries, he visited the offices of the Tehsildar at Bangalore who confirmed that both the documents i.e. the caste certificate and the domicile certificate were genuine.

10. In ***Bharati Reddy v. State of Karnataka (2018) 6 SCC 162***, the Supreme Court emphasized that a writ of *quo warranto* requirement to unseat a person appointed to a public office could not be issued as long as the certificates on the basis of which he was so appointed were not invalidated by the competent authority. It was held in paragraph 33 as under:

“33. As the subject certificate still holds the field and until it is invalidated by the Competent Authority, it is unfathomable as to how the appellant can be said to have occupied the public office without legal authority so as to Invoke the extraordinary writ jurisdiction of issuing a writ of *quo warranto*.”

11. Learned counsel for the Respondents had no answer to the finding of the Enquiry Officer that the certificates issued to the Petitioner were genuine. He kept on repeating that the Revisional Authority and the Appellate Authority had not agreed with the Petitioner. However, that is the very

reason as to why the Petitioner is before this Court. It appears to the Court that neither the Competent Authority, nor the Appellate Authority or the Revisional Authority have paid any heed to the stark fact that the very certificates on the basis of which the Petitioner secured his appointment i.e. the domicile certificate and the caste certificate were verified to be genuine documents by the authorities concerned. It did not matter from the point of view of the Respondents whether the Petitioner had produced the requisite documents for the purposes of obtaining those certificates. The authorities concerned did not take the view that the Petitioner had used wrongful means for obtaining those certificates. Consequently, there was no material available with the Respondents to come to such a conclusion.

12. The Petitioner has obviously struggled in life. Despite being the child of persons engaged in casual labour who were working on a daily wage basis in Bangalore and living in a shed, he managed to complete his 9th and 10th standard. He qualified in the exams and endurance tests and was finally appointed as a constable in the CISF. In the absence of anything to indicate that he obtained the caste and domicile certificates by 'wrongful means' for securing appointment in the CISF, it was unfair to remove the Petitioner from service on such an unfounded charge, unsupported by credible evidence.

13. For the aforementioned reasons, the Court sets aside the impugned orders dated 16th March, 2017 of the Enquiry Officer; 12th September, 2017 of the Appellate Authority and 4th January, 2018 of the Revisional Authority. The Petitioner is directed to be reinstated forthwith with all

consequential benefits i.e. continuity in service, including notional fixation of pay, etc. but will not be entitled to any arrears/back wages.

14. The petition is allowed in above terms. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 11, 2019

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