
(2006) 03 MP CK 0096
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10572/03

343, Karim Khan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2006) 03 MP CK 0096

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Bhagwan Singh, for the Appellant; Harish Agnihotri, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.—A challenge has been made in this petition to the order of dismissal dated 31.10.1995 (Annx. A/5) and the Appellate order dated 4.4.1996 (Annx.A/7).

2. Short facts relating to the petition are that the petitioner was appointed as Constable in 22nd Battalion Special Armed Force of Madhya Pradesh in January, 1970. With the passage of time, he was promoted to the post of Head Constable (Driver) and was holding the post when he was served with the charge sheet dated 7.4.1995 on various charges, which included a charge that he by submitting a forged certificate disclosed his date of birth as 1.7.1945 and procured the Government service. Thus, he was stated to have committed a fraud with the Government at the time of recruitment and has obtained the gains in an illegal manner. It was alleged in the charge sheet that the correct date of birth of the petitioner was 8.1.1937 which was suppressed by him. Two more charges were framed against him but the same were not found to be proved by the enquiry officer. According to the petitioner, the enquiry was initiated at a complaint of one Ramgopal Mishra, who has denied to have made any such complaint in his statement contained in Annx.P/1. However, a departmental

enquiry was held and it was found that the school leaving certificate submitted by the petitioner at the time of his recruitment was forged and the date of the petitioner being 8.1.1937, he was over age at the time of recruitment. The alleged forged certificate is marked as Annx.A/2, whereas, the reply of the petitioner is contained in Annx.A/4. The departmental enquiry was conducted by Shri A.R. Korram, Sub Divisional Officer (Police), who found the said certificate to be forged one. The Superintendent of Police, Shahdol, accepted the enquiry report and passed the order of dismissal contained in Annx.A/5. An appeal was preferred by the petitioner which has been dismissed vide order dated 4.4.1996 contained in Annx.A/7 by the Deputy Inspector General of Police.

3. Shri Bhagwan Singh, learned Counsel for the petitioner challenged the orders contained in Annx.A/5 and A/7 on the following grounds:

(i) Petitioner has served the department for about 25 years and has not committed any misconduct.

(ii) No departmental enquiry could have been initiated since the alleged complainant Ramgopal Mishra has disowned the complaint vide-Annx.P/1. Moreover, the alleged complainant has not even been examined in support of the complaint.

(iii) Date of birth of the petitioner is 1.7.1945 and it has been wrongly held to be 8.1.1937.

(iv) The punishment of dismissal is highly disproportionate looking to the services rendered, and the promotion of the petitioner from the post of Constable to Head Constable. The punishment of dismissal could not have been imposed and at the most a minor punishment would have served the purpose of departmental enquiry.

4. Shri Harish Agnihotri, learned Govt. Advocate, supported the impugned order. He submitted that the charge of forgery having been established in the departmental enquiry, the impugned orders are not liable to be interfered with.

5. Considered the submissions and perused the record.

6. Submission of the learned Counsel that a departmental enquiry could not have been initiated after 25 years of commission of forgery, has no merits. Since the departmental enquiry was initiated when there was a complaint about the forgery, it cannot be said that the enquiry was initiated in a belated manner. In such matters, the enquiry can well be initiated whenever there is a complaint about fraud and the forgery is detected. It is not a case of the petitioner that any complaint about his date of birth was earlier made and he was continued in the department inspite of any such knowledge. It is further not a case of the petitioner that he was promoted alter any such complaint was made. Thus, the departmental enquiry cannot be said to have been conducted in a belated manner. Reliance of the petitioner on the decision, in the case of Union of India and Ors. v. O.P. Manchanda 2005(1) MPJR 65, is of no assistance because in that

case a charge sheet was issued in the year 1991 in regard to the incident which was stated to have occurred in the year 1977-78. In the present case, the complaint was received in the year 1994 and the show cause notice was issued on its basis in the year 1995. Prior to receipt of the complaint, the department was totally unaware of the fact that the petitioner had submitted a forged certificate while securing the Government job. Looking to the nature of charges, it was not necessary for the department to examine Ramgopal, the alleged complainant, because the forgery was stated to have been committed by the petitioner with regard to the school leaving certificate submitted by him at the time of his recruitment and this fact could have been proved by an independent evidence.

7. As regards another submission, it may be seen that the petitioner has not denied to have produced the school leaving certificate contained in Annx.A/2. His name was stated to be enrolled at Serial No. 198 in the list of the students admitted in the institution. Learned Govt. Advocate, has made available the original record of the enquiry which contains the statement of Ram Naresh Singh, S/o Jai Pratap Singh, who happened to be the headmaster of Middle School, Sanehi. He on the basis of School record, has stated that no student in the name of Karimullah Khan (Name of the petitioner) was admitted in the said school. The school leaving certificate submitted by the petitioner bears Serial No. 81 against which the name of Ku. Vidhya Devi is entered in the school record. This witness has further stated that brother of the petitioner, namely, Ajimullah Khan was admitted in the school whose date of birth, as per the school record was 1.7.1945. The petitioner has not chosen to cross-examine this witness, so, it may well be assumed that the statement given by Ram Naresh Singh was admitted to the petitioner. The petitioner in view of his actual date of birth i.e., 8.1.1937, would have become age barred for the services of the Constable, since the age for the post of Constable is prescribed between 18 to 25 as per Police Regulations. The findings of the enquiry officer are based on the material on record and cannot be said to be perverse. Moreover, the petitioner has been unable to establish that actual date of his birth was 1.7.1947, and the alleged school leaving certificate was infact issued. In the light of the law laid down by the Apex Court in B.C. Chaturvedi Vs. Union of India and others, , this Court hereby declines to interfere in the findings of the Enquiry Officer and eventually of the Disciplinary Authority.

8. Lastly, Shri Bhagwan Singh, learned Counsel for the petitioner contended that the punishment of dismissal is shockingly disproportionate. He submitted that a minor punishment would have served the purpose.

9. Considered the submission in the light of the record of the departmental enquiry.

10. The Supreme Court has come a long way from its earlier viewpoints on the question of quantum of punishment. The recent trend in the decisions of the Supreme Court seek to strike a balance between the earlier approach to the

industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of the Supreme Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. Thus, it may not now be proper to allow the employees to break the discipline with impunity. Law declared by the Supreme Court in terms of Article 141 of the Constitution categorically demonstrates that normally there would be no interference with the quantum of punishment unless an appropriate case is made out therefor. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. Such interference at the hands of the Tribunal courts should be inter alia on arriving at a finding that no reasonable person could inflict such punishment.

11. The petitioner was a Head Constable in Police Services. He was to uphold the rule of law. Though he was overage at the time of recruitment, he is found to have secured the job by submitting a forged certificate regarding his date of birth. Keeping this in mind, this Court is of the opinion that the Disciplinary Authority cannot be said to have committed any error in imposing the punishment of dismissal from service.

12. In case of Ram Saran Vs. I.G. of Police, CRPF and Others, , the appellant was found to have secured the appointment by furnishing false birth certificate. Pursuant to departmental enquiry his dismissal was directed which came up before the Apex Court for consideration. The Apex Court while upholding the dismissal reiterated its earlier observations contained in the decision of R. Vishwanatha Pillai Vs. State of Kerala and Others, which are reproduced below:

It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by . playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to the post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise

equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

13. The Apex Court ultimately held that it was a case which did not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. The aforesaid reasonings apply to the present case with full force, since the petitioner as a fact, has been found to have committed forgery and played fraud, while seeking appointment at the time of initial recruitment. Thus, this contention also fails and no interference is warranted in the quantum of punishment.

14. In the result, the writ petition fails and the same is hereby dismissed, however, without order as to costs.