

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 1221/2021

Reserved on 30.05.2023
Pronounced on 18.07.2023

Mohammad Yousuf Allie

...Petitioner(s)/Appellant(s)

Through: Mr. M. C. Dhingra, Adv. & Mr. M. K. Panditha, Adv

Vs.

High Court of JK Th. its Registrar General & Anr.

...Respondent(s)

Through: Mr. M. I. Qadiri, Sr. Adv. with Mr. Naveed Gul, Adv. for R-1
Mr. Fahim Shah, GA for R-2

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

J U D G M E N T

Atul Sreedharan, J

The present petition has been filed by the petitioner who was initially aggrieved by his order of suspension and, thereafter of termination from service, due to which he had amended the petition raising additional grounds and prayers.

2. The brief facts of the case are as follows. The petitioner was selected in the J&K Judicial Services as a Munsiff, Judicial Magistrate, 1st. Class, in the year 2000. He is stated to have taken the benefit of the "Resident of Backward Area" (hereinafter referred to as the "RBA certificate") certificate taking advantage of which he was selected into the service. Resident of Backward Area certificate is akin to a caste certificate elsewhere, based on which the benefit of reservation is taken in Government service.
3. The petitioner's selection was challenged in a writ petition being SWP No. 1724/1999. The petitioner was one Reyaz Ahmad Gadda. He challenged the selection of the petitioner on the ground that he was not a resident of Rakhshilvat but of village Mirgund. A second writ petition being SWP no. 973/2000 was filed by one Javed Ahmad who was one

of the candidates, who challenged the selection of the petitioner on similar grounds.

4. The learned Single Judge, who was seized of the matter, passed an interim order on 11.08.2003 directing the Registrar Vigilance of this Court to conduct an enquiry and give a report. The Registrar Vigilance conducted an enquiry concluding that the petitioner fraudulently secured a place in the J&K Judicial Service based on a fabricated RBA certificate. The petition was finally disposed of by the learned Single Judge on 06.06.2008. The said order was challenged by the petitioner by filing LPA No. 110/2008. The LPA was disposed of by the learned Division Bench of this Court issuing directions, *inter alia*, directing the Deputy Commissioner, Bandipora, under SRO 126 of 1994 to conduct an enquiry into the genuineness of the RBA certificate based on which the petitioner secured a position in service. In effect, the direction given by the learned Single Judge to the Registrar Vigilance to enquire into the case was set aside. However, in the interim, the report of the Registrar Vigilance was sent to the High Court on the administrative side by the learned Single Judge. The Administrative Committee, on the basis of the report of the Registrar Vigilance, suspended the petitioner from service.
5. The petitioner also challenged the order passed by the learned Division Bench in the LPA which, *inter alia*, had directed the Deputy Commissioner, to enquire into the genuineness of the RBA certificate before the Hon'ble Supreme Court.
6. The Supreme Court initially, vide its order dated 08.07.2016 stayed the order passed by the learned Division Bench in the LPA. However, by its order dated 04.10.2017 the initial order of 08.07.2016 was modified whereby, the Hon'ble Supreme Court directed the Deputy Commissioner, Bandipora to conduct an enquiry into the caste verification certificate after giving an opportunity of participation to the petitioner.
7. Learned counsel for the petitioner further submits that during the pendency of the SLP before the Supreme Court, a report was given by

the Deputy Commissioner, dated 12.01.2018 whereby doubt was raised on the genuineness of the RBA certificate. The said report was also placed before the Hon'ble Supreme Court which is recorded in its order dated 15.01.2018. However, the learned counsel for the petitioner says that the copy was not given to the petitioner. *Inter alia*, learned counsel for the petitioner has indicted the said report stating that the Deputy Commissioner had delegated the work of ascertaining the genuineness of the RBA certificate to the Tehsildar concerned who in turn further delegated it to the Naib Tehsildar.

8. On 30.01.2010, second report which refers to itself as the final report of the Deputy Commissioner, which is extremely elaborate, was passed, which categorically held that the RBA Certificate was fabricated.
9. During the pendency of the SLP, the petitioner preferred a review before the Divisional Commissioner who endorsed it and referred it to the Deputy Commissioner to review the order dated 30.01.2018. Fresh proceedings before the Deputy Commissioner concerned took place in the review and the third report dated 07.07.2018 was prepared which completely absolved the petitioner and held the RBA certificate to be valid.
10. Thereafter, the petitioner himself withdrew the SLP before the Hon'ble Supreme Court on the ground that the SLP had become infructuous in the light of the third report given by the Deputy Commissioner finding the RBA certificate to be valid.
11. As, the petitioner continued to remain under suspension on account of the order passed by the Administrative Committee of the High Court, and his representation through proper channel was also dismissed by the Administrative Committee of the High Court which information was communicated to him by the Office of the Registrar General, the petitioner filed the present writ petition for revoking his suspension. One of the main grounds for revoking the suspension was that as the Deputy Commissioner had reviewed the second report dated 30.01.2018, by preparing a fresh report dated 07.07.2018, the substratum of the Administrative Committee's order suspending the

petitioner stood obliterated. However, during the pendency of this petition, the Full Court decision of this Court recommending the termination of the petitioner's services was communicated to the Government on 25.08.2021. Based on the said recommendation, the services of the petitioner were terminated by the State Government vide order dated 10.09.2021.

12. The main grounds of challenge put forth by the learned counsel for the petitioner are, firstly, that the Full Court only took into consideration the two reports dated 12.01.2018 and 30.01.2018 which were against the petitioner but totally ignored the third report dated 07.07.2018 which exonerated the petitioner and held the RBA as valid, in the review proceedings. Secondly, learned counsel for the petitioner submits that principles of natural justice, specifically *audi-alteram-partem* was violated as the petitioner was never subjected to a departmental enquiry which was violative of Article 311(2) of the Constitution. Thirdly, he submits that the Full Court failed to appreciate that the reports dated 12.01.2018 & 30.01.2018 had ceased to exist upon the third report dated 07.07.2018 being passed in review.
13. Learned counsel for the petitioner had prayed that the impugned order of termination be set aside and the petitioner, who by now has attained the age of superannuation, be at least given retiral benefits.
14. Learned counsel appearing for the respondent-High Court has submitted that the facts put forth by the learned counsel for the petitioner is not in the proper perspective. He further states that the 3rd report dated 07.07.2018, which was passed in review is *non est* because it is in violation of Rule 32 of SRO 126, and therefore, the previous reports of 12.01.2018 & 30.01.2018 would prevail and reliance upon the same by the Full Court, was not misplaced and neither was it erroneous in law.
15. Heard the learned counsel for the parties. Perused the record of the case and considered the judgments placed before this Court.
16. What is not disputed herein is the existence of the three reports dated 12.01.2018, 30.01.2018 & 07.07.2018. The report dated 30.01.2018 is

extremely elaborate and had taken into consideration the various material on record and examined them threadbare, gave cogent reasons for holding the RBA of the petitioner as invalid. The said report also reflects that the petitioner had appeared before the Deputy Commissioner and had given documents from his side which were also duly considered. The said report also records the fact that the prayer for the personal hearing by the petitioner was rejected as the Deputy Commissioner was only involved in a fact-finding enquiry which was to be based on documents.

17. The review that was preferred by the petitioner under Section 32 was before the Divisional Commissioner who thereafter transferred the matter to the Deputy Commissioner to review the report dated 30.01.2018. In the application for review, the petitioner had mentioned that he was never given an opportunity of hearing and that was the reason why the Divisional Commissioner had transferred the matter to the Deputy Commissioner to prepare a fresh report after hearing the petitioner.
18. The contention of the learned counsel for the petitioner that the report of 30.01.2018 passed by the Deputy Commissioner earlier stood revoked in the light of the order dated 17.07.2018, as the same reviewed the previous report, deserves to be rejected for the following reasons.
19. In this regard, the judgment of the Hon'ble Supreme Court reported in *AIR 2010 SC 3745 (Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Others)* is extremely relevant. In paragraph 13, the Supreme Court held that the power of review is not an inherent power but a creature of the statute and therefore, a power of review could not be exercised where the statute did not provide for it. In this regard it would be relevant to refer SRO 126 with specific reference to Rule 31 which relates to appeals and is reproduced hereunder as:

1. ***“Any person aggrieved by an order of rejection of the authorised officer under rule 30, may, at any time before the expiry of 90 days from the date of the order, prefer an appeal to***

- i. **Deputy Commissioner, if the order appealed against is passed by Tehsildar or Sub-Divisional Magistrate in their capacity as Authorised Officer.**
- ii. **Divisional Commissioner, if the order appealed against is passed by Deputy Commissioner or Additional Deputy Commissioner in their capacity as Authorised Officer.**
- iii. **Director General of Police against the order passed by the DIG.**

2. The Appellate Authority referred to in sub-rule(1) shall within 30 days from the date of receipt of the appeal pass such orders on the appeal as it deems fit.

Provided that no such order shall be made unless a reasonable opportunity of being heard has been afforded to the appellant."

20. Thereafter the second rule that would be relevant in this case is Rule 32 which deals with review and revision. The same reads hereunder:-

"Review/Revision: The Appellant Authority may suo moto or on an application made, call for the record of the proceedings taken or order so made by an Authorized Officer under these rules for purposes of satisfying itself as to the legality or propriety of such proceedings or orders and may pass such orders in reference thereto, as it deems fit."

21. Thus, from a proper construction of Rule 32 it is clear that the appellate authority which is the Divisional Commissioner (Rule 31)(ii), would also be the authority for the purpose of the review or revision of an order passed by subordinate authority as per Rule 32. Rule 32 does not provide for any power of delegation of the power of review to the Deputy Commissioner. It is the Divisional Commissioner itself who was expected to review the report dated 30.01.2018 and the transfer of the said review to the Deputy Commissioner was not a procedure provided by Rule 32. Therefore, in the light of the Supreme Court Judgment in Kalabharati Advertising *supra*, we hold that the power of

review is a power provided by statute and not an inherent power, and it must be exercised by the authority empowered under the statute and the same cannot be delegated unless, the statute itself provides for delegation of the power of review. Thus, the report dated 07.07.2018 is void *ab-initio* and *non-est* in the eyes of the law.

22. Further, the judgment placed before this Court by the learned senior counsel appearing for the High Court, which is ***AIR 1991 SC 1600 (Ajudh Raj & Ors. Vs. Moti)*** is extremely relevant. In that case, the Supreme Court was deciding the question of limitation in a suit filed after an adverse order under a Special Act was passed. While doing so, the Supreme Court held that an order that has been passed without jurisdiction can be ignored as a nullity i.e., non-existent in the eyes of law and that it was not necessary to set it aside. In other words, learned senior counsel appearing for the High Court has argued that as the report of 07.07.2018 was a nullity in the eyes of law as the Divisional Commissioner had committed an illegality by delegating the review to the Deputy Commissioner, there was no requirement for the High Court or the State to file any judicial proceedings to declare the report of 07.07.2018 as a nullity. This judgment has been relied upon by the respondent, in order to counter the argument, put forth by the learned counsel for the petitioner, that the report dated 07.07.2018 was valid as it was never set-aside by any quasi-judicial or judicial authority. This aspect is purely academic in this case as we have already held in the preceding paragraph that the third report dated 07.07.2018 was void *ab initio* and *non-est*.
23. It is also relevant to mention here that the report dated 30.01.2018 that was reviewed by the report of 07.07.2018 was passed at a time when the SLP of the petitioner was pending before the Supreme Court. Here the argument of the learned counsel for the State should be adverted to. He has submitted that if the petitioner was aggrieved by the report of 30.01.2018 which was placed before the Supreme Court in the pending SLP, it was for the petitioner to move an appropriate application before the Supreme Court praying that the said report of 30.01.2018 be struck

down as it was violative of the principles of natural justice. However, the petitioner never resorted to that process and instead moved an application for review in which the report of 07.07.2018 was passed, which as stated hereinabove earlier, has held by this Court as non-est and void ab-initio, which automatically revives the report of 30.01.2018 and 12.01.2018. He has further submitted that the petitioner has never challenged the non-applicability of the report of 12.01.2018 which was also against him.

24. The learned counsel for the State has also referred to and relied upon a judgment of the Supreme Court reported in *(2011) 10 SCC 1 (Rajendra Singh Verma (Dead) Through LRs. & Ors. Vs. Lieutenant Governor (NCT of Delhi) & Anr.* The learned counsel appearing for the State has specifically adverted to paragraph No. 98 of the said judgment which reflects that the control of the district judiciary is vested entirely in the High Court in order to ensure the independence of the district judiciary under Article 235 of the Constitution and the same is exclusive in nature. The Supreme Court also held that the decision of the Full Court, the recommendations of the High Court for disciplinary action against judges of the district court is binding upon the Governor under the scheme of Articles 233, 234 and 235 of the Constitution and the Governor cannot refuse to act in terms of the recommendations made by the High Court on the ground that the Governor was not aided and advised by the Council of Ministers. In other words, learned counsel for the State has submitted that once the recommendation to terminate the services of the petitioner was made by the Full Court, the passing of the impugned order terminating his service by the State Government was merely a formality. Under the circumstances, we are of the opinion that there was no error either in law or on facts of the Full Court relying only upon the reports dated 12.01.2018 and 30.01.2018 as they were the only reports valid in the eyes of law before the Full Court as the report of 07.07.2018 passed in review by the Deputy Commissioner was non-est in the eyes of law, the same being violative of Rule 32 of SRO 126 of 1994.

25. As regards the contention put forth by the learned counsel for the petitioner that there has been violation of natural justice as Article 311 clause (2) was not complied with for the petitioner was terminated without departmental enquiry which renders the recommendation of the Full Court of the High Court and the subsequent order of termination bad in law. In this regard, it has been contended by the learned senior counsel appearing for the High Court that the principle of natural justice is not a holy grail and the same is to be seen in the facts and circumstances of a case, whether not according an opportunity of hearing would render the proceedings against the petitioner null and void.
26. In this regard, the learned senior counsel appearing for the High Court has referred to the judgment of the Supreme Court reported in ***AIR 2004 SC 1469 (R. Vishwanatha Pillai vs. State of Kerala & Ors.*** with specific reference to Article 311. In that case, the appellant had entered the service of the State on a post reserved for the Scheduled Caste/Scheduled Tribe on the basis of a fabricated caste certificate. When the same came to the light of the authorities, his appointment was treated as cancelled. The action was not taken for any misconduct while in service as a civil servant, but on the ground that he did not belong to the Schedule Caste as claimed by him before his appointment to the post. In that case also, the appellant was terminated from service without a departmental enquiry and the Supreme Court held in paragraph 15, that the appellant could not claim a right to the post after having usurped the same which was kept for a reserved candidate by playing fraud and producing a false caste certificate. It also held that unless the public servant can lay a claim to the post on the basis of his appointment, he cannot claim the constitutional guarantee given under Article 311 of the Constitution. Thereafter, in the facts of that particular case, the Supreme Court held that as the appellant had obtained the appointment on the basis of a false caste certificate, he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution and, thereafter, dismissed the appeal filed by the appellant. In other words, the Supreme Court held that a

person who secures appointment on the basis of fabricated documents is in no position to claim equity and protection of Article 311 of the Constitution. It further held that where the entry into the service itself was on the basis of fraud, such a person was not entitled to get protection under Article 311 of the Constitution.

27. The RBA certificate in the Union Territory of J&K is akin to a Caste certificate elsewhere as the benefit of reservation can be availed of by persons who are holders of a RBA certificate as the report of 30.01.2018 of the Deputy Commissioner, clearly disclosed that the RBA Certificate was fraudulently secured by the petitioner, and the same not ever having been challenged by the petitioner before a judicial forum and the subsequent report of 07.07.2018 having already been held by this Court as non-est in the eyes of law, the Full Court made no error in relying upon the report of 30.01.2018 and coming to the conclusion that the entry into service of the petitioner itself was by fraudulent means and, therefore, depriving him of an opportunity of departmental enquiry is not in violation of Article 311 of the Constitution as has been held by the Hon'ble Supreme Court in similar circumstances in Vishwanath Pillai *supra*.

28. Under the circumstances, the petition stands dismissed.

(MOHAN LAL)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:

18.07.2023

Yasmeen/Altaf/Shaista

Whether approved for reporting? Yes