

(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD.

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Registration No. T.A. 210 of 1986

Mani Ram Vishwakarma . . vs. . Union Of India & others.

Hon'ble Justice Mr. S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

On 21.10.1984 Mani Ram Vishwakarma, to be described as the plaintiff, filed a suit against the defendants for declaration that the order of termination of his service dated 7.10.1980 was illegal. The suit was dismissed. He then preferred an appeal which has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

On 30.12.1978 the plaintiff was appointed as E.D.D.A. cum-E.D.M.C. of Branch Post Office at Garapur. The aforesaid post office started functioning on 6.1.1979 and the plaintiff joined the same on 8.1.1979. His case is that on 12.10.1980 he received the order dated 7.10.1980 which is illegal because it was made in collusion with defendant no.3 and was against the principles of natural justice since the plaintiff was not afforded any opportunity to show cause. The defence is that according to the rule the candidate should be local resident and since the plaintiff was resident of village Chandelpur and not of Pandetara, so, after departmental inquiry he was removed from service. One Chhotey Lal moved an application on 15.2.1979 disclosing

that the plaintiff obtained the appointment by falsely showing that he was resident of Pandetara. If he was resident of Pandetara, the appointment was no doubt valid, but according to the complaint the plaintiff was resident of Chandelpur and in this way he obtained the appointment order ~~falsely~~ by asserting wrongly that he was resident of Pandetara. So, after this complaint an inquiry was made and after the departmental inquiry the plaintiff was removed from service. The learned Munsif dismissed the suit: hence this appeal, which, as stated above, has been transferred to this Tribunal.

The main point to be seen is as to whether the plaintiff is resident of Chandelpur or Pandetara. According to the rules the plaintiff should have been a resident of Pandetara otherwise he could not have obtained the appointment order. The plaintiff alleged in his application that he was resident of Pandetara. According to the defence the plaintiff is resident of Chandelpur. So, we have to decide whether the plaintiff is resident of Chandelpur or Pandetara. In support of his version the plaintiff examined himself on oath and relied upon the Kutumb Register of Pandetara. In this connection of events the following sequence and dates are relevant: There must have been some talk about the appointment and some procedure must have been adopted in that connection. Ultimately the plaintiff was appointed on 30.12.1978 and he joined on 8.1.1979. Normally in Kutumb Register a general type of entry is made ~~that~~ such as a particular person residing in a particular house (House No.) ~~is~~ ~~xxxxxx~~ of a particular village. In this Kutumb Register

of village Pandetara it is mentioned that the entry relating to the plaintiff was made by the order dated 14.5.1979 which means that there was no entry in the Kutumb Register before 14.5.1979 and the probabilities are that some application was moved whereupon an order was passed on 24.5.1979 and in pursuance of that order this entry in Kutumb Register was made in which it was shown that the plaintiff was resident of village Pandetara. All this happened soon after the plaintiff had joined the service asserting that he was resident of village Pandetara. So, this entry in the Kutumb Register is highly suspicious. The voters list dated 1.1.1980 could be prepared on the basis of this Kutumb Register. The complaint of Chhotey Lal is dated 15.2.1979 and this voters list of 1980 was prepared on 1.1.1980. In this way neither the voters list of 1980 nor the Kutumb Register inspire any confidence. On the other side, the defendants have filed certain documents from which it appears that in the voters lists of 1979, 1975 and 1982 of village Chandelpur the plaintiff has been shown as resident of village Chandelpur. On 15.2.1979 Chhotey Lal moved an application that the plaintiff was resident of village Chandelpur and not of Pandetara. He filed a certificate from the Gram Sabha that the plaintiff belonged to village Chandelpur. On 12.5.1982 the plaintiff moved an application with the allegation that he was resident of village Chandelpur. In This application was moved when the plaintiff tried to contest the election for the office of ^{Sadar} Pradhan of village Chandelpur. Thus, from the plaintiff's own admission contained in his application dated 12.5.1982 it appears that he belongs to village Chandelpur. Of course, he

could have shown that his admission is wrong and was made due to certain misunderstanding or under certain circumstances. Instead of doing this he has completely denied to have moved that application. When the voters lists were prepared in the years 1975 and 1979 and there was no such dispute, the plaintiff was shown as a resident of village Chandelpur. Thus Plaintiff's own admission and his false denial clearly corroborate the documentary & evidence led by the defendants as well as the statements of three defence witnesses to the effect that the plaintiff is resident of Chandelpur and not of Pandetara. So, there is very good evidence to prove that the plaintiff is resident of Chandelpur and not of Pandetara. Plaintiff's main contention is that according to the Commissioner's report he was resident of village Pandetara. We have gone through the report submitted and the map as well as the measurements made by the Commissioner. An objection was filed against this report by the defendants and it does not appear that the same has been disposed of by the learned Munsif. However, some of the objections filed by the defendants against this report appears to have some substance. The house of plaintiff stands on plot no. 571. This is the last plot of village Pandetara. The village Chandelpur adjoins to the south of plot no. 571. There is plot no. 313 to the south of plot no. 571 of Pandetara. Learned Commissioner found plot no. 560; as fixed from there, he came to a pillar in plot no. 561 and thereafter he fixed point 'B' (the north-eastern corner of plot no. 571) and thereafter he located point 'A' (the north-western corner of plot no. 571). There was one other 'Sahadda' of three villages and no measurement was made

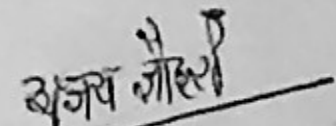
from that plot. The measurement was made from northern side only and not from the two fixed points on two different sides. The Commissioner tried to make measurements from the southern side (plot no. 303^{1/2} of other village) and he came to the conclusion that from the map of Chandelpur (plot no. 313) measurements were made, but no correct decision could be arrived at. So, it cannot be said with reasonable certainty that the finding of the learned Commissioner is accurate. A difference of few yards would make a lot of difference and the position of the house of the plaintiff could be shifted to another village. However, we have gone through the report of the Commissioner and the objections filed against the same and we come to the conclusion that it will not be safe to rely upon the same specially when there is good documentary and oral evidence to prove that the plaintiff is resident of village Chandelpur. So, it is clear that in order to obtain his appointment the plaintiff falsely asserted that he was resident of village Pandetara. Under the rules he should have been local person. He was not a local person and he obtained the appointment order through false representation and in this manner the Department was justified in removing him on this ground.

The next contention was that though the plaintiff had not completed three years and his services could be terminated without any notice before the completion of three years but he should have been given a show cause notice before the order of termination was passed. We think that this argument is based on some misunderstanding. The defence version is that a complaint was made by one Chhotey Lal who filed certain documents in support of his

claim that the plaintiff was resident of village Chandelpur and not of Pandetara and has falsely obtained the appointment order. Some inquiry was made in this connection and after the departmental inquiry the plaintiff was removed; and that instead of exhausting the departmental remedies the plaintiff rushed to the court. The plaintiff admits that a departmental inquiry was made. His contention that he was not heard and was not permitted to give evidence in defence is nothing but ~~was~~ sweet say and the same could not be established. To our mind, neither justice nor law has suffered and the learned Munsif was justified in dismissing the suit.

This application (C.A.No. 269 of 1983) is dismissed with costs on parties.

November 12th, 1986. Vice Chairman.
R.Pr.


Member (A).