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**(2014) 06 MAD CK 0080**  
**In the Madras High Court**  
**Case No : W.P. No. 10097 of 2011**

P. Sudalaimuthu

APPELLANT

Vs

Union Bank of India

RESPONDENT

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**Date of Decision :** 04-06-2014

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 21, 226  
Industrial Disputes Act, 1947 — Section 2(s)

**Citation :** (2014) 3 LLJ 755

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

T. Raja, J.—The present writ petition is directed against the impugned order of punishment of dismissal imposed against the petitioner on the charge of securing employment in the respondent-Bank by concealing material information about his educational qualification.

2. Learned counsel for the petitioner submitted that the first respondent invited applications for the post of part-time House Keeper by advertisement dated 11.6.2008. The petitioner, in response to the said advertisement, applied on 23.6.2008 along with the required particulars for the said post. When the minimum educational qualification was a second standard pass or eighth standard fail, it appears that the petitioner, having passed eighth standard and belonging to Hindu Kuravan community, a Scheduled Caste, enclosed the copies of community certificate and school certificate along with his application mentioning that he had passed only fifth standard and also submitted the proof in support of the same. Therefore, the allegation is that the petitioner, having passed eighth standard, has concealed deliberately to mention the same in order to secure employment by mentioning that he has passed only fifth standard. After the selection process was over, the petitioner was provisionally shortlisted for appointment to the post of part-time House Keeper in the respondent-Bank

and he was also issued with a communication on 19.8.2008 to call on the second respondent with the original letter with four passport size photographs and thereafter the petitioner was issued with the letter of appointment on 20.8.2008 appointing him as part-time House Keeper in one-third scale wages with a basic pay of Rs. 1,353.33p at the Melapalayam branch. After joining duty, he was kept on probation for a period of six months and thereafter his services were confirmed. In the meanwhile, the first respondent called for applications from prospective candidates by another advertisement dated 26.9.2008 for the post of Peon/Hamal in the respondent-Bank. The petitioner was also one among the candidates who made an application in response to the advertisement dated 26.9.2008 for the post of Peon/Hamal by declaring that he had passed eighth standard. While applying for the post of part-time House Keeper, since he had already declared to have passed only fifth standard, the respondents, finding this discrepancy, issued a charge memo dated 26.8.2010 calling upon the petitioner to submit his explanation for concealment of material information. The petitioner submitted his detailed explanation stating that although he had passed eighth standard, a pass in fifth standard being sufficient for the post of House Keeper, considering his socio-economic status, the respondent-Bank was kind enough to offer him employment to the post of House Keeper. From the date of appointment as House Keeper, he has been working sincerely to the satisfaction of his employer without giving any room whatsoever. However, since the basic educational qualification for the post of part time House Keeper was a pass in second standard, the petitioner, out of sheer innocence, had thought that a declaration of pass in fifth standard would get him employment, but there was no intention muchless wilful intention to suppress or conceal the factum of his pass in eighth standard. On this basis, in his explanation, the petitioner prayed for dropping of the charge. The disciplinary authority, finding it difficult to accept the explanation offered by the petitioner, ordered for an enquiry by appointing an enquiry officer who also, after completion of the enquiry, finding that the petitioner had knowingly concealed the material information about his educational qualification and not submitted any extenuating and mitigating factors, concluded that the charges were proved beyond doubt. With this finding, the enquiry officer sent his report dated 24.2.2011 to the respondent-Bank.

3. Continuing his arguments, the learned counsel for the petitioner submitted that the second respondent, the Chief Manager/Disciplinary Authority, Union Bank of India, without proper appreciation of the facts and circumstances which led the petitioner to apply for the higher post, had wrongly and erroneously imposed a deadly punishment, snatching away the livelihood of the petitioner, dismissing him from service for the gross misconduct, although several other lesser punishments have been contemplated under the rules. Adding further, it has been the consistent stand of the learned counsel for the petitioner that it is a matter of record that the petitioner has concealed his original educational qualification at the time of sending his application for the post of part time House Keeper along with the requisite particulars mentioning that he had passed only

fifth standard. But that does not mean that he has wilfully suppressed any material that has led to any financial loss to the respondent-Bank. When it is also an admitted fact that the petitioner, from the date of joining service, has not given any room for misconduct or any complaint whatsoever, by taking into account the socio-economic status of the petitioner, who belongs to Hindu Kuravan community, which is notified as Scheduled Caste, the second respondent/disciplinary authority, in all fairness, he pleaded, could have imposed lesser punishment other than dismissal. But unfortunately, the disciplinary authority, the second respondent herein, even after taking note of the extenuating and mitigating factors placed by the petitioner for imposition of lesser punishment for the proved misconduct, has arbitrarily imposed the grave punishment of dismissal from service, resultantly, the petitioner has lost his livelihood. On this basis, he prayed for interference with the quantum of punishment.

4. Placing heavy reliance on the judgment of the Andhra Pradesh High Court in Mary Sai Kumari Vs. Regional Manager and Disciplinary Authority, Region IV, State Bank of India, Vijayawada and Another, , the learned counsel for the petitioner argued that when a similar and identical issue came up for consideration, the High Court of Andhra Pradesh, while dealing with the question as to whether a better qualification can be a disqualification, disagreeing with the similar punishment imposed against the Sweeper/Waterman who passed S.S.C., in third division cannot be considered to clerical cadre post, but he is entitled to be considered for non-messengeral post, set aside the order of discharge, making it clear that throwing out a person who is economically poor would surely deprive herself and members of her family of their livelihood. The expression "life" under Article 21 of the Constitution of India is not static and because of the judicial activism of the Supreme Court, its horizon is widened to a large extent and it is well settled that right to life enshrined in Article 21 means something more than survival or animal existence, as it includes the right to live with human dignity, a right to have minimum subsistence allowance during suspension pending disciplinary action and includes all those aspects of life which go to make a man's life meaningful, complete and worth living. As right to life includes right to livelihood and as the public employment is the source of living, the same cannot be taken away by any procedure which is not reasonable, fair and just. On this basis, the learned counsel further contended that for a minor inadvertent lapse committed by the petitioner, the respondents should not have visited with the grave punishment of dismissal from service. Such an action will be totally arbitrary, unreasonable and unfair. It is also a clear infraction of Article 14 in general and 16 in particular and therefore necessarily Article 21 should come into play for interfering with the impugned punishment.

5. Placing reliance on one another judgment of the Apex Court in Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, , although softly placed his argument, emphatically argued that considering the whole aspect of the case of the petitioner, since the process of selection of part

time House Keeper had already been completed and the petitioner also has been selected, it would not be proper to disturb him by imposing the grave punishment disproportionate to the proven charges. Drawing to the notice of this Court paragraphs-20 and 21 of the judgment, he has further highlighted that if an employee does not perform the duties attached to the post, disciplinary proceedings can certainly be taken against him and an employer cannot throw up his hands in despair and devise a method denying appointment to a person who otherwise meets the requisite qualifications on the ground that if appointed, he would not perform his duties. Moreover, when the qualification prescribed is minimum, higher qualification cannot become a disadvantage to the candidates. When the Apex Court in similar circumstances has held that higher qualification cannot cause any disadvantage to a candidate to be selected, in the present case, when the petitioner, without any intention, of course, with an object to secure employment due to the backward situation faced by his family, has mentioned his educational qualification as eighth standard pass. That can never be construed that the petitioner has deliberately and with mala fide intention misrepresented his higher qualification. In any event, when the petitioner has got higher qualification for the post of part time House Keeper, the respondents should have accepted his higher qualification, but wrongly initiated departmental proceedings, and finally, after accepting the report of the enquiry officer holding him guilty of the charge of making misrepresentation of his qualification, the major punishment of dismissal ought not to have been imposed against the petitioner.

6. Again placing reliance on one another judgment of the Apex Court in *Sengara Singh and Others Vs. State of Punjab and Others*, , for the proposition that the disciplinary authority, while imposing punishment against several delinquents, cannot discriminate in the matter of imposing different types of punishments. In the present case also, when a similarly placed person committed the same misrepresentation for securing employment, the disciplinary authority has imposed lesser punishment of suspension of increment without cumulative effect for one year. But in the case of the petitioner, imposing the major punishment of dismissal from service is totally running contrary to the ratio laid down by the Apex Court in *Sengara Singh and others* case mentioned supra. He has also relied upon two other judgments of the Apex Court in *Rajendra Yadav Vs. State of M.P. and Others*, and in *Man Singh Vs. State of Haryana and Others*, for the very same proposition. On this basis, he prayed for interference with the impugned punishment by giving a direction to the respondents to reinstate the petitioner from the date on which he was dismissed from service with all consequential benefits.

7. Finally, concluding his arguments, he has requested this Court not to dislodge the writ petition on the ground that the petitioner has got an effective and alternative remedy, since the petitioner has rightly approached this Court under Article 226 of the Constitution of India when there is a clear violation of Article 14 of the Constitution of India. Although the petitioner has got an alternative

remedy of statutory appeal, the petitioner is justified in approaching this Court for violation of Article 14, therefore, the question of relegating the petitioner to the appellate authority at this stage may not be resorted to. In support of his submission, he has also placed reliance on the judgment of the Apex Court in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , for the proposition that the penalty must be commensurate with the gravity of misconduct and any penalty disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. Therefore, when the second respondent/disciplinary authority has acted to impose an unreasonable punishment violating Article 14 of the Constitution of India, the petitioner is entitled to approach this Court by filing the present writ petition under Article 226 of the Constitution of India. On this basis, he prayed for allowing the writ petition by setting aside the impugned order.

8. A detailed counter affidavit has been filed by the respondents. Mr.V.Karthick, learned counsel for the respondents, in support of the punishment impugned, has taken a preliminary objection as to the maintainability of the writ petition under Article 226 of the Constitution of India, on the ground that when the petitioner was afforded a personal hearing on 30.3.2011 and finally, dissatisfied with his explanation, the disciplinary authority imposed the punishment of dismissal on 6.4.2011, the petitioner, having a right of appeal to the appellate authority, deliberately did not avail the same, but he has wrongly chosen to approach this Court challenging the order of dismissal, resultantly, neither the petitioner nor the respondents is able to place all the relevant evidence before the appellate authority to re-appreciate the evidence, as a result, not only the respondents, even the petitioner also is going to lose the chance of convincing the appellate authority. Therefore, the petitioner, having an effective, alternative and efficacious remedy before the appellate authority, should have approached the appellate authority by filing a statutory appeal. As he has not done so, the present writ petition, which is not meant for a person who disregards the effective and alternative remedy, should not be entertained. Adding further, the learned counsel for the respondents submitted that since the petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, he has to raise a dispute in the manner known to law regarding his dismissal from service of the bank and it will be open to the bank to apprise the industrial adjudicator the factors which weighed the bank to impose the punishment of dismissal. Moreover, when it is also open to the respondents to adduce evidence before the industrial adjudicator and as such if the industrial adjudicator comes to a conclusion that the enquiry conducted against the petitioner is vitiated for any reasons whatsoever, the petitioner will be the beneficiary, leaving this option by filing this writ petition, the petitioner has deliberately deprived the chance both to himself and to the respondents, therefore, the present writ petition directly filed without approaching the appellate authority and sidelining the provisions of the Industrial Disputes Act is liable to be dismissed in limine, he prayed. I find some merits in his submissions. The petitioner being a Sweeper,

comes within the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947, therefore, without raising an industrial dispute before the Industrial Tribunal, no writ petition will lie.

9. Going to the merits of the matter, it has been argued that when the petitioner knew that the candidate should have passed second standard for the post of part time House Keeper, he has applied for the said post on 26.3.2008 when he had already passed eighth standard in 1994 itself. But deliberately he has enclosed the fifth standard pass certificate and thereby he has intentionally misled the bank to secure employment by giving false particulars. Had the petitioner disclosed his correct qualification, his application would not have been considered by the bank, for the reason that when a particular post is reserved for a particular sect of people, the petitioner, by misrepresenting his educational qualification, has taken away the post reserved for other people. Secondly, in order to secure employment in the respondent Bank, the petitioner has proved himself unbecoming of an employee of the bank, where integrity, utmost faith and honesty are predominantly required, for the simple reason that the bank is not only taking care of the individual depositor's money, but also the most valuable public money. To safeguard the valuable public money, the bank has got its own rules and regulations and separate yardstick for disciplinary proceedings. But in this case, as mentioned above, the petitioner has deliberately misrepresented his educational qualification and he proved to be unfaithful. Therefore, the respondent Bank, by losing total faith in him, has ultimately come to the final conclusion that he is no more required to serve with a fraudulent attitude in the respondent Bank. Therefore, the impugned punishment imposed against the petitioner cannot be tested by this Court. Moreover, when the evidence required needs to be re-appreciated by the appellate authority and also by the Industrial Tribunal under the provisions of the Industrial Disputes Act, this Court, sitting under Article 226 of the Constitution of India, should not delve upon to re-appreciate the evidence produced by both sides before the domestic enquiry officer. On this basis, he prayed for no interference.

10. This Court, again finding force in the submissions made by the learned counsel for the respondents, is unable to agree with the prayer made by the petitioner. As fairly admitted by the learned counsel for the petitioner, it is not in dispute that the petitioner has misrepresented his educational qualification at the time of securing employment for the post of part time House Keeper by withholding the full information as to his educational qualification. When the educational qualification contemplated for the post of part time House Keeper is only second standard pass or eighth standard fail, the petitioner applied on 23.6.2008 with lesser qualification. Therefore, the petitioner, having concealed his educational qualification, suffered a departmental proceeding at the hands of the second respondent. After issuance of charge memo dated 26.8.2010, he was called upon to submit his explanation. The petitioner also, in his written representation dated 30.8.2010, has stated that although he passed eighth standard, a pass in fifth standard was sufficient for the post, but, however,

considering his socio-economic status, he has requested the respondent Bank to drop the charges, as there was no wilful or dishonest intention to cause any loss to the Bank. Moreover, when his appointment to the post of part time House Keeper is not going to come in the way of any financial aspect, he requested in his detailed representation dated 30.8.2010 not to proceed with the departmental proceedings. But the disciplinary authority, finding no merits in the explanation, finally appointed an enquiry officer, who also, after completion of the enquiry, submitted a report holding him guilty of the charges. On the basis of the report of the enquiry officer, the disciplinary authority thought it fit to impose the present punishment of dismissal from service. No doubt, the learned counsel for the petitioner has placed on record the judgment of the Andhra Pradesh High Court in the case of Mary Sai Kumari Vs. Regional Manager and Disciplinary Authority, Region IV, State Bank of India, Vijayawada and Another, seeking interference in the impugned punishment of dismissal, on the ground that possessing better qualification by a candidate cannot be a disqualification. But it has been the repeated dictum and ruling of both the Apex Court and this Court that it is the prerogative and privilege of the disciplinary authority to impose suitable punishment on the delinquent depending upon the facts and circumstances of each case. Since in the present case, the second respondent/disciplinary authority has come to the conclusion that the petitioner is no longer required to serve in the bank, for the reason that he got entry by deliberately concealing his educational qualification, this Court is unable to agree with the prayer made by the petitioner.

11. Accordingly, this writ petition is dismissed. However, there is no order as to costs.