
(2015) 03 AHC CK 0155
In the Allahabad High Court
Case No : C.M.W.P. No. 13981 of 1995

Kamakhya Narain Singh

APPELLANT

Vs

National Airport Authority and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2015) 3 AWC 3199 : (2015) 4 UPLBEC 3040

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : R.K. Awasthi, A.K. Singh, G.P. Singh, K.J. Khare, R.K. Mishra and S.N. Singh, for the Appellant; U.N. Singh and V.K. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.C. Tripathi, J—Heard Shri R.K. Awasthi, learned counsel for the petitioner. Shri V.K. Singh senior advocate appears for the respondents. By means of the present writ petition, the petitioner has prayed for following relief"s:

"(i) to issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned cancellation order dated 6.9.1994 (Annexure-9).

(ii) to issue an appropriate writ order or direction in the nature of mandamus commanding the respondents to appoint the petitioner to the post of Fire and Rescue Operator at Civil Aerodrome, Varanasi.

(iii) to pass such other and further orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case which the petitioner is found entitled to.

(iv) to award costs."

2. By order dated 25.8.1999 the petitioner was allowed to add the following

relief"s in the prayer clause:

"(v) issue a writ, order or direction in the nature of certiorari quashing the impugned advertisement (Annexure-1 to the affidavit).

(vi) issue a writ, order or direction in the nature of mandamus commanding the respondents to decide the representation (Annexure-3 to the affidavit) made by the petitioner.

(viii) issue a writ, order or direction in the nature of mandamus commanding the respondents to reserve one post of Fire and Rescue Operation for the petitioner."

3. Brief facts giving rise to the writ petition are that the petitioner was an applicant for the post of Fire and Rescue Operator (a Class-III post). The petitioner being eligible for the said post, his name was sent by the Employment Exchange vide letter dated 24.8.1992 and as such the petitioner appeared for preliminary physical measure and written test on 6th September, 1992 in the office of respondent No. 2, i.e., National Airport Authority, Varanasi. After preliminary physical measurement and written test, which was scheduled to take place on 6.9.1992 the petitioner was asked to appear for final selection in the office of Senior Aerodrome Officer, National Airport Authority, Safdarjung, New Delhi. He competed in the final selection and was thereafter nominated for training subject to production of police verification. In this connection he was required to submit a declaration in a prescribed proforma known as attestation form for verification of character and antecedents, which he did. Subsequently, the petitioner had been informed by letter dated 6.9.1994 that as he had given false information in Column 12 of the aforesaid form and had suppressed material facts, as such his selection for the post of Fire and Rescue Operator was cancelled. It is also apparent from the record that the petitioner had filed this writ petition seeking quashing the aforesaid order dated 6.9.1994 and the writ petition was entertained by this Court in the year 1995. For a considerably long time the respondents were not asked to file counter-affidavit in the matter. It was only in 1999 the respondents were asked to file counter-affidavit. On 8.2.2000 this Court had passed the following interim order in favour of the petitioner. The same is reproduced hereunder:

"This petition was filed in the year 1995. No counter-affidavit has been filed. Learned counsel for the respondent prays and is allowed 6 weeks" more time to file counter-affidavit. In the meantime, the petitioner shall be allowed to join and shall be paid salary."

4. Aggrieved with the said order the respondents had preferred National Airport Authority and others v. Kamakhya Narain Singh, Special Appeal No. 137 of 2000, which was allowed vide order dated 22.4.2000 with following observations:

"We are, therefore, of the considered view that on the facts of the present case, the impugned order passed by the learned single Judge to the effect that the writ petitioner shall be allowed to join and shall be paid salary is wholly unjustified

and is liable to be set aside.

For the reasons mentioned above, the special appeal succeeds and is hereby allowed. The impugned order of the learned single Judge insofar as it directs that writ petitioner shall be allowed to join and shall be paid salary is set aside. It is made clear that any observation made in this order is only for the purpose of deciding the special appeal and shall not be construed as an expression of opinion regarding the merits of the claim made by the parties."

5. It is relevant to mention at this stage that in the attestation form for verification of character and antecedents, which was verified by the petitioner on 8.10.1993 on the top left hand side of the form, the word "Warning" was written in bold letters. On the left side it is mentioned as follows:

"(i) giving a false information or concealment of correct information shall be treated as disqualification and the applicant may be treated as disqualified for appointment.

(ii) if the applicant is detained or is sentenced subsequent to submission of the form, he shall immediately give information of the same and non-supply of such an information shall be treated as concealment of correct information and

(iii) if during the course of service, it was revealed that the applicant had given false information or had concealed correct information, his services may be terminated."

6. For ready reference Column 12 of the form reads as follows:

7. The petitioner at the time of filling the form had scored out the word "Yes" in every column and as such his reply was "no" meaning thereby he had never been arrested in any criminal case. Subsequently, it had been brought into notice to the department that the petitioner has concealed his prosecution in Criminal Case No. 1430 of 1991 under Sections 498A and 3/4 Dowry Prohibition Act. In the said criminal case the petitioner was detained and was subsequently enlarged on bail by the Hon"ble High Court and as such the petitioner had concealed the material fact while furnishing relevant information and as such by the impugned order the appointment of the petitioner was cancelled.

8. Learned counsel for the petitioner submits that in the present matter at no point of time the petitioner was afforded any opportunity in the matter. At any point of time the petitioner had not deliberately concealed the material fact and it was incumbent upon the respondents to provide an opportunity to defend in the matter. He further makes submission that once the petitioner had successfully undergone training, he had legitimate expectation of being appointed and his right could not be frustrated on purely hyper technical ground. The impugned order is penal in nature and entail civil consequence and as such not affording any opportunity is fatal. The order impugned is vitiated and the same is against the principle of natural justice.

9. Per contra Shri V.K. Singh, learned senior advocate submits that in the present matter the F.I.R. had been lodged against the petitioner and in this connection he was detained and released on bail, which is admitted case and as such there is no dispute that at the time of furnishing the necessary information the petitioner had deliberately concealed the material fact and atleast he was well conversant with the facts that the F.I.R. was lodged against him. He was implicated in the said criminal case and had gone to jail. Therefore, it was incumbent upon him to furnish the necessary information and as such the petitioner had made deliberate attempt to conceal the material fact while submitting the relevant papers to the department. He further submits that Column 12 was innocuous to the extent that there was categorical clauses, were you ever arrested, "have you ever been prosecuted" or "have you ever been kept in jail". Therefore, in the aforesaid facts, there was no necessity for providing any opportunity.

10. On the other hand, learned counsel for the petitioner submits that subsequently there was a compromise and the said criminal case is ended in acquittal and final verdict was also in favour of the petitioner. Therefore, as such, his selection could not have been cancelled.

11. I have arrived at rival submissions and perused the record.

12. It is not disputed that in the present matter the criminal case was registered under Sections 498A and 3/4 Dowry Prohibition Act prior to furnishing the information against the petitioner and he was subsequently released on bail. Therefore, it was incumbent upon the petitioner to furnish the correct information to the department as per Column 12 of the attestation form. Even if there was compromise or acquittal, he had to mention categorically in the said form and as such non-disclosure of the aforesaid facts cannot be justified in any manner. Once the department had asked the categorical information and the petitioner had deliberately scored out the word "yes" in every column and as such his reply was "no" meaning thereby neither he was ever prosecuted nor sent in jail. On all the counts he had deliberately misled the department and as such the petitioner did not acquire indefeasible rights to be appointed. The department has also taken a stand that in such circumstances where at the initial stage of appointment, if the petitioner just for getting an employment had made deliberate false statement, he is man of suspicious character and unworthy of being inducted in the services of the authority. The work in the department is very sensitive in nature, where the security of airport is at stake. If such kind of person is inducted in service, then the whole security of the Airport would be in jeopardy.

13. The issue of obtaining the appointment by misrepresentation is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed

as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

14. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853 : (1993) 2 BC 546 : (1993) 6 JT 331 : (1995) 109 PLR 293 : (1993) 4 SCALE 277 : (1994) 1 SCC 1 : (1993) 3 SCR 422 Supp : (1994) 1 UJ 1 . In Lazarus Estate Ltd. v. Besalay, 1956 All ER 349, the court observed without equivocation that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

15. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, AIR 1994 SC 2151 : (1994) 80 CompCas 140 : (1994) 1 JT 586 : (1994) 1 SCALE 565 : (1994) 2 SCC 647 : (1994) 1 SCR 857 : (1994) 1 UJ 351 : (1994) WritLR 497 and State of Maharashtra and Others Vs. Prabhu, (1995) 1 LLJ 622 : (1994) 2 SCC 481 , this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."

16. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, AIR 1992 SC 1555 : (1991) 5 JT 378 : (1991) 2 SCALE 1386 : (1992) 1 SCC 534 : (1991) 3 SCR 446 Supp : (1992) 1 UJ 346 , it has been held as under:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

17. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, (2000) 1 ACC 484 : (2000) ACJ 1032 : AIR 2000 SC 1165 : (2000) 2 CLT 25 : (2000) 100 CompCas 705 : (2000) 3 CTC 506 : (2000) 3 JT 122 : (2000) 2 SCALE 343 : (2000) 3 SCC 581 : (2000) 2 SCR 264 : (2000) 1 UJ 655 : (2000) AIRSCW 835 : (2000) 2 Supreme 294 , this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in M.P. Mittal Vs. State of Haryana and Others, AIR 1984 SC 1888 : (1985) 1 CompLJ 190 : (1985) 82 PLR 212 : (1984) 2 SCALE 555 : (1984) 4 SCC 371 : (1985) 1 SCR 940 : (1985) 17 UJ 22 .

18. In Ram Chandra Singh Vs. Savitri Devi and Others, AIR 2004 SC 4096 : (2004) 97 CLT 426 : (2004) 172 ELT 446 : (2004) 6 JT 93 : (2004) 6 SCALE 327 : (2004) 12 SCC 713 : (2004) 2 UJ 1526 : (2004) AIRSCW 4454 : (2004) 5 Supreme 705 , this Court held that "misrepresentation itself amounts to fraud", and further held "fraudulent misrepresentation is called deceit and consists in

leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad." The said judgment was re-considered and approved by this Court in Vice-Chairman, Kendriya Vidyalaya Sangathan and another v. Girdharilal Yadav, (2004) 6 SCC 325 .

19. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, AIR 1996 SC 686 : (1996) 1 LLJ 781(2) : (1995) 6 SCALE 214 : (1995) 4 SCC 100 Supp : (1995) 4 SCR 526 Supp : (1996) 1 UJ 600 . this Court, after placing reliance upon and approving its earlier judgment in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, (1990) 2 LLJ 153 : (1990) 1 SCALE 806 : (1990) 3 SCC 655 : (1990) 2 SCR 559 : (1990) 1 UJ 710 . observed as under:

"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of Law as the employment secured by fraud renders it voidable at the option of the employer."

20. In Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, (1996) 8 AD 669 : (1997) 75 FLR 42 : (1996) 10 JT 34 : (1996) 8 SCALE 11 : (1996) 11 SCC 605 : (1996) 7 SCR 199 Supp : (1997) 1 UJ 159 , this Court examined the similar case where the appointment was refused on the post of Police Constable and the court observed as under:

"It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State, Though he was found physically fit, passed the written test and interview and was provisionally selected on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force."

21. In Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, AIR 2003 SC 1709 : (2003) 97 FLR 117 : (2003) 2 JT 256 : (2003) 2 LLJ 523 : (2003) 2 SCALE 444 : (2003) 3 SCC 437 : (2003) SCC(L&S) 306 : (2003) 2 SCR 361 : (2003) 2 SLJ 370 : (2003) AIRSCW 1126 : (2003) 2 Supreme 219 and A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, AIR 2005 SC 4292 : (2005) 107 FLR 157 : (2005) 8 JT 23 : (2005) 7 SCC 177 : (2005) SCC(L&S) 924 : (2005) 2 SCR 1050 Supp : (2005) 3 SLJ 407 : (2005) AIRSCW 5175 : (2005) 6 Supreme 73 , this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could

not understand what information was sought. This Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. "The requirement of filling column Nos. 12 and 13 of the Attestation Form" was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service.

22. In *State of Haryana and Others Vs. Dinesh Kumar*, AIR 2008 SC 1083 : (2009) 238 ELT 545 : (2008) 1 JT 390 : (2008) 1 SCALE 268 : (2008) 3 SCC 222 : (2008) AIRSCW 696 : (2008) 1 Supreme 296 , this Court held that there has to be a deliberate and willful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different

23. In *Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu*, (2005) 2 ESC 170 : (2005) 104 FLR 1063 : (2005) 2 JT 358 : (2005) 2 SCC 746 : (2005) SCC(L&S) 323 : (2005) 2 SCR 1147 : (2005) 2 SLJ 233 , this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

24. In *R. Radhakrishnan Vs. The Director General of Police and Others*, AIR 2008 SC 578 : (2008) 2 CLT 604 : (2007) 115 FLR 792 : (2007) 13 JT 225 : (2008) 1 SCC(L&S) 283 : (2007) 11 SCR 456 , this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

25. The same view was also taken by Hon''ble Supreme Court in *Devendra Kumar v. State of Uttaranchal and others*, Civil Appeal No. 1155 of 2006, decided on 29th July, 2013.

26. It is well-settled law that the verification of character and antecedents is one of the most important criteria to test whether the selected candidate is suitable for the post or not. The concealment of material fact by a candidate at the time of seeking appointment is fatal and such appointment is also liable to be cancelled. In view of the above, I am not inclined to interfere in the writ petition under Article 226 of the Constitution of India. The writ petition being devoid of merit is hereby dismissed.