

(2014) 05 AHC CK 0343

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16519 of 2006

Amrendra Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2014) 142 FLR 452

Hon'ble Judges : Vivek Kumar Birla, J

Bench : Single Bench

Advocate : S.K. Srivastava and R.C. Singh, Advocate for the Appellant; B.N. Mishra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vivek Kumar Birla, J.—The present petition has been filed challenging the order dated 7.3.2006 passed by the Director, E.S.I. Yojana Labour Medical Services, U.P., Kanpur, respondent No. 2 whereby appointment of the petitioner was set aside. Further direction for lodging first information report against the petitioner was also given by means of the aforesaid order dated 7.3.2006. I have heard learned Counsel for the petitioner and learned Standing Counsel for all the respondents.

2. The counter affidavit and rejoinder affidavit have been exchanged in the present petition and the same is being disposed of with the consent of the parties in accordance with rules of the Court.

3. As per the allegations made in the present petition, the petitioner was appointed vide order dated 25.10.1989 on the post of Class-IV employee (Ward Boy) by the Assistant Director, ESI Yojana, Ghaziabad. It was clearly mentioned in the aforesaid alleged appointment (which was ultimately found forged by the respondent No. 2 as mentioned in the impugned order) that the petitioner will have to submit his joining report within 15 days of the order otherwise the

appointment so made on temporary basis will automatically stands cancelled.

4. As per Annexure-2 to the petition, the petitioner allegedly submitted his joining report on 28.10.1989 and on the same day the petitioner applied for the leave for one day. This leave application dated 28.10.1989 is Annexure-3 to the petition. Subsequently, allegedly petitioner sent one application dated 3.11.1989 addressed to the In-charge Medical Officer, E.S.I. Dispensary Mohan Nagar, Ghaziabad that due to injuries in the eyes of his brother and illness of his father, leave be permitted from 1.11.1989 and he will rejoin after the treatment of his brother. A perusal of Annexure-5 to the petition shows that petitioner moved an application on 15.3.1990 before Director, E.S.I. Yojna, Kanpur that since he is residing at Kanpur his parents are also living at Kanpur, therefore he may be transferred to Kanpur. Annexure-6 to the petition is a letter dated 21.3.1990 addressed to the Assistant Director, E.S.I. Yojna, Ghaziabad that the permission of transfer of the petitioner from Ghaziabad to Kanpur is granted. Allegedly, again vide application dated 1.5.1990, the petitioner prays for joining the duty at Ghaziabad. A certificate issued by the In-charge Medical Officer, E.S.I. Dispensary Mohan Nagar, Ghaziabad that the petitioner was present for working from 1.5.1990 to 30.5.1990 at E.S.I. Dispensary Mohan Nagar, Ghaziabad is annexure-8 to the petition. On 4.6.1990 allegedly the petitioner moved an application before the Assistant Director, E.S.I. Yojna, Kanpur that from 28.10.1989 he was working as Ward Boy in E.S.I. Dispensary, Ghaziabad and in pursuance to the letter dated 31.3.1990 issued by Director he has been relieved on 30.5.1990 to join at E.S.I. Dispensary at Kanpur and he should be permitted to join. This alleged joining report dated 04.06.1990, which carries endorsement of the Assistant Director on the same date i.e. 4.6.1990 that he was posted under approval of Director, E.S.I., Kanpur, is on record as Annexure-9 to the petition. The alleged joining report of the petitioner on 4.6.1990, is on record as Annexure-10 to the petition. Subsequently, the petitioner joined at E.S.I., Dispensary Kidwai Nagar, Kanpur on 13.7.1993 in pursuance to the order dated 30.6.1993. This document is annexed as Annexure-11 to the petition.

5. The application with necessary documents were called for from the eligible candidate by the Director, E.S.I. Yojna vide letter dated 3.4.1999, in pursuance thereto the petitioner applied for promotion and was granted promotion to Class in post vide order dated 18.4.2001. As such the petitioner was promoted from Class-IV employee to Junior Clerk and he joined on 18.4.2001. Extracts of service book have also been annexed by the petitioner to demonstrate his working under E.S.I. Yojana. The endorsement in service book mentioned that the petitioner had joined on 28.10.1989 in E.S.I. Dispensary Mohan Nagar, Ghaziabad his working as such also verified from 1.5.1990 to 30.5.1990.

6. The trouble of the petitioner started when show cause was called for vide letter dated 21.4.2005 by the Joint Director, E.S.I. Yojna to explain about his appointment; joining and working at Ghaziabad as no documents whatsoever are available on record, and to explain as to whether how he could be given new pay

scale w.e.f. 1.5.1990, whereas in fact he had given joining on 4.6.1990 in E.S.I. Dispensary Juhi-II, Kanpur. This letter is annexed as Annexure-19 to the petition.

7. An explanation was submitted by the petitioner on 29.4.2005 which was received on 30.4.2005 (Annexure-20 to the petition). In his explanation, he submitted that he had joined at Ghaziabad on 28.10.1989 and the then In-charge Medical Officer, Dr. B.K. Agrawal had also given a certificate that he had been working there from 1.5.1990 to 30.5.1990 and subsequently he had joined at Kanpur on 4.6.1990 and that for the period from 1.5.1990 to 30.5.1990 the then In-charge Medical Officer, E.S.I. Dispensary, Juhi-II had made the payment of salary to the petitioner. Therefore, new pay-scale was given to the petitioner w.e.f. 1.5.1990. Apparently, this explanation was not found satisfactory and the petitioner was issued show cause notice dated 25.11.2005 clearly indicating therein that his appointment appears to be forged and no record whatsoever is available for the period from 25.10.1989 to 1.5.1990; his name has not been shown in the salary registrar or the cash book regarding any payment made to him; and that he had joined at E.S.I., Dispensary Mohan Nagar, Ghaziabad. Therefore, prima facie, satisfaction was recorded that the appointment letter was a forged document and he was given 10 days time. The petitioner submit his reply to the show cause notice which is Annexure-23 to the petition. A letter dated 2.12.2005 written by the Chief Medical Officer, E.S.I. Yojna, Kanpur is also on record as Annexure-22 to the petition, which clearly disclose that a point wise information was sought from Dr. B.K. Agrawal, the then In-charge Medical Officer, E.S.I. Mohan Nagar, Ghaziabad regarding aforesaid issue and in reply he had only submitted that the entire record should be available in the office. It was further recorded that no record whatsoever is available in the office and it is only on the basis of the documents as endorsed by Dr. B.K. Agrawal it appears that the petitioner Amrendra Kumar was working at Ghaziabad. Reply submitted by the petitioner to the show cause notice was only to the effect that no document is forged and he was issued proper letter of appointment and he had joined the service in pursuance thereof and he was transferred to Kanpur and was subsequently promoted to Class-III post (as already noticed in earlier paragraph).

8. In the impugned order, it was clearly recorded that after thorough inquiry of the record available, it was found that the petitioner did not join within 15 days from the date of alleged letter of appointment, dated 25.10.1989 which clearly provided that, in case he does not join the order of appointment will automatically stand cancelled. It was also recorded that whatsoever document regarding health certificate, inquiry certificate etc were required to be submitted which were not submitted by the petitioner. His joining was shown on 1.5.1990 and only this much was certified by the concerned doctor/authority that he was working at E.S.I. Dispensary Mohan Nagar, Ghaziabad from 1.5.1990 to 30.5.1990. However, there was no date or dispatch number on the aforesaid letter and therefore the same was disbelieved. It was also noticed that even without joining at Ghaziabad, the petitioner was transferred from Ghaziabad to Kanpur vide order dated 31.3.1990 and he submitted his joining at Directorate

on 4.6.1990, which also clearly demonstrate that he never joined at Ghaziabad. The Medical Officer, E.S.I. Dispensary, Ghaziabad vide letter dated 10.9.1995 clearly reported that no document whatsoever regarding service of the petitioner at that place is on record. It was pointed out that from 25.10.1989 to 1.5.1990 one month prior to and one month after this period there was no mention of name of the petitioner in the salary registrar or cash book and he had never drawn salary, there and therefore, it appears that he had never joined at dispensary and no record whatsoever is available on Ghaziabad regarding working of the petitioner.

9. The finding has also been recorded that no application regarding Government service and no record regarding appointment of the petitioner is on record in the office of the Assistant Director. Although, it was certified that he had worked at Ghaziabad from 1.5.1990 to 30.5.1990 but while joining at Kanpur the L.P.C. disclosed that he had paid salary upto April, 1990 whereas from the record, it appears no salary whatsoever is paid to the petitioner at Ghaziabad. After recording this findings based on service record as available relating to the petitioner, a categorical finding was recorded by the Commissioner that it was a case of forged appointment based on forged document and therefore appointment was liable to be set aside which was accordingly set aside. A direction regarding the alleging of the first information report was also given appointments of the aforesaid order dated 7.3.2006.

10. Against the aforesaid order the present petition was filed an interim order dated 27.3.2006 was passed by this Court providing that no further coercive action shall be taken against the petitioner as directed in the impugned order. Thus, in pursuance thereto the Counsel for the petitioner stated that no criminal proceeding had been undertaken against the petitioner.

11. The Counsel for the petitioner submits that only ground for passing of the impugned order is that the document regarding appointment and joining of the petitioner are not on record and hence they appear to be forged. He submits that the record keeping is the job of the department for which no fault can be found to the petitioner. The aforesaid contention is liable to be rejected, inasmuch as, full opportunity was afforded to the petitioner to prove that his appointment was genuine. There was no proof that he at all was appointed and joined at Ghaziabad, at least within 15 days from the date of alleged appointment letter. All precaution regarding verification of concerned record were taken care of by the authority by calling explanation from and report from the then In-charge Medical Officer as already discussed in the previous paragraph. Hence, this contention is liable to be rejected.

12. The Counsel for the petitioner further submits that a close scrutiny was required about the correctness of the document placed by the petitioner. As held, thorough investigation was conducted by the competent authority as such it is misplaced to argue that close scrutiny was not done by the competent authority before passing of the impugned order.

13. The Counsel for the petitioner placed much force in his argument while contending that no opportunity of hearing was given to the petitioner and a departmental inquiry must have been conducted in the present case as the petitioner was working and was promoted also. He submitted that disciplinary inquiry should have been conducted as per relevant rules.

14. I do not find any force in the argument, inasmuch as, it is case of forged appointment for which Article 311 of the Constitution of India or any pari materia provision in any service rules is not applicable. The petitioner at the best was entitled for show cause notice, which was duly and extensively provided by the competent authority and the opportunity to prove contrary to the material on record, was also sufficiently given to the petitioner before holding that the appointment was forged and the petitioner had submitted forged documents regarding his initial appointment. Any subsequent event i.e. transfer, promotion etc or records of the service book are irrelevant when the very basis of the employment i.e. appointment letter and his joining within 15 days, as per alleged appointment letter are completely missing and the documents after inquiry have been held" to be forged documents.

15. The Counsel for the petitioner thereafter submits that at least post-decisional hearing should have been granted to the petitioner. In my opinion, this argument has also no force. At every stage sufficient opportunity was granted to the petitioner to submit reply regarding forged documents or documents, which are not on record of the employer. As such, it is not a case where post-decisional hearing is required or would have made any difference in the decision of the competent authority. In this regard, the stand taken by the State in counter affidavit, in my opinion, the paragraph 10, 12, 15 and 16 of the counter affidavit, are relevant which are quoted hereinbelow:

"10. That the contents of para 9 of the writ petition, as stated, are denied. The petitioner"s averment that he submitted his joining report on 1.5.1990 in the office of Employees State Insurance Hospital, Mohannagar, Ghaziabad, is emphatically denied due to the reason that on 1.5.1990, while the petitioner submitting his joining report has not submitted along with the joining report the necessary medical certificate of his fitness and other certificates, which were necessary to be submitted along with the joining report. As such, the alleged joining report submitted by the petitioner, is not liable to be accepted.

12. that the contents of paras 11 and 12 of the writ petition, as stated, are denied. It is stated that the petitioner had failed to join his duties legally at his first place of posting, as mentioned in his appointment letter, and by playing fraud and conspiracy obtained a transfer order from the department and succeeded in joining his duties at Employees State Insurance Hospital, Juhi-II, Kanpur, which act of the petitioner is wholly illegal and irregular.

15. That the contents of para 19 of the writ petition, as stated, are denied. It is stated that in the service book of the petitioner there has been no entry

regarding his first joining at the specified place and within the specified time, as mentioned in his appointment letter.

16. That in reply to the contents of paras 20 and 21 of the writ petition it is stated that from the perusal of the service book of the petitioner, the fact regarding joining of petitioner came to light at Directorate level, showing the working of petitioner w.e.f. 1.5.1990 to 30.5.1990 at Employees State Insurance Hospital, Juhi-II, Kanpur, whereas the fact is just contrary to it, as during the said period the joining of petitioner has been shown at Employees State Insurance Hospital, Mohan Nagar, Ghaziabad, which is wholly contradictory. The petitioner has also failed to submit any satisfactory reply in this regard."

16. I have gone through the rejoinder affidavit wherein except repetition of the contents of the petition in different words nothing substantial has been stated.

17. Learned Counsel for the petitioner has placed reliance on the judgment of this Court in Writ A No. 25129 of 2008 (Const. 618/946 Rajbeer Singh v. State of U.P and others) to press that there was a difference in date of birth certificate and therefore his service could not have been terminated without conducting inquiry. In my opinion, it is a case of giving incorrect date of birth so as to enjoy benefits of longer service period and whereas in the present petition, the appointment letter and joining report itself were forged documents. In my opinion, in the present case conducting disciplinary inquiry under the rules was not required.

18. Learned Counsel for the petitioner has also placed reliance on the decision of this Court in Muzeeb v. Dy. Director of Consolidation, Azamgarh and others 1996 (87) R.D. 66 wherein entry Li the revenue record was under challenge on the ground that the possibility of an error creeping in by concerned authority cannot be ruled out. Therefore person affected must be afforded an opportunity of hearing as he may be possessed of sufficient material by which he may be able to show that the order giving rise to entry in dispute is not a forged one. In my opinion, in the present case sufficient opportunity was given to the petitioner to produce the record regarding his appointment and joining at Ghaziabad as no document whatsoever was available on record. Therefore, the aforesaid case is also distinguishable.

19. In Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, wherein the Hon"ble Apex Court has held that requirement to comply with The principles of natural justice would vary from case to case. It was further held in paragraph 14, a post-decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing and that such post-decisional hearing in a case of this nature is not contemplated in law.

20. In the present case, it was not a case of mistake of entry in service book of the petitioner and further he was undisputedly given show cause notice or to produce whatsoever material is available to prove his appointment as genuine and to prove he had working at Ghaziabad. Documentary evidence which

primarily fails to do such post-decisional hearing would not have helped the petitioner in the present case also. Undisputedly it was not a case of misconduct during service but it is a case of getting and entering into service on the basis of forged documents.

21. It is settled law that fraud vitiates everything. From the discussion made hereinabove, there is no doubt that it was a clear cut case of fraud by which the petitioner got into service. A reference to few judgments of the Hon''ble Apex Court in this regard may be made. In Ram Chandra Singh Vs. Savitri Devi and Others, State of Chhatisgarh and Others Vs. Dhirjo Kumar Sengar, Tanna and Modi Vs. Commissioner of Income Tax , Mumbai XXV and Others, State of Manipur and Others Vs. Y. Token Singh and Others, and Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, in view" of the aforesaid judgments of the Hon''ble Apex Court, I am of the view that no lenient or sympathetic view of the matter can be taken and the present petition is clearly devoid of merit.

22. Under these circumstances, for the discussion and observations made hereinabove, I am of the opinion that the order dated 7.3.2006 passed by the respondent No. 2 does not require any interference in exercise of extraordinary power of this Court under Article 226 of the Constitution of India. The petition is dismissed accordingly and interim order dated 27.3.2006 stands vacated.