
(2011) 11 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 6398 (W) of 2005

Bidhan Chandra Mahato

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
West Bengal Primary Education Act, 1973 — Section 106, 60

Citation : (2011) 11 CAL CK 0032

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Amit Prokash Lahiri, for the Appellant; Kamalesh Bhattacharya and Ms. Bratati Roy Chaudhury, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—The petitioner has challenged the Memo No. 3361 dated 29.12.2004 issued by the Chairman, District Primary School Council whereby and whereunder the service of the petitioner is terminated with immediate effect.

2. The factual matrix may be adumbrated as follows:

(i) The petitioner registered himself with the concerned employment exchange in the year 1993 after having passed the Madhyamik Examination in the year 1987

(ii) The name of the petitioner was sponsored by the said employment exchange to the District Primary School Council, Purulia for consideration of his candidature to the post of Primary Teacher.

(iii) The petitioner submitted testimonials/certificates including the marksheet of the Madhyamik Examination and was found eligible to be called for oral interview.

(iv) The petitioner was found successful and was issued the letter of appointment on 12th December, 2003 and was appointed as Assistant Teacher in Nalkupi Primary School under Jhalda-II Circle and the petitioner joined the service on

26th December, 2003.

(v) By Memo No. 1217 dated 05.07.2004 issued by the Chairman, District Primary School Council to the Sub Inspector of School, where request was made to obtain the marksheet of the Madhyamik Examination of the petitioner for the purpose of further investigation.

(vi) The Chairman, District Primary School Council, Purulia issued show cause notice on 12.10.2004 asking the petitioner to file reply on the submission of the false marksheet of the Madhyamik Examination.

(vii) In reply, the petitioner states that the marksheet submitted by the petitioner is genuine and correct.

3. By the impugned order, the service of the petitioner is terminated having obtained by practicing fraud in submitting the false marksheet.

4. Mr. Amit Prakash Lahiri, the learned advocate appearing for the petitioner submits that the authority has passed an order of termination of service without giving an opportunity of hearing to the petitioner. It is further submitted that the petitioner never submitted any false marksheet and as such the impugned order is not sustainable. He further contends that there is a statutory rule framed in exercise of the power u/s 106 and Section 60 of the West Bengal Primary School Education Act, 1973 vide notification No. 906-SE (Pry) dated 9th July, 2001 which provides the procedure for imposing penalties including the dismissal from service. Lastly, he contends that impugned memo having issued without complying the provisions contained statutory rules is liable to be quashed and set aside.

5. Mr. Kamallesh Bhattacharya, learned advocate appearing for the respondent submits that the petitioner has submitted the false marksheet of the Madhyamik Examination and has committed fraud at the time of taking employment. He further submits that the fraudulent act does not confer any right on the petitioner including the right to be heard and is not obligatory on the part of the authority to comply the statutory rules.

6. Having considered the respective submissions, it is undisputed that the petitioner after having found eligible was issued the letter of appointment. It is also undisputed that the petitioner thereafter joined the service on 26th December 2003. Subsequently, it is apprehended by the appointing authority relating to the genuinity of the purported marksheet and, thereafter, issued the instruction to the Sub Inspector of School to take steps for the purpose of verification of the said marksheet. After having found that the marksheet which was submitted by the petitioner to be in genuine, a show cause notice was issued to offer the reply. In reply, the only statement made by the petitioner is that the marksheet which is submitted is correct and genuine.

7. It is no doubt true that the administrative authorities who are governed by the statutory rules cannot depart therefrom, more particularly when the action

relates to the dismissal of service which also inheres the right conferred under Article 14 and 16 of the Constitution. There is an exception to said general rule, if the said administrative authorities found that the fraud is committed at the time of taking employment. Fraud vitiates all solemn acts. A person who committed fraud and gain benefit, thereof, cannot expect that he should be treated as per with the other person who have been subjected to the dismissal on other ground under the equality clause provided reason is recorded though in precision by the administrative authority in the order of dismissal.

8. Principle of natural justice is in-applicable when fraud is committed for obtaining appointment. The Supreme Court in case of State of Chhatisgarh and Others Vs. Dhirjo Kumar Sengar, held that the candidate who committed fraud at the time of taking employment and the authority after giving note of the said proceeding is not required to comply with the principle of audi alteram partem before such cancellation since the fraud vitiates all solemn acts.

9. In another judgment rendered in case of State of Manipur and Others Vs. Y. Token Singh and Others, . The Apex Court held that the appointments if founded on the forged document then state is not obliged to pay salary to the employees and the candidate cannot claim a right to be heard before such order of cancellation. There are many instances where the Apex Court have held that the appointment is liable to be cancelled if the same is obtained by committing Fraud (See Union of India and M Bhaskaran, 1995 Supp (4) SCC 1000, Jammu and Kashmir Public Service Commission Vs. Farhat Rasool and Others, , H.R. Adyanthaya and Others Vs. Sandoz (India) Limited and Others,

10. Thus it is inconceivable to say that a person who committed fraud has right to be heard or the authorities to adhere to the principle of natural justice. But if the candidate has obtained the appointment by practicing fraud, the authorities are bound to disclose all the particulars of fraud in the impugned order and are not exonerated from such responsibility by mere saying that the candidate has committed fraud.

11. The fraud has been defined as an act of deliberate deception with the design of securing something by unfair advantage of another. It is deception in order to gain by another's loss. The fraud is being viewed to such an extent that it nullifies all the acts and have far reaching consequences. In a suit based on fraud, Order 6 Rule 4 postulates that the party relied on fraud must have pleaded particulars which may be necessary to constitute fraud.

12. It is not conceived that the authorities who were passing an order of dismissal from service on the ground of fraud is exonerated from recording the particulars or elements of fraud in the impugned order.

13. In the instant case, the authorities have found that the petitioner has committed fraud in submitting the false marksheet but have not recorded its satisfaction about the marksheet submitted by the petitioner at the time of appointment and other particulars by which it can be safely concluded that the

marksheet of the petitioner is not genuine. In absence of any particulars in the impugned order, this court is not in a position to opine conclusively on the commission of fraud.

14. Thus the order impugned is quashed and set aside. The concerned authority i.e. the Chairman, District Primary School Council, Purulia is directed to reconsider the matter afresh and shall pass the reasoned order in the light of the observations made herein above. If the said authority feels that an opportunity of hearing to the petitioner is necessary, the said authority shall provide the hearing to the petitioner and shall thereafter pass the reasoned order. Entire exercise shall be completed by the said authority within 8 weeks from the date of the communications of this order.

15. For abandon precaution it is made clear that this court has not considered the matter so far as it relates to commission of fraud and the said authority is free to take the said decision without being influenced by any observations made in this order on the said aspect.

16. The writ petition is allowed.

17. There shall be no order as to costs.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.