

SUPREME COURT OF INDIA

Vice-Chairman, Kendriya Vidyalaya Sangathan

Vs.

Girdharilal Yadav

C.A.No.2785 of 2004

(V. N. Khare CJI., S. B. Sinha and S. H. Kapadia JJ.)

28.04.2004

JUDGMENT

1. Leave granted.

2. This appeal is directed against the judgment and order dated 8-4-2003, passed by the High Court of Gujarat, summarily dismissing the writ petition filed by the appellants herein, questioning an order of the Central Administrative Tribunal dated 11-12-2002, whereby and whereunder the order of the Commissioner, Kendriya Vidyalaya Sangathan dated 10-10-1997, canceling the offer of appointment of the respondent herein as Principal in Kendriya Vidyalaya, Rewari, in the State of Haryana was quashed.

3. The basic facts of the matter are not in dispute.

4. The respondent herein worked as PGT (Maths) teacher in Kendriya Vidyalaya, Jammu, from 22-9-1981 to 22-7-1985. On and from 23-7-1985 to 26-6-1986, he again worked as PGT (Maths) teacher in Kendriya Vidyalaya, Lawrence Road, New Delhi, of the appellants' society. Yet again, from 26-6-1986 to 26-7-1994, he worked in Kendriya Vidyalaya, Rewari, and Haryana. Thereafter, he had been working in one of the Kendriya Vidyalaya at Kota, Rajasthan. His permanent address is said to be Village Dhani Shobha, PO Ahrod, and District Mahendragarh in the State of Haryana.

5. It is not in dispute that by a resolution dated 10-10-1993, the Ministry of Social Welfare, Government of India, issued a common list of Other Backward Classes effective from 8-9-1993 in relation to fourteen States; wherein Ahirs/Yadavs in the State of Haryana did not find place. Only on 6-8-1994, the Government of Rajasthan issued a notification in terms whereof the persons belonging to Ahirs/Yadavs were included in the list of Other Backward Classes (for short "OBC"). The respondent, at the relevant time, as noticed above, was working at Kendriya Vidyalaya, Kota, Rajasthan. Ahirs/Yadavs were included as OBC in four States, including the State of Rajasthan by the Government of India in terms of a resolution dated 19-10-1994.

6. An advertisement was issued for appointment for 92 posts of Principals of Kendriya Vidyalayas out of which 25 posts were reserved for OBC candidates. Pursuant to and in furtherance of the said advertisement, the respondent applied for the post as an OBC candidate on 28-3-1995. Along with the said application, he also annexed a caste certificate showing that he belonged to the OBC category. Relying on the basis of the said certificate produced by him at the Air Force Station, Jamnagar, Gujarat, he was offered an appointment by the appellants herein. However, later on, it was found that the said caste certificate did not satisfy the requirement of law and he had furnished false and inaccurate information and upon concealing his permanent residential address in Haryana.

7. It is not in dispute that so far as the State of Haryana is concerned, at the relevant point of time, Ahirs/Yadavs were not treated as OBC. An enquiry was conducted by the District Magistrate wherein it was found that the respondent belonged to the State of Haryana and not the State of Rajasthan and, thus, was not entitled to obtain the said certificate.

8. A show-cause notice was issued to him on 12-6-1997 asking him to show cause as to why his appointment should not be cancelled. On consideration of the show-cause filed by the respondent and upon taking into consideration the reports of the authorities concerned and further, upon giving the respondent an opportunity of personal hearing by an order dated 10-10-1997, his appointment as a Principal of the Kendriya Vidyalaya Sangathan was cancelled by the competent authority of the appellant.

9. The respondent herein filed an original application before the Central Administrative Tribunal and by an order dated 15-10-2001; the same was disposed of directing him to prefer an appeal against the said order dated 10-10-1997; pursuant whereto he preferred an appeal. The Appellate Authority also gave the respondent a personal hearing and by an order dated 13-2-2002, dismissed the said appeal. The respondent herein filed an application before the Central Administrative Tribunal questioning the said appellate order dated 13-2-2002 which, as noticed hereinbefore, was allowed. The writ petition filed by the appellant herein questioning the said order was dismissed by the High Court stating that although the provisions of Article 311 of the Constitution of India were not applicable to the employees of Kendriya Vidyalaya Sangathan, but it was obligatory on its part to initiate an enquiry against the respondent. The High Court held that as no opportunity had been granted to the respondent explaining the circumstances which had been held against him, the judgment and order of the Central Administrative Tribunal cannot be faulted with.

10. The learned counsel appearing on behalf of the appellant would submit that keeping in view that the respondent was guilty of commission of fraud, it was not necessary to grant him a further opportunity of hearing as, admittedly, he obtained a certificate to the effect that he belonged to OBC although he was a permanent resident of Haryana and not a permanent resident of Rajasthan. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that had an opportunity of hearing been given to the respondent, he could have shown that he was appointed as an open category candidate and not as a reserved category candidate.

11. The admitted facts remain that the respondent is a permanent resident of Haryana. It further stands admitted that at the relevant time, Ahirs/Yadavs of Haryana were not treated as OBC. It further stands admitted that the respondent obtained a certificate showing that he was a resident of Rajasthan, which he was not. It is not disputed that a detailed enquiry was conducted by the District Magistrate, Kota, wherein the respondent had been given an opportunity of hearing. It is also not in dispute that he had given an opportunity to show cause as to why his appointment should not be cancelled not only by the appointing authority but also by the Appellate Authority. In terms of Section 58 of the *Evidence Act, 1872* facts admitted need not be proved. It is also a well-settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straitjacket formula. In *Bar Council of India v. High Court of Kerala* this Court has noticed that:

"24. the principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in *Sohan Lal Gupta v. Asha Devi Gupta* of which two of us (V. N. Khare, C.J. and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held :"

29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.

"25. the principles of natural justice, it is well settled, must not be stretched too far'. (*Mardia Chemicals Ltd. v. Union of India*¹ and *Canara Bank v. Debasis Das*. In *Union of India v. Tulsiram Patel* whereupon reliance has been placed by Mr. Reddy, this Court held :

'97. Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed."

30. Furthermore, the respondent herein has been found guilty of an act of fraud. In our opinion, no further opportunity of hearing is necessary to be afforded to him. It is not necessary to dwell into the matter any further as recently in the case of *Ram Chandra Singh v. Savitri Devi* this Court has noticed:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In *Derry v. Peek*² it was held :

In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit."

12. In view of our findings aforementioned that the respondent was guilty of an act of fraud, in our opinion, the Central Administrative Tribunal as also the High Court committed a manifest error in setting aside the order of the appointing authority as also the Appellate Authority.

13. For the reasons aforementioned, the impugned judgment cannot be sustained, which is, accordingly, set aside.

The civil appeal is, accordingly, allowed. No costs.

¹(2004) 4 SCALE 338)

²(1889 (14) AC 337