

State Of Up And Another vs Himanshu And Another on 1 April, 2025

Author: Ashwani Kumar Mishra

Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44496-DB

Court No. - 29

Case :- SPECIAL APPEAL DEFECTIVE No. - 886 of 2024

Appellant :- State Of Up And Another

Respondent :- Himanshu And Another

Counsel for Appellant :- C.S.C.,Rajiv Singh

Counsel for Respondent :- Abhinav Tripathi,Prashant Shukla,Ram Prakash Upadhyay

AND

Case :- SPECIAL APPEAL DEFECTIVE No. - 877 of 2024

Appellant :- State Of Up And Another

Respondent :- Ashish Kumar Paliwal And Another

Counsel for Appellant :- Kunal Ravi Singh,Rajiv Singh

Counsel for Respondent :- Abhinav Tripathi,Prashant Shukla,Ram Prakash Upadhyay

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Donadi Ramesh, J.

In Ref: Delay Condonation application Heard.

This is an application seeking condonation of delay in filing the appeals.

Cause shown for the delay caused in filing of appeal is explained to the satisfaction of Court.

The delay is condoned.

This application, accordingly, stands allowed.

In Ref: Special Appeals

1. With the consent of learned counsel for the parties, the special appeals are taken up for final hearing at the admission stage.

2. These special appeals are directed against the order passed by the learned Single Judge on 6.9.2024, in Writ-A No.13871 of 2024 and Writ-A No.13882 of 2024. In the writ petitions, the order of employer dated 21.10.2021 is assailed whereby it was held that the respondent-petitioners had obtained appointment on the basis of forged O'Level certificate and consequently, his continuance in service was impermissible. This order of 21.10.2021 is challenged after nearly three years in the writ petition. Learned Single Judge has entertained the writ petition on the ground that disciplinary action was required to have been undertaken by the authorities and that merely by issuing show-cause notice, it was not open for the appellants to have held the certificate not to be genuine and thereby discontinue the engagement of the respondent-petitioner. Learned Single Judge, therefore, has suspended the order dated 21.10.2021 and has allowed the respondent-petitioner to discharge his duties and to pay him salary. Thus aggrieved, the State is before this Court in these intra-court appeals.

3. At the very outset, when the matter is taken up, an objection is taken by Sri Ashok Khare, learned Senior Counsel assisted by Sri Prashant Shukla, that the appeal is not maintainable as it arises out of an interim order.

4. Sri Manish Goel, learned Additional Advocate General assisted by Sri Ankit Gaur, appearing for the appellants submits that the writ petition was not only entertained after about three years, but by interim relief, learned Single Judge has granted final relief, which could have been allowed only when the writ petition itself was allowed. It is submitted that the order impugned clearly affects matters of movement and, therefore, would clearly amount to a judgment and the special appeal would be maintainable.

5. We have heard learned counsel for the parties and have carefully perused the materials on record.

6. Two questions arise for consideration in the present appeals; the first question is as to whether learned Single Judge could have allowed the relief which as per the appellants amounted to grant of final relief at the admission stage itself; the second question is as to whether disciplinary inquiry was required to have been conducted against the respondent-petitioner before discontinuing his engagement on the ground that the basis of employment was a forged certificate produced by the respondent.

7. We propose to take up the second question first. Sri Ashok Khare, learned Senior Counsel, has placed reliance upon an order passed by the co-ordinate Bench of this Court in *Parmi Maurya vs. State of UP and others*; 2014 SCC Online All 16612 in order to submit that even in case of appointment obtained on forged certificate, the requirement of holding disciplinary inquiry cannot be dispensed with. To similar proposition is the judgment of co-ordinate Bench in Special Appeal No.642 of 2024. Learned Senior Counsel for the appellant also places reliance upon the judgment of the Supreme Court in *Sandeep Kumar vs. GB Pant Institute of Engineering and Technology Ghurdauri and others*; 2024 SCC Online SC 541, wherein the Supreme Court has observed as under in paragraph No.18:

"On a bare perusal of the termination letter dated 19th May, 2022, it becomes apparent that the decision to terminate the services of the appellant from the post of Registrar was not preceded by an opportunity to show cause or any sort of disciplinary proceedings. The enquiry as referred to in the termination letter was in relation to the qualifications of the appellant for being appointed on the post of Registrar. The letter further indicates that the selection to the post of Registrar was not approved by the Board of Governors in its 26th meeting dated 16th June, 2018. The said observation in the letter dated 19th May, 2022 is totally erroneous and contradicted by the minutes of the meeting dated 16th June, 2018."

8. On the above aspect, learned Senior Counsel for the appellant places reliance upon the judgment of the Supreme Court in *R.Vishwantha Pillai vs. State of Kerala and others* and other connected matters reported in 2004 AIR Supreme Court 1469, wherein the three Judge Bench of the Supreme Court observed as under in paragraph No.13:

"We do not find any substance in this submission. The misconduct alleged against the appellant is that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate. While appointing the appellant as Deputy Superintendent of Police in the year 1977, he was considered as belonging to the Scheduled Caste. This was found to be wrong and his appointment is to be treated as cancelled. This action has been taken not for any misconduct of the appellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by the KIRTADS and the Scrutiny Committee constituted under the orders of this Court. Appellant was given due opportunity to defend himself. The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On

close scrutiny of facts we find that the safeguards provided in Article 311 of the Constitution that the Government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself stands complied with. Instead of departmental inquiry the inquiry has been conducted by the Scrutiny Committee consisting of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer having intimate knowledge in the verification and issuance of the social status certifies, who were better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to the appellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld upto this Court would be repetitive as well as futile. The second safeguard in Article 311 that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of the appellant has been passed by his appointing authority."

9. Having given our careful consideration, we find some substance in the contention of the appellants that where the discontinuance of engagement is not on account of an act of misconduct, but is rather based on the allegation that employment itself is obtained on the basis of forged document, the requirement of holding of disciplinary inquiry would not be necessary. The purpose of holding the disciplinary inquiry is to ascertain as to whether any misconduct is actually committed by the employee concerned, on the basis of which the services are proposed to be terminated/discontinued. This is not the situation in the facts of the present case. In this case, no misconduct is attributed to the respondent. His engagement is discontinued on the charge that appointment was obtained on the basis of manipulated certificate.

10. Admittedly, the basis of discontinuation from service of respondent/petitioner is the allegation that a forged certificate had been relied upon and the issuing authority, i.e., NIELIT, in its reply has clearly disowned issuance of certificate relied upon in favour of respondent-petitioner. At this juncture, we may also note that an earlier order on the same allegation was set aside in the earlier writ filed by the respondent/petitioner. Thereafter, show-cause notice was issued to the respondent/petitioner and on the basis of verification obtained from the concerned issuing authority a finding is returned that the appointment was obtained on the strength of fabricated document. This order of 2021 came to be challenged in the writ filed in 2024.

11. At this juncture, since the matter is still subjudice before the learned Single Judge, we would not like to express any definite opinion and we refrain from doing so, by merely observing that the issue raised with regard to requirement of holding disciplinary enquiry and relied upon by the learned Single Judge would require a deeper consideration at the time of hearing of the writ petition.

12. Coming to the second question, we find that the services of the respondent had been discontinued in the year 2021. The writ petition was filed after nearly three years. On the very first day, the learned Single Judge has proceeded to pass the order under challenge whereby not only the order of 2021 was stayed, but a direction has been issued to reinstate the respondent and allow him to serve and also receive salary etc. Ordinarily, grant of such relief would be after exchange of affidavits in the matter, particularly, when the writ itself is filed after nearly three years. The order of learned Single Judge affects matter of moment and an intra-court appeal would be maintainable in view of the law laid down by the Division Bench of this Court in State of UP vs. Kumari Renu Tiwari (1993) 2 UPLBEC 1325.

13. The earlier writ petition of the respondent was allowed only on the ground that opportunity of hearing was not given in the matter. It is undisputed that a show-cause notice came to be issued to the respondent-petitioner and after considering his explanation in respect of genuineness of the certificate, the fresh order has been passed in 2021. In such view of the matter, it would have been appropriate for the learned Single Judge to have invited a reply in the matter before granting the nature of relief, as has been allowed to the respondent.

14. For the reasons enumerated above, these special appeals succeed and are allowed. Order passed by learned Single Judge dated 6.9.2024 is set aside.

15. We request the learned Single Judge to consider the objection of the appellant to the claim of respondent-petitioner, raised in the counter affidavit, and proceed to decide the matter as per his Lordship's earliest convenience.

Order Date :- 1.4.2025 LN Tripathi