

(2015) 11 JH CK 0040
In the Jharkhand High Court
Case No : W.P. (S) No. 4275 of 2011

Radha Mohan Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2016) 1 JLJR 48

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Saurav Arun, Advocate, for the Appellant; Rakhi Rani, J.C. to Senior S.C. II, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter-alia prayed for quashing show cause notice dated 25.09.2010 and also for quashing order dated 19.02.2011, whereby the petitioner was dismissed from services and further for issuance of direction upon the respondents to allow the petitioner to continue to the post on which petitioner was working since long i.e. Class-IV post.

2. Bereft of unnecessary details, the facts as emanated from the averments of the writ application, in a nutshell, is that an advertisement dated 09.01.1999 was published by the respondents inviting applications for appointment to the post of IV grade in Bokaro Collectorate requiring minimum educational qualification of the candidate is Class-VII with knowledge of reading and writing with Devnagari script. In pursuance thereto petitioner alongwith others applied for the said post with requisite documents. The respondent No. 2 vide memo dated 18.03.2005 issued the appointment letter to the petitioner and appointed him on Class-IV post in Bokaro Collectorate. While continuing as such, a show cause was issued to the petitioner seeking explanation that the document which was submitted by the petitioner at the time of appointment specially the School Leaving Certificate

in support of Educational Qualification was found to be forged and petitioner was directed to reply to the same within fifteen days, to which, the petitioner responded stating that the school leaving certificate of Class-IX pass submitted by the petitioner is correct and duly certified by the Headmaster of the School but that has not been taken into consideration by the respondent authority and vide letter dated 23.12.2006, an order was passed by the Deputy Commissioner Bokaro Collectorate whereby the petitioner has been put under suspension as the certificate pertaining to the educational qualification was found forge on preliminary enquiry. Thereafter, departmental proceeding was initiated against the petitioner by appointing enquiry officer and vide memo dated 08.02.2007, a charge sheet was served upon the petitioner in respect to the forged document submitted at the time of the appointment vide Annexure-5 to the writ application. The petitioner filed detailed reply after serving of the charge sheet. The petitioner again submitted original certificate before the appropriate authority which was duly considered by the enquiry officer and was found to be genuine and valid, which is evident from the letter of enquiry officer dated 19.08.2008. The inquiry report submitted by inquiry officer has been taken into consideration by the then Deputy Commissioner, who recommended the case of the petitioner and others for medical test for determination of actual date of birth and thereafter to consider the cases so that they can remain in service. The Medical Board was constituted and the Civil Surgeon-cum-Chief Medical Officer on 14.11.2008 certified the age of the petitioner 40 to 45 years as on 14.11.2008 as per Annexure 8 and 8/1 to the writ application. It has been submitted that the Deputy Commissioner, Bokaro being not satisfied with the enquiry report submitted by the inquiry officer, directed to conduct enquiry afresh by appointing another enquiry officer, without any intimation or communication ever been given to the petitioner, nor asked to appear on any date in the proceeding by the second enquiry officer. It has further been submitted that it is evident from second show cause issued to the petitioner that before dismissal from services, show cause has been given to the petitioner on 25.09.2010 and when no reply has been given, then on 25.10.2010 time was granted to file show cause within 21 days. But from the order dated 25.09.2010 it clearly appears that the respondents- authorities were bent upon to dismiss the petitioner from the services in spite of the recommendation made by the enquiry officer for reconsideration of his case. It has been submitted that the basing on the 2nd enquiry report, the petitioner was dismissed form services vide memo No. 145 dated 19.02.2011.

3. Per-contra the counter-affidavit has been filed on behalf of the respondent Nos. 1 and 2 repelling the averments made in the writ application. It has been contended in the counter-affidavit that first inquiry report being vague and inconclusive, second enquiry was given to Executive Magistrate vide letter dated 02.08.2010 since the first enquiry officer had been transferred. The second enquiry officer in course of conducting the enquiry submitted the report vide letter dated 06.10.2010 attaching the report of educational qualification

verification report of District Education Officer, Siwan vide letter dated 18.09.2010. The report of District Education Officer, Siwan clearly reveals that the educational qualification certificate of the petitioner is forged as evident from Annexure-B series to the counter-affidavit. It has further been submitted that the petitioner was given an opportunity to present his case and was well intimated vide letter dated 09.08.2010 issued by the second enquiry officer vide Annexure-C to the counter-affidavit. The report of the second enquiry officer proved that the petitioner had submitted false and fabricated educational qualification certificate. Further the District Education officer's report clearly mentioned that the petitioner had never been admitted in the said school and no such educational qualification certificate had been issued by the school as per Annexure-D to the counter-affidavit. It has further been submitted that Sri Bharat Lal Mahtha and Sri Adhirath Mahtha have not been taken back in the service and no discriminations has been made against the petitioner.

4. Heard Mr. Saurav Arun, learned counsel appearing for the petitioner and Mrs. Rakhi Rani, J.C to Sr. S.C. II, learned counsel appearing for the respondents and perused the records minutely.

5. Learned counsel for the petitioner has strenuously urged that the impugned order dated 25.09.2010 (Annexure-11) and the order of dismissal dated 19.02.2011 (Annexure-12) of the writ application were in violation of Article 311 of the Constitution of India. Learned counsel for the petitioner further submits that the respondent authorities specially the disciplinary authority if wants to differ with the findings of the enquiry officer, the reason for differing in the opinion has to be given and communicated to the petitioner as well as the enquiry officer. In the instant case, no reason has been assigned, therefore, impugned order dated 25.09.2010 and the order of dismissal dated 19.02.2011 smacks of colourable exercise of power. Learned counsel for the petitioner further submits that the respondents ought to have considered the first enquiry report dated 05.05.2008. Learned counsel for the petitioner further submits that in the instant case the respondents did not consider the medical report given by the Civil Surgeon on 14.11.2008 that too after the recommendation made by the respondent No. 2 vide letter dated 31.10.2008.

Learned counsel for the petitioner during course of argument has referred to decisions of the Hon''ble Apex Court rendered in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Learned counsel for the petitioner has further referred to decision in W.P. (S) No. 1221 of 2013 dated 17.01.2014, W.P.(S) No. 5374 of 2012 dated 17.01.2014, W.P.(S) No. 1248 of 2013 dated 29.11.2013 and W.P. (S) No. 1935 of 2013 dated 17.01.2014 wherein this Hon''ble Court while referring to in the case of K.R. Deb Vs. The Collector of Central Excise, Shillong, , Nand Kumar Verma Vs. State of Jharkhand and Others, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, has been pleased to hold that it

is not open to the respondents to support the impugned order by supplementing reasons through counter-affidavit filed in the present petition.

6. Learned counsel for the respondents on the other hand has assiduously justified the action of the respondents by referring to averments made in the counter-affidavit. During course of argument, learned counsel for the respondents has referred to the decision rendered in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, , in particular, paragraph 15, wherein the Hon''ble Apex Court has been inter-alia held that:--

"15. when an appointment in services has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

7. Having gone through the materials available on record and the rivalized submissions made by learned counsels for the parties, it appears that the petitioner has not been able to make out a case for interference by this Court due to following facts, reasons and judicial pronouncements:--

"(a) Since the inquiry report submitted by the inquiry officer was vague and inconclusive, the second inquiry was given to Executive Magistrate on the ground that the first inquiry officer has been transferred. During course of inquiry, the second inquiry officer conducted the inquiry and submitted the report attaching educational qualification verification report of District Education Officer, Siwan dated 18.09.2010 as evident from Annexure-B series of the counter-affidavit. Therefore, after taking into consideration the reply to the show cause, the petitioner was finally terminated from services vide letter No. 145 dated 19.02.2011 after giving opportunity to the petitioner prior to dismissal order being passed.

(b) In the case in hand, in view of the seriousness of allegation and misconduct committed by the petitioner, the power of judicial review cannot be applied and moreover the fact finding given by the inquiry officer based on the materials on record cannot be interfered with, as has been held by the Hon''ble Apex Court in the case of State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, , specially at paragraph 15, which is quoted herein below:

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions..... "

Applying the aforesaid principles of Hon''ble Apex Court, as indicated herein above, I find no reason to interfere with the impugned order.

8. On the cumulative effect of facts, reasons and judicial pronouncements and in view of the discussions made in the foregoing paragraphs, I am of the considered

view that the impugned order of dismissal do not call for any interference by this Court.

9. Accordingly, the writ petition is dismissed being devoid of any merit.