

(2014) 12 AHC CK 0025

In the Allahabad High Court

Case No : Special Appeal Defective No. 991 of 2014

Biran Lal Gupta

APPELLANT

Vs

Deputy General Manager, Zonal Office and Others

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 ALJ 768

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Shiv Nath Singh, Kanchan Chaudhary and Udai Singh, Advocates for the Appellant; Ashok Trivedi, Advocates for the Respondent

Judgement

1. This special appeal is from a judgment and order of the learned single Judge dated 22 September 2014. While dismissing the petition the learned single Judge has specifically recorded a finding that the petition was filed on the basis of false averments and by setting up misleading facts; that the appellant continued in service even after attaining the age of superannuation on 13 September, 2009 on the strength of an interim order which was obtained on the basis of a material suppression and that, in consequence, it would be open to the employer bank to recover the salary paid to the appellant with effect from 1 October, 2009. The writ petition under Article 226 of the Constitution was dismissed with costs quantified at Rs. 1 lac. The appellant was appointed on 24 August, 1982 by the Bank of Baroda as a Class-IV employee. A charge-sheet was issued to the appellant on 7 December, 1993 alleging that he had submitted a school leaving certificate of C.A.V. Inter College, Allahabad stating that his date of birth was 30 October, 1962 while seeking employment in the bank. The charge-sheet alleged that the school leaving certificate was found to be fabricated since, as a matter of fact, the appellant had studied in the Kesar Vidya Peeth Inter College, Allahabad from where he had passed the examination from the U.P. Board in second division with 45.6% marks in 1965 and according to the record of the

school, the actual date of birth of the appellant is 12 September, 1949. Hence, it is alleged that the appellant had obtained appointment in the service of the bank by producing a false certificate of his educational qualifications and age, otherwise he would not have been eligible for selection in the subordinate cadre.

2. During the course of disciplinary proceedings, the appellant was represented by a defence representative on 21 March, 1998. The Presenting Officer produced several documents including the High School mark sheet of the appellant and the High School certificate of 1967. At that stage, the appellant made a statement that he was admitting the charges voluntarily and in token whereof, he was marking his signature on the order sheet recording his admission. The order sheet was signed both by the appellant and by his defence representative, apart from the Presenting Officer and the Inquiry Officer. The admission was in the following terms:

"I, Biren Lal Gupta, voluntarily admit the charges as framed under the charge-sheet served on me. I am admitting these charges voluntarily and without any pressure and coercion. I am putting my signatures to this effect, in my knowledge of and during admitted the charges. I am also making request that lenient view may kindly be taken".

3. When the final order was passed by the Disciplinary Authority on 5 May, 1998, the appellant was represented by his defence representative who pleaded for leniency in view of his voluntary admission of the charges. The Disciplinary Authority imposed a penalty of stoppage of 4 increments with cumulative effect, which would have the effect of postponing the future increments. The following observations reiterated the admission which was made by the appellant:

"On 01.05.1998, Mr. M.L. Gupta, defence representative & Mr. Biren Lal Gupta, Charge-Sheeted employee have appeared before the undersigned Disciplinary Authority. During the hearing, Defence Representative emphasised that the quantum of punishment on Mr. Biren Lal Gupta is too harsh in these hard days and in view of voluntary admission of charges a punishment of stoppage of 02 increments may be imposed upon him to meet natural justice".

4. The appellant filed a writ petition 2008 being Civil Misc. Writ Petition No. 64540 of 2008 with a prayer that since the appeal is pending since 1998, that should be disposed of expeditiously. The learned single Judge directed by an order dated 6 May, 2009, while disposing of the petition, that the appeal be heard and disposed of within two months.

5. On 12 June, 2009, the appellant received a communication of the Assistant General Manager of the Bank in connection with the presentation of mementos on the occasion of the superannuation of employees by which the appellant was informed that the date of his superannuation was 30 September, 2009. On 13 July, 2009, an order was passed by the Deputy General Manager as appellate authority recording that as a matter of fact no appeal allegedly dated 27 May, 1998 had been received either by the concerned branches of the Bank or by the

appellate authority and the existence of the purported appeal came to the notice of the Bank only when it was submitted in the earlier writ proceedings.

6. Be that as it may, the appellate authority noted that the appellant had admitted the charges voluntarily before the Disciplinary Authority and had, in fact, pleaded for leniency. The appellate authority rejected the appeal by its order dated 13 July, 2009.

7. The appellant filed a second writ petition Civil Misc. Writ Petition No. 40555 of 2009 on 29 July, 2009 seeking to challenge (i) the order of the disciplinary authority dated 5 May, 1998; (ii) an intimation that the appellant would be attaining the age of superannuation on 30 September, 2009; and (iii) the order of the appellate authority dated 13 July, 2009.

8. On 10 August, 2009, the learned single Judge granted interim relief staying the operation of the notice of retirement dated 12 June, 2009 on the basis of the submission of the appellant that his date of birth was 30 October, 1962, as borne out from the High School Certificate (annexed as annexure-3 to the writ petition). The relevant part of the interim order of the learned single Judge reads as follows:

"The submission is that the petitioner's date of birth is 30.10.1962 as is evident from his High School Certificate, copy whereof has been filed as Annexure-3 to the writ petition. By the impugned notice, respondents are going to retire the petitioner by erroneously treating his date of birth as 12.9.1949. Upon perusal of the copy of the petitioner's High School Certificate and the impugned notice of retirement, the submission made by the learned counsel for the petitioner prima facie appears to be correct.

In view of the above, it is provided that till the next date of listing, the effect and operation of the retirement notice dated 12.6.2009 shall remain in abeyance".

9. At this stage, it would be material to note that when the second writ petition (Civil Misc. Writ Petition No. 40555 of 2009) was filed by the appellant, the appellant set up his case on the basis of his having passed the Class-VIII examination from C.A.V. Intermediate College, Allahabad in 1974 in which his date of birth was mentioned as 30 October, 1962. When the petition came up before the learned single Judge for final hearing, the learned Judge noted that, during course of the disciplinary proceedings which had commenced in the year 1993 and had concluded in the year 1998, the appellant appeared and admitted the charges and hence his date of birth was treated as 12 September, 1949 instead of 30 October, 1962.

10. The learned single Judge noted that the appellant had not filed an appeal and the order of punishment withholding four increments had been carried out. It was only in the year 2008 that the first writ petition was filed on the pretext of getting a "pending appeal" decided when the appellant would have been aware that he was due to retire in the following year 2009. The learned single Judge

observed that the appellant, after rejection of his "appeal," filed a second writ petition making false averments and setting up misleading facts before the court and obtained the benefit of an interim order under which he continued in service even after the date of his superannuation. Hence, the learned single Judge directed that the interim order be vacated, the petition would stand dismissed and that the bank would be at liberty to recover the salary paid to the appellant from 1 October, 2009.

11. The first aspect of the case which merits emphasis is that, during the course of the disciplinary proceedings, the appellant had specifically admitted the charge of his having procured employment on the basis of a fabricated certificate of the C.A.V. Intermediate College, Allahabad, stating that he had passed Class-VIII and his date of birth was 30 October, 1962. As a matter of fact, the appellant had studied at Kesar Vidya Peeth, Inter College, Allahabad and the record of the school indicated that his date of birth was 12 September, 1949. During the course of disciplinary proceedings, the appellant was represented by his defence representative and both the appellant as well as the representative signed the order sheet dated 21 March, 1998 in token of the appellant's acceptance of the charges. Again, before the disciplinary authority which passed the final order on 5 May, 1998, a plea for leniency was made. The disciplinary authority noted that in view of the voluntary admission of charges, it was contended that a punishment of stoppage of two increments may be imposed. The disciplinary authority imposed a penalty of stoppage of four increments with cumulative effect, with the effect of postponing future increments. The appellant moved the first writ proceeding (Civil Misc. Writ Petition No. 64540 of 2008) nearly 10 years after the order of the disciplinary authority, seeking a facially innocuous prayer for the disposal of his appeal. According to the bank, there was, in fact, no appeal filed in the first place but, what is important is that the letter of the appellant dated 27 May, 1998 (annexure-11 to the writ petition) purportedly addressed to the appellate authority contains no retraction or even an averment to the effect that the appellant had not made the admission, as stated before the Inquiry Officer or that the admission was not valid or genuine. In fact, the filing of a writ petition nearly 10 years after the order of the Disciplinary Authority with a seemingly innocuous prayer that a decision on the appeal may be taken, was nothing but an effort to revive a stale cause of action in view of the impending retirement which was to take place on 30 September, 2009 following the date of birth as 30 October, 1962.

12. After the appellate authority dismissed the appeal in compliance with the order of the learned single Judge in the first writ petition, the appellant filed a second writ petition. The conduct of the appellant is clearly not bona fide. Despite having admitted the charges in the course of the disciplinary proceedings, the appellant once again set up a case that his date of birth was 30 October, 1962 on the strength of a certificate which had been found to be fabricated. It was on the basis of such an averment that the learned single Judge on 10 August, 2009 was persuaded to stay the operation of the retirement noting

the submission that the date of birth of the appellant was 30 October, 1962 "as is evident from his High School Certificate, copy whereof has been filed as annexure-3 to the writ petition". It was on the basis of the same fabricated material that an interim order was sought and obtained at the preliminary hearing. The appellant continued to have the benefit of the interim order for a period of nearly 5 years until the petition was dismissed on 22 September, 2014.

13. On these facts, it would be abundantly clear that the conduct of the appellant has been fraudulent since the inception. The appellant made a conscious attempt to suppress material facts and to mislead the court. The interim order of the court dated 10 October, 2009 was obtained on the basis of a clearly false pleading which was false to the knowledge of the appellant who had specifically admitted the charges against him.

14. The submission which has been urged on behalf of the appellant that there is no finding in regard to his correct date of birth and that the decision was palpably erroneous cannot be accepted, once he had admitted the charge against him, as is evident from the record. Since the learned single Judge has directed recovery of the salary which has been paid to the appellant from 1 October, 2009 and has awarded costs of Rs. 1 lac, we have duly perused all the documentary material, though we are conscious of the fact that in a special appeal, the court would not be justified in re-appreciating the evidentiary material to substitute its own opinion for the opinion of the learned Single Judge. However, we find that the learned single Judge is manifestly correct in dismissing the writ petition, ordering recovery of salary and imposing exemplary costs where a litigant has abused the process of the court. The order of recovery was justified for the simple reason that the appellant obtained the benefit of an interim order for 5 years beyond the date of superannuation only on the basis of his willful suppression of fact and by misleading the court.

15. The writ jurisdiction under Article 226 of the Constitution requires candour on the part of every litigant. The conduct of the appellant has correctly been deprecated by the learned single Judge. Hence no case for interference in the special appeal is made out. The Special Appeal is, accordingly, dismissed. There shall be no order as to costs.