
(1993) 08 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Special Appeal No. 375 of 1993

Mahesh Kumar

APPELLANT

Vs

United Commercial Bank and Others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (1993) WLN 246(1)

Hon'ble Judges : R.S. Kejriwal, J;N.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 has been directed against the order of learned Single Judge of this Court dt. 26.3.1993 whereby the writ petition filed by the petitioner against his dismissal by the respondents has been dismissed.

2. Brief facts which are necessary for the disposal of this special appeal as alleged by the appellant petitioner are that he is a natural born son of Biharilal of Sr. Madhopur and tailor by caste. In pursuance of advertisement issued by the respondent Bank in the year 1983 the appellant applied vide Anx. 12 for the post of Cashier-cum-clerk alleging to be a member of Scheduled Caste along with a certificate issued by Tehsildar marked as Anx. 13. He was appointed on the said post on 13.2.1984 against Scheduled Caste quota. Notice to show cause was issued to the petitioner on a complaint to which the petitioner filed a reply stating that he was adopted by Bhanwarilal @ Biharilal Meena of Village Dantala when he was 10 years old by a formal document, which was written in Bahi on 2.4.82 and he got a certificate issued by the Tehsildar. On enquiry it was found that the fact has been falsely canvassed by the petitioner. The Enquiry Officer came to the conclusion that the petitioner-appellant obtained the certificate through unscrupulous means and by misrepresenting about belonging to Meena Tribe and nothing was produced regarding his adoption. This allegation that the

adoption was recorded in the Bahi on 2.4.82 was not accepted. The certificate was not in the prescribed proforma and was also not issued by the District Magistrate. The respondent Bank dismissed the appellant from service. Against the order of dismissal the appellant filed a writ petition but the same was also dismissed. Hence, this special appeal.

3. Mr. Mridul, learned Counsel for the appellant argued that the petitioner-appellant disclosed all facts regarding his natural father and mother and also submitted his higher secondary and other certificates. Therefore, merely on the basis of the certificate of Tehsildar it cannot be said that the appellant misrepresented and got appointment against Scheduled Caste quota by committing fraud. He has further submitted that the appellant was in bonafide belief that he had gone in adoption on the basis of certificate issued by the Tehsildar who gave it on the basis of record of Municipal Board, He placed reliance on the judgment of Apex Court reported in M.S. Mudhol and Another Vs. S.D. Halegkar and Others, Dr. M.S. Mudhol and Ors. v. Shri S.D. Halegkar and Ors.

4. Heard learned Counsel for the appellant and perused the impugned order as well as the case law.

5. In Dr. M.S. Mudhol and Ors. v. Shri S.D. Halekar and Ors. (supra), by way of writ of quo warrant to appointment of respondent no. 1 on the post of Principal of a Private aided school was challenged on the ground that the said respondent did not possess requisite qualifications. Their lordships of the Supreme Court held that fault was of 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although the respondent no. 1 did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years. Now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There was nothing on record to show that he had at the time projected his qualifications other than what he possessed. Their Lordships further held that it would be iniquitous to make him suffer for the same now after a period of 12 years.

6. It is no doubt true that a person who has not naturally born to a Scheduled Caste Couple if goes in adoption to such family he can claim himself as belonging to Scheduled Caste. In the instant case according to the petitioner appellant he was adopted by Bhanwarilal @ Biharilal Meena when he was 10 years old but in the matriculation certificate instead of the name of his adoptive father, the name of natural father has been shown. Even in the application form submitted by him to the respondent Bank, the petitioner has mentioned his name as Mahendra Kumar s/o Biharilal, Suram-Ka-Bazar, Srimadhopur. He also mentioned his father's name as Biharilal and mother's name as Mali Devi whereas the name of his adoptive mother is Smt. Moni Devi w/o Biharilal and the address of his adoptive father is of village Dantala. Apart from that, even if the allegation of the petitioner-appellant that he was adopted by Bhanwarilal is assumed to be true,

then too the certificate which has been issued by the Tehsildar cannot be accepted-for the reason that according to the petitioner himself the entry was made in the Bahi of Bhanwarilal @ Biharilal Meena of Dantla on 2.4.82 whereas the petitioner appellant born in the year 1950 and the adoption as alleged took place in 1969. Moreso, the petitioner became 23 years of age on 2.4.82, therefore, in view of Government of India Brochure for S.C. and S.T. in Service (VII Edition) (M 8) (Page-209 to 211) the alleged certificate could not be issued by Tehsildar and only by the concerned District Magistrate, therefore, the certificate of cast issued on the basis of affidavit of the petitioner is of no avail. Under the circumstances, the learned Single Judge has rightly observed that the Enquiry Officer has rightly come to the conclusion that the appellant obtained employment by defrauding the Bank authorities, against S.C. quota on the basis of certificate and, therefore, the argument that the appellant disclosed all facts is not sustainable in the facts and circumstances of this case. The case law cited by the learned Counsel for the appellant is not helpful for the reason that in that case there was no fault of the incumbent respondent no. 1 the appointee but on the part of Selection Committee and a writ of quo warrant was filed against the respondent as he was lacking in qualifications whereas in the case in hand as already stated the petitioner-appellant obtained certificate of caste by Tehsildar on his own affidavit and on that basis got appointment. On enquiry he has not been able to prove even adoption and after giving full opportunity to the petitioner, the E.O. has come to the conclusion that the petitioner got appointment by committing fraud. This finding of Enquiry Officer has been affirmed by the learned Single Judge holding that the authorities concerned were perfectly justified in dismissing the petitioner from services. Therefore, the petitioner cannot take advantage of Dr. M.S. Mudhol's case(supra). Learned Counsel for the petitioner has not been able to show any illegality or infirmity in the order passed by the learned Single Judge, so as to call for any interference in the impugned order.

7. In the result, this special appeal has no force, so it is hereby dismissed.