

(2019) 04 CAL CK 0071

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 19460, 19461, 19462, 19466, 19467, 19473
(W) Of 2018

Kajal Bagdi Others

APPELLANT

Vs

Central Bank Of India & Ors

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 04 CAL CK 0071

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : AmalBaranChatterjee, SamiranMondal, Supratik Jana, SripaliSinha, NitishSamanta, BishwambherJha, R.K. Sahoo

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner has filed the instant writ petition praying for issuance of a writ of mandamus commanding the respondents to cancel/quash and set aside the order of punishment of dismissal from service passed by the disciplinary authority and confirmed by the appellate authority with a further prayer for reinstatement in service with all back wages and other consequential benefits.

The facts leading to the case are as follow:

The petitioner was appointed as casual/temporary worker as a subordinate staff in Safai Staff cadre of the bank. The appointment was provisional subject to receiving clear character/antecedents report. The appointment was on probation for a period of six months from the date of joining and confirmation in the bank service was subject to making a satisfactory progress during the probation period and attaining the standard required by the bank.

In the letter of appointment there was a clause wherein it was indicated that the

service was liable to be terminated with appropriate notice if revealed at any time after appointment that the information/particulars furnished to the bank in the application for securing appointment or in connection therewith are materially incorrect or false or any information/particulars called for by the bank or otherwise are found to be suppressed.

A memorandum of settlement was entered on 9th August, 2012 by and between the bank management and All India Central Bank Employees Federation to the effect that as a one-time measure the temporary/casual workers engaged by various branches within the guidelines of the central office management will be allowed to participate in the recruitment process which will be initiated in the immediate future for selection to the post of subordinate staff with the designation "SafaiKarmachari-cum-special-staff" and/or Safai Staff on full time basis as per the eligibility criteria along with fresh candidates.

The casual workers who were already in appointment were allowed to participate in the recruitment process for selection to the post of subordinate staff with the designation SafaiKarmachari-cum-special-staff and/or Safai Staff on full time basis as per the eligibility criteria along with fresh candidates subject to fulfilment of certain conditions. The temporary/casual worker should have been engaged in subordinate cadre including SafaiKarmachari and have to be in minimum 45 days service during the continuous period of 12 months. The age of the candidate should have been between 18 to 26 years when they were initially engaged as temporary/casual worker and the age of the candidate on the date of settlement should not be more than 45 years. The recruitment was to be done through personal interview of eligible candidates by committee(s) to be constituted by the management. 25% of the vacancies accruing in the Safai Staff cadre was kept reserved for being filled by conversion from full time SafaiKarmacharis who have put minimum of 5 years of continuous service on full scale wages and who may not possess the qualification prescribed for direct recruitment to the post but may possess elementary literacy and ability to read either English or Hindi or regional language. To determine the ability to read a simple written test was to be held. Minimum qualification marks was 40% for general category and 25% for SC/ST candidates. Successful candidates in written test were to be interviewed. For the appointment of Safai Staff minimum educational qualification was 8th standard pass or equivalent.

On verification of the documents submitted by the petitioner at the time of obtaining appointment it appeared to the bank that he submitted false/forged documents pertaining to his educational qualification for getting the appointment as Safai Staff. The petitioner was called upon to furnish his explanation.

The explanation provided by the petitioner being unsatisfactory the bank decided to hold departmental enquiry against him as per the provision of the Memorandum of Settlement on Disciplinary Action and Procedure dated 10th April, 2002 for workmen (MOS for short).

A charge sheet was issued with the charge of gross misconduct that the petitioner knowingly made false statement in his application regarding educational qualification and submitted fake documents pertaining to employment in violation of Paragraph 5(m) of MOS. An enquiry officer was appointed and a regular departmental enquiry was held.

In the said proceeding the primary contention of the petitioner was that the management did not properly verify all the certificates and the actual existence of the school. There was no adverse report against him. He was not given an opportunity to cross-examine the witness who stated that the certificate was not genuine. Natural justice was not followed in his case.

The punishment of dismissal from service of the bank without notice was sought to be imposed upon the petitioner as per paragraph 6(a) of MOS.

The petitioner was given an opportunity to file his objection as regards the quantum of punishment proposed to be imposed upon him. Final order was passed dismissing the petitioner from service of the bank without notice in accordance with paragraph 6(a) of MOS. The petitioner challenged the same by filing appeal which stood rejected.

The orders passed by the disciplinary authority and the appellate authority are under challenge in the present writ.

The petitioner argued that the headmaster of the school in question was not summoned for examination. The author of the certificate alleged to be forged was also not examined. For want of proper examination the said document could not have been held as not genuine/forged.

It has been strenuously argued that the educational qualification of passing class 8th standard was neither compulsory nor required for being appointed in the post in question. The petitioner could have very well not produced the certificate at all. Non-production of the certificate mentioning the educational qualification would not have stood in the way of the petitioner getting the appointment as he possessed the skill of reading and writing English as well as the local language fluently. The educational certificate was submitted not with the view of getting any advantage out of the same. The petitioner was not required to submit the same as the petitioner was already in service when the settlement in between the bank and the banking association took place and as a one-time measure for regularisation of the service of the casual workers the said process was initiated. The authority acted without jurisdiction by relying upon a document which was superfluous and not necessary.

When a one-time measure was adopted for regularising the service of the casual workers the same should have been conducted with a human approach. Moreover when the selection process required only personal interview the certificate produced by the petitioner could have been ignored. No reliance ought to have been placed on the same.

The quantum of punishment is highly disproportionate to the alleged nature of offence committed by the petitioner. The petitioner prays for setting aside the order of punishment originally passed as well as the order of the appellate authority confirming the same. He prays for allowing the writ petition.

The petitioner relies upon the decision delivered in the case of Rama Kant Mishra vs. State of Uttar Pradesh &Ors. reported in AIR 1982 SC 1552 (paragraph 6) wherein the Court held that for the charge of vindictiveness, justice, equity and fair play demand that punishment imposed must always be commensurate with the gravity of the offence charged. Where the Court is satisfied that the order of dismissal was not justified it may set aside the order and direct reinstatement as it thinks fit including awarding any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

He also refers to the decision delivered by a three Judge Bench of the Hon'ble Supreme Court in the case of AvtarSingh vs Union of India &Ors. reported in MANU/PH/1634/2001 wherein the Court held that the employer has to act on due consideration of the Rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the service of an employee. The exercise of power has to be in a reasonable manner with objectivity having due regard to the facts of the case. What yardstick is to be applied has to depend upon the nature of the post. Higher post would involve more rigorous criteria for all services. For lower posts which are not sensitive nature of duties, impact of suppression on suitability has to be considered by concerned authorities. Considering post/nature of duties services and power has to be exercised on due consideration of various aspect.

He also relies upon an unreported judgment and order dated 27th November, 2011 delivered by a learned Single Bench of this Court in WP No. 21196(W) of 2017 SimaDutta vs. Central Bank of India &Ors. wherein the Court was pleased to allow the writ petition by directing the respondent bank to reinstate the petitioner with back wages.

The learned advocate appearing on behalf of the respondent bank submits that the minimum education qualification required for appointment in the post of SafaiKarmachari-cum-safai staff and/or Safai Staff was class 8 passed. The petitioner submitted the transfer certificate of the school showing him to be class 8 passed with the intention of getting the job. Thereafter on verification from the headmaster of the school in question it was detected that the transfer certificate was not genuine. The school authority sent their report to the bank. It was submitted that the petitioner with the sole intention of getting the job manufactured the certificate in question.

After detection of the forgery committed by the petitioner a memo calling for explanation and thereafter a charge sheet was issued against him. The petitioner participated in the disciplinary proceeding that followed. The petitioner was afforded opportunity to defend himself. He was duly represented by his defence

representative who made submissions on his behalf. It was proved that the petitioner suppressed his proper educational qualification and relied upon a forged document in support of his educational qualification. He was charged with gross misconduct and dismissed from service. The appeal filed by the petitioner was also taken into consideration by the appellate authority and the same was dismissed. The quantum of punishment is appropriate and commensurate to the gravity of charge.

It has been contended that the rules and procedures for conducting disciplinary proceeding were strictly adhered. Proper opportunity of hearing was given to the petitioner. Principles of natural justice, equity and fair play were duly complied with. There is no irregularity in the disciplinary proceedings. The disciplinary authority rightly passed the order which is a reasoned one. There is no infirmity in the order impugned. This court ought not to exercise the discretion of judicial review in the facts of this case. The writ petition is liable to be dismissed.

The respondents rely upon the judgment delivered by the Hon'ble Supreme Court in Bank of India &Ors. vs. Abhinash&Ors. reported in AIR 2005 SC 3395 (paragraph 11) wherein the Court held fraud vitiate the most solemn proceeding in any civilised system of jurisprudence. Fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth.

He also relies upon the judgment delivered by the Hon'ble Supreme Court in Supdt. of Post Office &Ors. vs. R. ValasineBabu reported in AIR 2007 SC 1126 paragraphs 11, 13, 14 and 16 wherein the Court held that if the employees have played fraud in obtaining appointment he should not be allowed to get the benefits thereof as the foundation of appointment collapses.

Heard submissions made on behalf of both the parties.

Pursuant to the direction passed by the Court the records were produced by the respondent bank. The document in dispute is the Transfer Certificate allegedly issued by the head master of the school in which the petitioner allegedly studied till class eight. The said Transfer Certificate is annexed at page 28 of the bunch of documents produced by the bank. At a glance of the said certificate it appears to be doubtful. The name of the school is not printed in the transfer certificate. There is a seal allegedly of the school which is absolutely illegible. It is absolutely unlikely that a school will issue transfer certificate without indicating the name and address of the school clearly. The headmaster of the school has intimated to the bank that the certificate in question was not issued by the school (pages30-31 of the bunch of documents produced by the bank).

The petitioner argued that the author of the letter has not been summoned. From the enquiry report (page 56 of the bunch of documents produced by the bank) it appears that the officers of the bank visited the school and on verification from the school authorities the certificates were found to be false. In the enquiry proceeding it is recorded that the school authority produced the admission register wherein the name of the petitioner was not found. The school

authority further disclosed that the signature of the headmaster on the day the transfer certificate was issued was different from the person who was actually the headmaster in the period in question. The disciplinary authority concluded that the certificate was not genuine and passed order accordingly.

It is noticed that the petitioner never asserts that the transfer certificate submitted by him was genuine. Silence of the petitioner to aver that the certificate was genuine leads to the unmistakeable conclusion that the certificate was not a genuine one. The petitioner without going into the genuineness of the certificate contends that the bank ought not to have placed reliance on the said document as for the post in question the educational qualification of passing class eight was not mandatory.

The eligibility criteria for recruitment of SafaiKarmachari cum sub staff and/or sub staff is mentioned in the recruitment notice dated 14th. August 2012. Serial no. 5 of the said notice mentions about the educational qualification required for the job i.e. minimum eighth standard pass or equivalent. The petitioner being aware of the fact that the minimum educational qualification required for the job being class eight passed procured the transfer certificate to prove that he possessed the requisite qualification for the job.

Paragraph 5 of MOS cites the acts and omissions on the part of the employee that constitute 'gross misconduct'. Paragraph 5(m) states 'knowingly making a false statement in any document pertaining to or in connection with his employment in the bank'.

Paragraph 6 (a) says that an employee found guilty of gross misconduct may be dismissed without notice.

Bank invoked the said provision, applied the same in case of the petitioner and dismissed him from service.

The submission of the petitioner that the certificate was superfluous and not required for the job does not appear to be correct as the eligibility criteria indicated in the recruitment notice clearly mentions that the candidate has to be class eight passed. Without the qualification of passing class eighth standard the petitioner could not have got the job at all.

Records show that the petitioner was duly heard and all opportunities to defend were given to the petitioner. All the procedures and steps in connection with conduct of the disciplinary proceeding were specifically followed. The charges against the petitioner stood proved.

The petitioner adopted dishonest means to get his job in the bank. On detection of the same the petitioner lost his job. The decision referred to by the respondent (AIR 2007 SC 1126) takes into consideration similar facts and comes to the conclusion that if the candidate does not fulfil the basic criteria his appointment cannot be allowed to be continued. In the said case the Supreme Court refers to the judgment delivered in the case of Bank of India &Anr. Vs. Avinash D.

Mandivikar&Ors. AIR 2005 SC 3395 wherein it was held that if the employee concerned having played fraud in obtaining an appointment, he should not be allowed to get the benefits thereof as the foundation of appointment collapses.

The judgment and order passed in the case of SimaDutta vs. The Central Bank of India (supra) relied upon by the petitioner is distinguishable on facts. The genuineness of the education certificate relied upon by the petitioner in the said case remained 'not-proved' which is substantially different from the case at hand.

In paragraph 7 of the judgment of Rama Kant Misra (supra) the Supreme Court held that the court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of dismissal or discharge was not justified in the facts and circumstances of the case.

The petitioner relies upon paragraphs 27 and 28 of the judgment of Avtar Singh (supra) wherein the Hon'ble Supreme Court held that the employer has to act on due consideration of rules/instruction, if any, in exercise of powers in order to cancel candidature or for terminating the service of an employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regards to facts of the case. What yardstick is to be applied depend upon the nature of the post. For lower posts which are not sensitive impact of suppression has to be considered on due consideration of various aspects.

The learned counsel harps on the point that the petitioner is a SafaiKarmachari and as a one-time measure his service was being regularised by the respondent bank. He submits that the information regarding qualification of the petitioner being trivial in nature the order of dismissal of the petitioner from service is grossly disproportionate with the gravity of the offence. He submits that the harshest form of punishment has been imposed upon the petitioner. He lays stress on the fact that in the meantime the petitioner has put in considerable years of service and he ought not to be dismissed in such a fashion.

The Hon'ble Supreme Court of India in Union of India &Ors. Vs. Himmat Singh Chahar 1999(4) SCC 521 held that the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose for finding out whether there has been infraction of any mandatory provisions of the act which has caused miscarriage of justice or for finding out whether there has been violation of the principles of natural justice which vitiates the entire proceeding. The High Court is not permitted to re-appreciate the evidence and come to a conclusion that the evidence is insufficient.

In Gridko Limited &Anr.Vs. SadanandaDolui&Ors. AIR 2012 SC 729 the Supreme Court held that judicial review cannot extend to the High court acting as an

appellate authority sitting in appeal over the decision so long as the action taken by the authority is not shown to be vitiated by the infirmities of illegality, perversity, unreasonable, unfair or irrational and so long as the action is not demonstrably in outrageous deviance of logic the Writ Court would do well to respect the decision under challenge.

From the facts of the instant case it appears that the disciplinary proceeding was conducted in accordance with the rules of the bank. Natural justice has been complied. The order of dismissal was passed by the competent authority in conformity with the clauses of the MOS. The order of dismissal does not appear to be disproportionate.

In my opinion resorting to unfair means by knowingly relying upon false documents to get the job is a serious offence. The same constitutes gross misconduct as per MOS. Punishment has been imposed accordingly. The order of dismissal does not appear to be disproportionate. Dishonesty has to be dealt with an iron fist. Any sympathy will sent out a wrong message and act as a premium to undeserving candidates to resort to corrupt practice for securing a job.

In view of the discussions made hereinabove there is no reason to interfere with the order impugned. The writ petition is devoid of merits and is accordingly dismissed.

W.P. No. 19473 (W) of 2018 is stands dismissed.

No order as to costs.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.