

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 16977 of 2017

Chandra Hansh
Versus
Union of India & Ors.

For the petitioner : Mr. Achin Kumar Majumder
Mr. Ananya Adhikary

For Union of India : Mr. Partha Ghosh

Heard on : 16th April, 2024

Judgment on : **16th April, 2024.**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order of termination dated 13th August, 2012, being annexure P-5 to the present writ petition.
2. The petitioner claims that he belongs to Other Backward Classes (OBC) and his family belongs to Aahir by caste.
3. It is the petitioner's case that after he was finally selected for the post of Constable in Railway Protection Special Force (RPSF) and after successful completion of his initial training he was finally appointed as a member of the RPSF and was posted at 4th

Battalion, RPSF, New Jalpaiguri. The said appointment to the post of Constable in RPSP was reserved for OBC category. The petitioner contends that in support of his status he had produced one certificate dated 24th July, 2007 bearing serial no. 8735 issued by the Tahasildar Allahabad (U.P.), at the time of his appointment.

4. Before the petitioner was confirmed and was on probation a show-cause notice dated 7th July, 2012 was issued by the appointing Authority whereby it was alleged that the petitioner had secured the appointment in the RPSF by producing false OBC certificate and suppressed the aforesaid fact in the attestation form furnished by him at the time of appointment.
5. The petitioner had duly responded to the said show-cause and enclosed therewith the certificates showing his OBC status. Records reveal that after receipt of the petitioner's reply, the Authority, being the Commanding Officer, 4th Battalion, RPSF, New Delhi, terminated the service of the petitioner by passing the order dated 13th August, 2012.
6. The petitioner had immediately thereafter, by communication in writing dated 25th September, 2012 made a representation to the Inspector General, RPSF, for his reinstatement enclosing the following documents-

*a) Photo copy of Enquiry report of officer-in-charge
Mayaima Police Station.*

- b) *Photo copy of the enquiry report of Circle Officer of Police.*
- c) *Photo copy of the Certificates issued by the Gram Pradhan, Kekhpal, Gram Development Officer, Area Panchayat Member, District Panchayat Member and (MLA) Member of Legislative Assembly.*
- d) *Photo copy of the Certificates issued by the Tehsil Office Soraon to prove the genuineness of his OBC certificate which was produced by him at the time of his initial appointment. But the said representation of your petitioner dated 25.9.2012 was not considered and no order was passed in favour of your petitioner”.*

7. Unfortunately for the petitioner, by a communication in writing dated 5th November, 2015, issued by the I.G-cum-Chief Security Commissioner RPF, Railway Board, the petitioner was informed since, there was no provision of appeal against the order of termination of a probationer, the representation of the petitioner could not be considered.
8. In the interregnum in terms of a direction dated 17th December, 2012 issued by the Railway Board, the petitioner was called upon by the Commandant 2nd Battalion RPSF, Gorakhpur (U.P.), to appear him on 14th February, 2014 along with all records for recording his statement.
9. The petitioner states that the petitioner had duly in terms of the aforesaid direction appeared before the Commandant 2nd

Battalion RPSF, Gorakhpur and had produced the relevant caste certificates to establish that he belongs to OBC category.

10. It is also the petitioner's case that in terms of a query made by the Chief Security Commissioner, the Tahsildar, Soraon, by a communication in writing dated 13th June, 2011 had duly verified the caste certificates of the petitioner and had confirmed that the caste certificate issued to the petitioner vide serial no. 9682 issued on 27th June, 2008 and the caste certificate issued on 4th December, 2010 were found to be correct and that the petitioner is Aahir by caste which belong to backward caste.
11. At the instance of the respondents an enquiry was also conducted by the Superintendent of Police, Allahabad, for the purpose of initiating proceedings against the petitioner with regard to alleged production of false OBC certificate.
12. Mr. Majumder, learned advocate representing the petitioner by drawing attention to the translated copy of the enquiry report dated 13th August, 2012, forming annexure P-10 to the writ petition, submits that on the basis of the enquiry, the police authorities had also been able to ascertain that the caste certificate issued in favour of the petitioner by the Tehsildar, Allahabad was genuine and that the petitioner belongs to Aahir community, in OBC category.

13. Mr. Majumder, further drawing attention of this Court to the order of termination dated 13th August, 2012 submits that the said order of termination was issued without holding any regular enquiry. The said order of termination casts a stigma on the petitioner since, it is alleged that the petitioner had obtained his appointment by not only producing false documents, but also in an illegal manner.

14. By referring to the judgment delivered by the Hon'ble Supreme Court in the case of **Nar Singh Pal v. Union of India & Ors.**, reported in **(2000) 3 SCC 588** he submits that law does not sanction termination of even a probationer without holding a proper enquiry when the order casts a stigma on the probationer. He has also placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **Dr. Vijayakumaran C.P.V. v. Central University of Kerala & Ors.** reported in **(2020) 12 SCC 426**, and an unreported judgment delivered by a Coordinate Bench of this Court on 30th January, 2017 in the case of **Sabhajeet vs. Union of India & Ors.** in W.P. 8161(W) of 2016. By referring to the case of **Sabhajeet** (supra), he submits that in identical set of facts a Coordinate bench of this Court not only set aside the order of termination but also directed reinstatement and regularization of the petitioner in service with a further direction to make payment of compensation of Rs.25,000/-. In the given facts since, this matter is not different from the judgment

delivered in ***Sabhajeet*** (supra), similar relief should be afforded in favour of the petitioner.

15. Mr. Ghosh, learned advocate representing the respondents on the other hand submits that the petitioner was a probationer. There is no provision in the Railway Protection Force Act, 1957 or the Rules framed thereunder to hold any regular enquiry for termination of service of a probationer. Since, the Rules also did not provide for an appeal, there is no irregularity on the part of the respondents in refusing to entertain the appeal filed by the petitioner. He submits that the respondents had proceeded on the basis of the communication issued by the Tehsildar, Allahabad, and having found on the basis of the communication of the Tehsildar, the caste certificate submitted by the petitioner to be not genuine, had issued the order of termination. There is no irregularity on the part of the respondents in issuing the order of termination dated 13th August, 2012.

16. Heard the learned advocates appearing for the respective parties and considered the materials on record. Before proceeding further in the matter since, the matter pertains to a challenge to an order of termination passed in connection with the service of a probationer, the first duty of the Court is to find out whether the order passed casts a stigma on the petitioner.

17. In this case it is found that the petitioner had been terminated from service not only on the allegation of furnishing false information, suppression of facts but also in obtaining his appointment in an illegal manner by producing false documents. The matter did not rest there. The respondents further made a complaint before the police authorities for initiating criminal proceedings against the petitioner for producing false caste certificate. Once, an allegation of this nature is put forth, the order does not remain an ordinary order of termination of a probationer. It is true that an employer is entitled to, before confirming a probationer in service to ascertain whether the probationer would be suitable for the employment. However, if the order of termination attaches a stigma and is passed without holding a proper enquiry, the order, in my view, goes against the principle of natural justice and is violative of Constitutional provisions. Admittedly, in this case the petitioner had been terminated on the ground of furnishing false information, suppression of facts and obtaining appointment by illegal means on the basis of production of alleged false caste certificate.

18. Having regard to the same, I find that the aforesaid order is not sustainable. Although, Mr. Majumder learned advocate by placing reliance on the unreported judgment delivered in the case of **Sabhajeet** (supra) has insisted that similar relief should be afforded in favour of the petitioner, I however, notice that

although, on the basis of the false information no criminal proceedings had been initiated against the petitioner, and although a RTI disclosure has been made to demonstrate genuinely of the caste certificate, I am of the view that such an issue can only be appropriately decided by the authorities in a regular enquiry to be conducted, if at all.

19. In view thereof, while setting aside the order of termination dated 13th August, 2012, I direct the respondents to reinstate the petitioner in service within a period of four weeks from the date of communication of this order. The period spent by the petitioner from the date of termination till the date of reinstatement shall be treated as an extra-ordinary leave with all notional benefits. The respondents shall be at liberty to enquire against the petitioner and if on the basis of the enquiry so conducted it is found that the petitioner belong to OBC Aahar community, then no further action be taken against the petitioner and the petitioner be regularized in service. Since, the communication dated 13th June 2011, issued by the Tehsildar Saron, addressed to the Chief Security Commissioner is already on record, the entire process to enquire and regularize the petitioner should be completed within a period of 12 weeks from the date of communication of this order. The question of back wages shall be decided by the respondents in accordance with law.

20. With the above observations and directions, the writ petition is disposed of.

21. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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