
(2017) 03 AHC CK 0038

In the Allahabad High Court

Case No : Special Appeal Defective No. 145 of 2017

Abhishek Chaturvedi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Citation : (2017) 122 ALR 340

Hon'ble Judges : Dilip B. Bhosale, CJ. and Mrs. Sangeeta Chandra, J.

Bench : Division Bench

Advocate : Kamlesh Shukla and Radhey Raman Mishra, Advocates, for the Appellant; A.S.G.I. and Vivek Ratan Agrawal, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Dilip B. Bhosale, CJ and Mrs. Sangeeta Chandra, J.— Heard Mr Kamlesh Shukla, learned counsel for the petitioner-appellant, Shri P.S. Pandey, learned counsel for the respondent No.1 and Shri Vivek Ratan Agrawal, learned counsel for respondent No. 2 to 5.

2. This appeal has been filed with a delay of 239 days. In the affidavit filed in support of application for condonation of delay, the petitioner-appellant has sufficiently explained the delay in approaching this Court, which is bona fide and unintentional and is therefore liable to be condoned.

3. Application for condonation of delay is allowed.

4. The Special Appeal shall be treated to have been filed in time.

Order on Special Appeal

5. The petitioner-appellant has challenged before us an order passed by the Hon'ble Single Judge dated 24.5.2016 dismissing the Writ-A No.19814 of 2016.

The brief facts of the case are that an advertisement was issued by the respondent Bank for the post of House-Keeper-cum-Peon, which required that a

candidate should have passed Class-X, but should not have passed Class-XII examination.

6. In pursuance of the said advertisement the petitioner had applied and had also submitted an affidavit on 15.10.2013 that he had not passed Class-XII and in case the information given by him in his application was found incorrect, then his candidature may be cancelled and appropriate action under the relevant rules may be taken by the Bank. After his appointment, evidence came on record that before giving this affidavit in October 2013, the petitioner had already passed Intermediate Examination in 2012 and the declaration made was false and it was well within his knowledge.

7. An inquiry was instituted and after affording opportunity of hearing the dismissal order dated 11.1.2016 was passed on ground of suppression of material information from the employer.

8. In the writ petition filed by the petitioner challenging the order of dismissal dated 11.1.2016, the Hon"ble Single Judge noted the arguments made on behalf of the appellant including case law relied upon him viz. Life Insurance Corporation of India v. Triveni Sharan Mishra (2014) 10 SCC Page 346 and Commissioner of Police and others v. Sandeep Kumar (2011) 4 SCC Page 644 and another un-reported judgment, in the case of Ram Kumar v. Oriental Bank of Commerce in C.M.W.P. No. 20961 of 2014 dated 23.7.2015.

9. However, the Hon"ble Single Judge relied upon the facts as mentioned in the counter affidavit, wherein reference was made to a circular of Ministry of Finance, Department of Economic Affairs dated 8.9.2004, in pursuance of which the Bank had fixed the qualification of Class-X as maximum qualification for appointment on the post of House-Keeper-cum-Peon.

10. It was also noted by the Writ Court that in Special Appeal No. 491 of 2015 Ritesh Kumar Mishra v. Union of India and others, a Division Bench of this Court had considered similar arguments raised by the counsel for the writ petitioner-appellant therein in an identical case, but had dismissed the appeal on the ground that the candidate, who has made a fraudulent misrepresentation and cannot now be permitted to challenge the terms of the advertisement. The appellant had participated in the selection held and the condition imposed in the advertisement was not challenged by him at any stage. The appellant had filed an affidavit and a declaration which were admittedly false and contrary to the facts, which were within his knowledge.

11. The reliance placed on the judgment rendered in the case of Life Insurance Corporation of India v. Triveni Shankar Mishra (Supra) was also negated by the Writ Court as in that case the Apex Court had interfered in the order of dismissal only on the ground that a similarly situated employee as the respondent therein, for similar mis-conduct, had been let off by awarding punishment of stoppage of increment for two years with cumulative effect, whereas the respondent therein had been dismissed from salary. The petitioner's challenge to the condition in

the advertisement was rejected as belated and an afterthought i.e. it was only made when the petitioner was found to have suppressed material facts and action as per law had been taken against him, the petitioner has challenged the relevant condition in the advertisement.

12. The judgment in the case of Commissioner of Police v. Sandeep Kumar (Supra) was also distinguished by the Hon''ble Single Judge on the ground that in another case in Civil Appeal No. 1155 of 2006 decided on 29.7.2013 Devendra Kumar v. State of Uttranchal and others, the Supreme Court had been pleased to hold that suppression of facts in itself constituted moral turpitude for which the employer would be well within its right to remove the employee concerned.

13. Since the Writ Court has dealt with all the arguments raised by the petitioner in his judgment and order impugned before this Court and has also relied upon the judgment of Division Bench of this Court in an identical case in Special Appeal No. 491 of 2015, we do not find any good reason to interfere in the order passed by the Hon''ble Single Judge.

14. Consequently, the Special Appeal is dismissed. No order as to costs.