
(2012) 11 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 182 of 2012

Nongmaithem Rajen Singh	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 14-11-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 19(1)(a), 226, 309, 32
Land Acquisition Act, 1894 — Section 11A
Right to Information Act, 2005 — Section 19, 6(1)

Citation : (2013) 1 GLT 7

Hon'ble Judges : T. Nanda Kumar Singh, J

Bench : Single Bench

Advocate : Tarunkumar, for the Appellant; Sobhna, GA, for the Respondent

Final Decision : Allowed

Judgement

T. Nanda Kumar Singh, J.—The writ petitioner, by this writ petition, is seeking for a direction to respondent Nos. 1, 2 and 3 not to consider the case of the private respondent No. 4 and/or to exclude name of private respondent No. 4, Shri T. Manaobi Singh, from the list of candidates for promotion to the post of Administrative Officer of the Department of Fisheries, Government of Manipur. Heard Mr. Kh. Tarunkumar, learned counsel for the petitioner and Ms. Sobhna, learned GA appearing for respondent Nos. 1, 2 and 3. None appeared for respondent No. 4 without showing any cause as well as on the last two dates fixed for hearing of this writ petition.

2. FACTUAL BACKGROUND:

The petitioner, who obtained graduation certificate in the year 1977, was initially appointed to the post of Lower Division Clerk (LDC) in the year 1979. In the year 1982 he was further promoted to the post of Upper Division Clerk (UDC) and also successfully completed accounts training in the year 1984; and later on promoted to the post of Head Clerk in the year 2000 and is still working as Head Clerk.

The post of Administrative Officer of the Department of Fisheries, Government of Manipur is a promotional post of the UDCs (Graduate)/Superintendent (Graduate)/Sr. Accountant (Graduate). Under the Recruitment Rules made by the Governor, in exercise of power conferred by proviso to Article 309 of the Constitution of India. Vide notification No. 1/38/87-RR/DP dated 06.03.1990 i.e., the Recruitment Rules called "Fishery Department Manipur [Administrative Officer (Fishery)] Recruitment Rules, 1990", appointment to the post of Administrative Officer (Fishery) is by promotion and failing which by direct recruitment; and (1) Superintendent (Graduate) having 5 years regular service in the grade, (2) Head Clerk (Graduate)/Sr. Accountant (Graduate) having 10 (ten) years regular service in their respective grades or 10 (ten) years regular service as Head Clerk and Sr. Accountant put together, are eligible for promotion to the post of Administrative Officer and essential educational qualification for promotion to the post of Administrative Officer is Graduate. The petitioner having completed ten years regular service as Head Clerk (Graduate) is eligible for promotion to the post of the said Administrative Officer of the Department of Fisheries, Government of Manipur.

3. The Director of Fisheries, Government of Manipur vide his letter No. FD/398/Estt/93 dated 14.12.1995 addressed to the Head Clerks circulated the final seniority list of Head Clerks of the Department of Fisheries, Government as on 19.08.1995. In that final seniority list of Head Clerks, name of the private respondent No. 4, Shri T. Manaobi Singh appeared at Sl. No. 3 and his educational qualification is PUC. At the time of publication of the said final seniority list of Head Clerks as on 19.08.1995, educational qualification of the private respondent No. 4, Shri T. Manaobi Singh was only PUC.

In the month of April, 2000 the private respondent No. 4, Shri T. Manaobi Singh had obtained earned leave for ten days w.e.f. 03.04.2000 to 13.04.2000 with permission to suffix 13.04.2000 being Sunday and holiday on account of private affairs under the order of the Director of Fisheries, Government of Manipur dated 30.03.2000. During the said period of leave of private respondent No. 4 the petitioner was allowed to look after the duties of private respondent No. 4.

4. There is a substantive vacancy in the post of Administrative Officer in the Fisheries Department, Government of Manipur since 01.03.2012 due to retirement of the incumbent of the said post of Administrative Officer on attaining the age of superannuation w.e.f. 29.02.2012. Thereafter, the authority of the Fishery Department, initiated steps for filling up the said vacancy in the post of Administrative Officer by promotion from amongst the incumbents holding feeder posts under the said Recruitment Rules for the post of Administrative Officer, dated 06.03.1990 which is still in force.

As stated above, essential educational qualification for promotion to the post of Administrative Officer is Graduate. The authority concerned had prepared the list of eligible candidates for appointment by promotion to the post of Administrative Officer of the Fishery Department and same was furnished to the Manipur Public

Service Commission along with necessary documents testimonials for consideration by the DPC which is to be convened by the MPSC and tentative date for holding DPC was on 23.02.2012.

5. The petitioner learnt from reliable source that the name of the private respondent No. 4 who is not even a graduate as per service record, is included in the list of eligible candidates for consideration for promotion to the post of Administrative Officer. The petitioner, through legal notice dated 20.02.2012 requested the Secretary, MPSC to consider the relevancy of the said Certificate of Graduation said to have been obtained by private respondent No. 4 in considering his eligibility for promotion to the said post of Administrative Officer, before his case (Respondent No. 4) is placed before the DPC. In that legal notice, the petitioner had highlighted all the facts and circumstances that the private respondent No. 4 was not a graduate as per the service record and also that if the private respondent No. 4 obtained Graduation Certificate, it was obtained unauthorizedly and it will amount to "misconduct" inasmuch as respondent No. 4 had not obtained permission from the concerned authority of the Fishery Department, Government of Manipur for pursuing higher studies or/for pursuing B.A Course as a regular candidate.

For that legal notice, the Joint Secretary, MPSC, vide his letter dated 19.03.2012 requested the Commissioner (Fisheries), Government of Manipur to furnish views of the Administrative Department to the point raised in the legal notice. The Director of Fisheries, Government of Manipur vide his letter dated 22.03.2012 addressed to the Commissioner, Fisheries, Government of Manipur furnished his comment to the said legal notice wherein the Director, admitted the factual position raised by the petitioner in the legal notice. However, the Director, Fisheries, Government of Manipur, clarified the controversial issue raised by the petitioner by stating that the matter regarding validity of the said graduation certificate obtained by the private respondent No. 4, without permission from the authority or without attending college is with the head of the institute; it is not concerned with the Department. Therefore, permission for pursuing the TDC/B.A course or attending college, according to the Director of Fisheries, is to be taken care of by the head of the institute i.e. the College and it is not concerned with the department.

6. It is the further case of the petitioner that it is understood under service rule that employees/officers are required to maintain absolute integrity and devotion to duty; they cannot act in a manner which will interfere with the absolute integrity and devotion to duty. Any action of the employee/officer which disturb the general duties and devotion to the duty, as provided under Rule 3 of the Civil Services (Conduct) Rules, 1964 will amount to "misconduct". Rule 3 of the Civil Services (Conduct) Rules, 1964 read as follows:

3, General

(1) Every Government servant shall at all times--

(i) maintain absolute integrity; (ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

(ii) No Government servant shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior;

(iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter;

(iv) A Government servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.

Explanation I:-A Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of clause (ii) of sub-rule (1).

Explanation II:-Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

7. The private respondent No. 4, who was serving as Drawing and Disbursing Officer of the office of the Directorate of Fisheries, Government of Manipur need full devotion to the duties and over and above, he is discharging his full time service. In other words, the respondent No. 4 is not apart time employee. During the period the private respondent No. 4 allegedly attended the regular course for obtaining graduation certificate i.e. B.A, he was a whole time employee of the Fishery Department of the office of the Directorate of Fisheries, Government of Manipur, as Drawing and Disbursing Officer. The private respondent No. 4, being whole time employee of the Fishery Department, Government of Manipur, required to discharge his duty with absolute integrity and devotion, and had to take prior permission from the competent authority to take admission in any course of studies which would interfere the working hours of office. Attending classes for B.A. for regular course will certainly interfere with the working hours of the private respondent No. 4 inasmuch as the full time course of regular students (candidates) of B.A. course are during working hours of the office. Therefore, according to the petitioner, private respondent No. 4 should have

obtained permission from the competent authority for taking admission in the course of B.A. which would interfere with the working hours of the office and as the private respondent No. 4 had obtained graduation certificate after regularly attending course, without permission, he had committed "misconduct".

8. The Government of India, i.e. G.I., M.H.A., O.M. No. 25/27/52-Estt dated 03.05.1952 and M.H.A., O.M. No. 130/54/Estt (A), dated 28.02.1955, had clearly mentioned that ordinarily, there can be no objection to the pursuit of knowledge by Government servants in their leisure hours. Even for pursuing higher knowledge during leisure hours permission is to be obtained and ordinarily permission is granted in the cases where it is noticed that the government employee/officer is pursuing higher studies during leisure hours but that permission may be withdrawn at any moment without assigning any reasons if the government servant has neglected his duties for the sake of his studies. It is clear from the above Government Memoranda that permission cannot be granted to the government officers/employees for pursuing higher studies by neglecting their duties for the sake of their studies. The said memoranda read as follows:

As the Ministries are aware it was proposed in G.I., MHA., OM No. 25/27/52-Estt dated 3rd May, 1952, to issue general instructions on the subject. The replies received to the O.M., however revealed that while some Departments found that efficiency was suffering on account of Government servants attending regular course of study for University Degrees even outside office hours a great majority of the Ministries was able to permit their employees to pursue such studies without detriment to official duties and that no serious problems had been created in most of the Departments by the Government servants joining educational institutions. It was, therefore, not considered necessary to issue any specific instructions on the subject. Ordinarily, there can be no objection to the pursuit of knowledge by Government servants in their leisure hours. But this must be subject to the condition that such pursuit does in no way detract from their efficiency. Wherever found necessary, the administrative authorities may require that Government servants under their control should take prior permission before joining educational institutions or courses of studies for University Degrees, as the joining of educational institutions involves advance commitment about attendance at specific hours and absence from duty during periods of examinations. Ordinarily, permission is to be granted, but with a view to summarily dealing with cases where it is noticed that the Government servant has been neglecting his duties for the sake of his studies, a condition may be attached saying that the permission may be withdrawn at any moment without assigning any reasons. This will, of course, be without prejudice to any other departmental action being taken where mere withdrawal of the permission is not considered adequate.

Government servants belonging to the Scheduled Castes/Scheduled Tribes may be allowed to take full advantage of the educational facilities subject to the policy stated above. [MHA., O.M., No. 130/54/Estt(A), dated 28th February, 1955]

It is the further case of the petitioner that the private respondent No. 4 who had committed misconduct in obtaining the graduation certificate could not be considered for further promotion to the post of Administrative Officer, for which, essential educational qualification for promotion is graduate.

9. The private respondent No. 4 had filed his affidavit in opposition wherein he did not deny that he obtained graduation certificate or/he completed the B.A. course while he was working as full time employee of the Directorate of Fisheries, Government of Manipur. However, his justification for pursuing higher studies, i.e. B.A. Course without permission from the concerned authority is that he did not attend regular course of studies and also that he did not attend college for not hampering the office work and as such no permission or sanction is required. Private respondent No. 4 further reiterated that the government always encourages all the employees to acquire higher educational qualifications while in service. It is also further case of the private respondent No. 4 that he obtained graduation certificate as private candidate without attending the course or/college. The M.H.A., O.M. No. 130/54/Estt (A) dated 28.02.1955 read with M.H.A., O.M. No. 1101/14/77-Estt (A) dated 21.05.1977 states that permission will be required only for regular course of studies of the Universities but for the course of studies of University Degree outside the normal office hours permission will not be required.

10. The petitioner filed reply affidavit to the affidavit in opposition filed by the private respondent No. 4, categorically stating that the private respondent No. 4 obtained his graduation certificate as regular candidate and not as a private candidate. The petitioner further stated that the Principal, Moirang College, issued certificate on 01.08.2000 clearly certifying that the private respondent No. 4 appeared TDC III Core (Pol. Sc.) examination of Manipur University in the year 1999 under Roll No. 713316 as regular candidate and declared to have passed the examination in the 2nd class (Hons) as per result sheet issued by the Manipur University. The said certificate issued by the Principal, Moirang College, from where private respondent No. 4 appeared TDC III Core (Pol. Sc.) Examination of the Manipur University in the year 1999 is also annexed as Annexure A/7 to the reply affidavit. On perusal of the said Certificate it is clear that the private respondent No. 4 appeared TDC HI Core (Pol. Sc) Examination of the Manipur University in the year 1999 under Roll No. 713316 as regular candidate and was declared to have passed the examination in the 2nd class (Hons) Division as per result sheet issued by the Manipur University.

11. The petitioner on 25.07.2012 submitted an application to the SPIO, Manipur University/Controller of Examinations, Manipur University, u/s 6(1) of the Right to Information Act, 2005 praying for providing informations mentioned therein. In response to the said application, the Assistant Controller of Examination, vide his letter dated 31.07.2012 furnished informations sought for by the petitioner that the private respondent No. 4 appeared TDC 3rd year examination, 1999 conducted by the Manipur University as regular candidate under Roll No. 713316

from the Moirang College and passed the examination in the 2nd Division. The petitioner has been further informed that under Ordinance of 1997 of the Manipur University, at least 75% of classes are to be attended by a regular candidate for the course of BA, i.e. TDC. The parawise reply under the RTI to the petitioner read as follows:

Para wise reply to RTI petitioner, Shri Nongmaithem Rajen Singh, S/o (L) N. Naola Singh

The relevant portion, i.e. para 11.2 of the said Ordinance of the University read as follows:

11.2. To be eligible for appearing at the First Second and Third year examination in Arts as a regular student, a student should attend at least 75% of the lectures delivered including practicals (for subjects having practical).

12. From the facts revealed above, it is clear that the private respondent No. 4 obtained graduation certificate as a regular candidate and for appearing the TDC 3rd Yr Degree course Examination as regular candidate, one has to attend 75% of the classes and also the said classes are during office hours. Attending said classes will certainly interfere the service of the private respondent No. 4 as a whole time employee of the Directorate of Fisheries and shall also interfere with the known general duties of the whole time employee as provided under Rule 3 of the Civil Services (Conduct) Rules, 1964. In this factual context, it is the case of the petitioner that the private respondent No. 4 had committed misconduct.

The question is what is "misconduct"? In normal service parlance the term "misconduct" implies a wrongful intention and not a mere error of judgment; and word "misconduct" is to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand Misconduct is a forbidden quality of an act. Misconduct in office is unlawful behaviour or/neglect by public officer of his duties, i.e. devotion to duty.

13. The Apex Court in State of Punjab and Others Vs. Ram Singh Ex. Constable, held as follows:

6. Thus it could be seen that word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty, it may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act of complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs,

regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

14. The Apex Court in *Union of India and Others Vs. Harjeet Singh Sandhu etc.*, held as follows:

22. In the context in which the term "misconduct" has been used in Rule 14, it is to be given a wider meaning and any wrongful act or any act of delinquency which may or may not involve moral turpitude, would be "misconduct", and certainly so, if it is subversive of army discipline or high traditions or army and/or if it renders the person unworthy of being retained in service. The language of sub-rule (2) of Rule 14 employing the expression "the reports on an officer's misconduct" uses "reports" in plural and misconduct in singular. Here plural would include singular and singular would include plural. A single report on an officer's misconduct may invite an action u/s 19 read with Rule 14 and there may be cases where there may be more reports than one on a singular misconduct or more misconducts than one in which case it will be the cumulative effect of such reports on misconduct or misconducts, which may lead to the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14.

15. The Apex Court in *Baldev Singh Gandhi Vs. State of Punjab and Others*, read as follows:

9. "Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct." Thus, ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meanings of the expression "misconduct", we, therefore, have to construe the expression "misconduct" with reference to the subject and the context wherein the said expression occurs, regard being had to the aims and objects of the statute. The appellant herein is an elected Municipal Councillor to a democratic institution i.e. local body. The aim and object of the Act is to make better provisions for administration of municipalities. The municipality is a democratic institution of self-governance consisting of local people, for the local people and by the local people. The prime object of the local body is to serve the local people and to provide amenities and service of the people residing within the municipality. As a representative of the public it is the duty of an elected representative to see that the public of his constituency are not burdened with excessive and arbitrary levy. No doubt, a Municipal Councillor holds a statutory office in a municipal council, but not statutory code of conduct in respect of Municipal Councillors has been enacted. However, it is a different question whether such a law could be framed as to restrict the freedom of speech and expression of a Municipal Councillor. However, it must be borne in mind that the appellant was not an employee or a servant of

the Municipal Council and also never held any office of profit in the Municipal Council. Every citizen, inasmuch as a Municipal Councillor, has a freedom of speech and expression under Article 19(1)(a) of the Constitution which includes fair criticism of the law or any executive action. Freedom of speech and expression is guaranteed in our democratic republic both in the legislature as well as in local bodies and, therefore, a legislator or a Municipal Councillor legitimately can express his views in regard to what he thinks to be a public interest. A legitimate exercise of right of speech and expression including a fair criticism is not to be throttled.

16. The meaning of the word "misconduct" explained in Harjeet Singh's case (supra), Baldev Singh Gandhi's case (supra) and Ram Singh Ex-Constable's case (supra) had been considered and followed in M.M. Malhotra Vs. Union of India (UOI) and Others, in M.M. Malhotra's case (supra) read as follows:

17. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

18. In Union of India and Others Vs. Harjeet Singh Sandhu etc., , in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be "misconduct" under Rule 14.

19. In Baldev Singh Gandhi Vs. State of Punjab and Others, it was held that the expression "misconduct" means unlawful behaviour, misfeasance, wrong conduct, misdemeanour, etc.

20. Similarly, in State of Punjab and Others Vs. Ram Singh Ex. Constable, it was held that the term "misconduct" may involve moral turpitude. It must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

21. Misconduct: as stated in Bait's Law of Master and Servant (4th Edn. at p. 63) "comprised positive acts and not mere neglect or failures". The definition of the word as given in Ballentine's Law Dictionary (148th Edn.) is: "A transgression of some established and definite rule of action, where no discretion

is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness.

22. It may be generally stated that the conduct rules of the government and public sector corporations constitute a code of permissible acts and behaviour of their servants.

17. This Court (Division Bench) in Rabindra Nath Barman Vs. Gauhati High Court & Anr. 2012 (2) GLT 111 held that admission in an academic course by a Government servant without permission of the competent authority is misconduct. Para 34 and 35 of the GLT in Rabindra Nath Barman's case (supra) read as follows:

34. Part-V of 1967 Rules lays down how a High Court employee/officer is to conduct himself. Rule 41 provides the general conduct. It provides that every members of the High Court service shall at all times maintain absolute integrity and devotion to duty and no member of the High Court services shall act in a manner prejudicial to the discipline and good order in the Registry. Rule 37 of the 1967 Rules made applicable the Rules and Orders for the time being in force and applicable to the Government servant of corresponding classes in the service of the State, to the members of the High Court services, subject to the provisions of the 1967 Rules. FR-11 of Fundamental Rules and Subsidiary Rules of Assam provides that the whole time of a Government servant is at the disposal of the Government, which pays him. The members of the High Court services are in whole time service and they are required to maintain absolute integrity and devotion to duty. They cannot act in a manner prejudicial to the discipline and good order in the Registry. They are required to perform their duties with absolute integrity and with devotion and cannot take any other engagement, which interferes with the working hours of the High Court and in discharging his/her duties. Admission in any course of study, which requires attendance in classes interfering with the working hours of the High Court, therefore, naturally requires prior permission as it interferes with the normal work of the High Court, which would result in not devoting to duty, thereby constitute misconduct.

35. The contention of the learned counsel for the petitioner that for taking admission in the law Course, where regular attendance is necessary and the timing of the classes clashes with the working hours of the High Court, the permission is not necessary and the authority should be liberal in granting permission, therefore, cannot be accepted. The circular issued by the Government of India relating to the permission for joining the educational institution by the Government servant do not support such contention of the learned counsel for the petitioner, the said circular being relating to the permission for joining the educational institution outside the normal working hours. No doubt ordinarily there can be no objection to pursue of knowledge by any member of the High Court services in their leisure hours but it must be subject to the condition that such pursuit in no way detract them from efficient discharge of duty, which necessitates taking permission before joining the

educational institution or course of studies, as the joining of such institution or courses involves commitment about attendance at specific hours and absence from duties during the period of examinations as well as for attending the classes.

18. From the above discussions, the only possible inference would be that the act of the respondent No. 4 for pursuing higher course or degree i.e. BA/TDC as a regular candidate by purportedly attending 75% of the classes, which were during office hours, shall certainly be misconduct. The officer who committed misconduct cannot be rewarded by promotion to the next higher post for his misconduct of obtaining Graduation Certificate unauthorizedly. However, it is up to the Manipur University to consider or take decision if the certificate of graduation obtained by the private respondent No. 4 calls for cancellation.

19. The Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, held that non disclosure of relevant and material documents with a view to obtain advantage amount to fraud and one should come to the court with clean hands. Para 5 of the SCC in *SP Chengalvaraya Naidu's* case (*supra*) read as follows:

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

20. The Apex Court in *Dalip Singh Vs. State of U.P. and Others*, held that materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final". Para 1-10

and 16 to 24 of the SCC in Dalip Singh's case (supra) read as follows:

1. For many centuries, Indian society cherished two basic values of life i.e., Satya (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In Hari Narain Vs. Badri Das, , this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

4. In Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, , the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11A of the Land Acquisition Act because of

the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

.. .. Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions.

6. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. Vs. State Bank of India*, , it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v. Kensington Income Tax Commissioners (1917) 1 K.B. 486* , and observed: (*Prestige Lights Ltd. Vs. State Bank of India*,)

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

8. In *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, , the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and

good conscience require such intervention.

9. In *Sunil Poddar and Others Vs. Union Bank of India*, , the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

10. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, , the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree and Others Vs. Bhagwandas S. Patel and Others*, .

21. The Apex Court in *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc.*, held that every litigant is expected to state the truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. Para 23, 24, 26, 27, 28 and 29 of the SCC in *A. Shanmugam's* case (supra) read as follows:

23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing of issues.

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in *Dalip Singh Vs. State of U.P. and Others*, observed that: (SCC p. 116, para 1):

1. Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system.

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It was imperative that the Judges must have complete grip of the facts before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered.

For the reasons discussed above, the State respondents are directed not to consider the private respondent No. 4 for promotion to the post of Administrative Officer, Fisheries, basing on the graduation certificate obtained by him unauthorizedly or by committing misconduct.

The writ petition is accordingly allowed.