

CASE NO.:
Appeal (civil) 5145 of 2006

PETITIONER:
Union of India and another

RESPONDENT:
Kunisetty Satyanarayana

DATE OF JUDGMENT: 22/11/2006

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of Special Leave Petition (Civil) No. 16572 of 2006]

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment and order dated 22.3.2006 of the Andhra Pradesh High Court in Writ Petition No. 7409 of 2004.

Heard learned counsel for the parties and perused the record.

The respondent was initially appointed as a Clerk in the Postal Department of the Union of India on 30.11.1965 on the basis of the marks obtained by him in the SSLC Examination. The SSLC certificate of the respondent indicated that he belongs to the 'Konda Kapu' community which is admittedly a Scheduled Tribe community in the State of Andhra Pradesh.

Thereafter the respondent appeared for a departmental test for promotion to the post of Upper Division Clerk against a post reserved for the Scheduled Tribe community, and the respondent was promoted as an Upper Division Clerk in Scheduled Tribe category. His promotion order specifically stated that he has been promoted as an Upper Division Clerk under Scheduled Tribe category vide promotion order dated 27.12.1976. Thereafter, in 1987, he was further promoted to the next higher post, i.e. LSG cadre, again on a post reserved for Scheduled Tribe category.

On 28.11.1994, a show-cause notice was issued to the respondent to show cause as to whether he obtained employment on forged caste certificate. In reply to the said show-cause notice, the respondent admitted that he does not belong to 'Konda Kapu' community, but he belongs to 'Kapu' community which is not a Scheduled Tribe community. The respondent in reply to the show-cause notice also stated that it was wrongly mentioned in the SSC register that he belongs to 'Konda Kapu' community on the basis of a declaration given by his illiterate father who got the respondent admitted in school when he was 11 years old.

By order dated 3.1.1995, the Assistant Post Master General directed that the respondent be treated as 'OC' community and accordingly an alteration was made in the respondent's Service Book stating that he belongs to 'OC' community.

On 11.7.1997, the competent authority i.e. Collector of Hyderabad District passed an order stating that the respondent obtained an ST caste certificate from the Mandal Revenue Officer although he does not belong to

'Konda Kapu' community, but he belongs to 'Kapu' community, which is not a Scheduled Tribe community. Hence, the Collector ordered cancellation of the caste certificate of the respondent and requested the Chief Post Master General, A.P. Circle to take action against the respondent vide order dated 11.7.1997.

Aggrieved against that order, the respondent filed an appeal before the State Government which was disposed of on 17.2.2001 holding that the respondent does not belong to Scheduled Tribe community and he cannot be considered as such, and the Postal Department may take appropriate disciplinary action against the respondent.

Consequently a Charge Memo dated 23.12.2003 was issued to the respondent framing the following charges against him:

"That he, while working as T/S Clerk in the Secunderabad Postal Division, appeared for the examination held on 19.9.76 for promotion to UDC against a post reserved for 'ST' community and subsequently he was also promoted to LSG Cadre based on the said reservation. However, as per G.O. Ms No. 28 dated 17.02.2001 the Government of A.P. declared that Sri K. Satyanarayana does not belong to Konda Kapu as declared by him and as such not entitled for the reservation under the ST category.

That Shri K. Satyanarayana availed reservation against ST in the promotional post though he does not belong to the said category and as such failed to maintain absolute integrity and acted in a manner unbecoming of a government servant contravening the provisions of Rule 3(1) (i) & (iii) of the CCS (Conduct) Rules, 1964. The statement of imputations gives the details of the reservation availed by the petitioner during his service."

Instead of replying to the aforesaid Charge Memo, the respondent filed an OA before the Central Administrative Tribunal, Hyderabad which was disposed of vide order 15.3.2004 with the direction to the applicant to submit his reply to the Charge Memo dated 23.12.2003 and on submission of the said reply the Disciplinary Authority should consider the same. Instead of filing any reply the respondent filed a Writ Petition in the High Court which has been allowed, and hence this appeal.

In our opinion, the High Court was not justified in allowing the Writ Petition.

It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.

The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing

some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

Learned counsel for the respondent submitted that the charge against the respondent had already been enquired into earlier and he had been exonerated of the charge in an earlier proceeding. Hence, he contended that the impugned Charge Memo would amount to double jeopardy and was therefore illegal. He relied upon the decision of this Court in Lt. Governor Delhi and others vs. HC Narender Singh 2004 (13) SCC 342.

We agree with the learned counsel for the respondent that if the charge which has been levelled under the Memo dated 23.12.2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable. However, in the present case, we are of the opinion that the charges levelled against the respondent under the Charge Memo dated 23.12.2003, had not been enquired into by any authority and he had not been exonerated on those charges. Hence we are of the opinion that it is not a case of double jeopardy.

In fact, the contention of the respondent was carefully examined by the Central Administrative Tribunal in paragraph 5 of its order dated 15.3.2004.

In the present case, in the earlier proceedings no finding had been recorded that the respondent had not availed of the benefit of belonging to the Scheduled Tribe community for any of the promotions given to him. In fact, the authority was satisfied that he gained initial entry into service as an 'OC' candidate and not as a Scheduled Tribe candidate. However, it seems that his subsequent promotions were against posts reserved for Scheduled Tribe Community, to which he did not belong. While disposing of the appeal filed by the respondent against the order of the District Collector, Hyderabad, the State Government referred the matter to the employer to take disciplinary proceedings after verifying of the records for production of false Caste certificate. It appears that the respondent availed of the benefit of Scheduled Tribe community for getting two promotions \026 one as UDC and another as LSG Clerk, on the ground that he belongs to Scheduled Tribe community, and it is for these reasons that the authorities issued the impugned Charge Memo dated 23.12.2003. Hence, we are of the opinion that ratio of the decision in Lt. Governor Delhi and others (supra) has no application in the present case.

For the foregoing reasons, we are of the opinion that the impugned judgment of the High Court is not correct and the same is set aside. We fully agree with the view taken by the Central Administrative Tribunal vide its order dated 15.3.2004. The respondent is now directed to submit his reply to the Charge Memo dated 23.12.2003 within three weeks from today and the authority concerned should decide the same expeditiously in accordance with law, and thereafter take appropriate legal action in pursuance of the said decision, after giving an opportunity of hearing to the respondent.

The appeal is allowed. There shall be no order as to costs.