
(2012) 01 DEL CK 0050
In the Delhi High Court
Case No : WP (C) No. 2744 of 2011

Rajinder Singh

APPELLANT

Vs

DTC and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 3 AD 97 : (2012) 187 DLT 447 : (2012) 128 DRJ 623 : (2012) 2 ILR Delhi 404 : (2012) 2 SLJ 162

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Kishore Kumar Patel, for the Appellant; Saroj Bidawat, Advocate with Mr. J.S. Bhasin and Ms. Rashmi Priya, for the Respondent

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner herein was appointed as Security Guard on 8th November, 1974 with the respondent Delhi Transport Corporation (DTC). The petitioner was promoted as Havaladar on 4th February, 1983 and thereafter got promoted to the post of Assistant Security Inspector (ASI) on 25th June, 1986. In that position he retired on 31st July, 2009 after attaining the age of superannuation. On 1st September, 2009 he was paid his gratuity and other retiral benefits were released to him on 22nd September, 2009. However, chargesheet was issued to him on 23rd February, 2010 i.e. after about seven months from the date of his retirement asking him to explain why proceedings should not be initiated against him under the CCS (Pension) Rules, 1972 for producing forged educational documents at the time of his promotion.

2. It so happened that when the petitioner was still in the employment, on 11th July, 2008 a complaint was received against him that his educational certificate of having passed High School Examination in 1968 was fake. According to this certificate, he had passed High School Examination in the year 1968 from the Board of Higher Secondary Education, U.P. Inquiry was made and the said Board informed the respondent DTC vide its letter dated 27th July, 2009 that the

certificate produced by the petitioner was not genuine and that the name of the candidate appearing against Sl. No. 4182 was not Rajinder Singh s/o Shri Ramphal. Instead, as per the records of the Board, it was one Shri Raghuraj Singh Bisht, s/o Sh. Chandan Singh who was given this certificate.

3. It would be pertinent to mention here that for appointment to the post of Security Guard to which post the petitioner was initially appointed, the educational qualification required is passing of 8th Standard which qualification the petitioner possessed. Same qualification was required for promotion to the post of Havaladar. Therefore, upto this stage, there was no issue. However, the minimum qualification prescribed for promotion to the post of ASI is matric/high school. At the time of promotion to this post, the petitioner had produced the aforesaid certificate showing that he had passed the High School Examination. On this basis he got the promotion. However, now he admits that he did not possess the said qualification and during the course of argument before the Tribunal as well, he conceded that the certificate produced by him was forged.

4. Notwithstanding the aforesaid position, the petitioner challenged the issuance of chargesheet on technical grounds. His submission was that the certificate was given to the authorities in the year 1986 when he was promoted to the post of ASI. Thus, at the time when he was served with the chargesheet on 23rd February, 2010 there was a delay of 24 years and it was issued after he retired on 31st July, 2009. Therefore, as per the provision of Rule 9 (2)(b) (ii) of the Pension Rule, 1972, no action could be taken against him in respect of the aforesaid even if it occurred 24 years ago, as the limitation provided by that Rule is 4 years. He had relied upon the judgment of this Court in Union of India and another Vs. J.P. Sharma, (Writ Petition (C) 6465/2003) to buttress his submission on purported time barred action.

5. The Tribunal has not accepted this plea of the petitioner holding that limitation of four years prescribed in the aforesaid Rule would not apply in the facts and circumstances of this case because the departmental proceedings have not been initiated against the petitioner for any mis-conduct and delinquency in the performance of his duties and therefore, limitation prescribed in Rule 9 (2)(b) (ii) of the Pension Rule would not apply. The Tribunal held that the promotion to the post of ASI is procured on the basis of false educational certificate which amounts to fraud. Such promotion is nonest and, therefore, the Tribunal has set aside the promotion given to the petitioner as ASI declaring the same as null and void and directed that he would be considered to have retired from the post of Havaladar. Submission in this writ petition remains the same.

6. There are two aspects of the matter which are quite distinctive. One pertains to promotion of the petitioner as ASI. The Tribunal has itself declared the same as nullity directing that the petitioner be treated retired from the post of Havaladar. In this behalf, the approach of the Tribunal is justified and does not call for any interference and in fact this part of the direction was not challenged at the time of arguments. The Tribunal has referred to the judgments of the

Supreme Court in the following cases:-

(i) Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Others, ;

(ii) A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, ; and

(iii) Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others, .

7. In all these cases, it is held by the Supreme Court that when the appointment is obtained by fraud, even if the incumbent had worked for number of years that would not be a mitigating circumstance and such an appointment which is null and void can always be terminated. In Madhulika's case, the appellant was appointed to the post of Clerk w.e.f. 18th March, 1981 against a post reserved for ST category on the strength of a caste certificate issued on 4th December 1979. The Government of India issued instructions on 23rd March, 1992 to all the Public Sector Undertakings to verify the caste certificates. The Scrutiny Committee set up by the Bank initiated inquiries and in the case of the respondent, it was found that the respondent did not belong to ST category and had obtained false certificate. The services were terminated on this ground. The Supreme Court while upholding the action of the employer rejected the plea of rendering service for a long period observing that equity, sympathy or generosity had no place where the original appointment rests on a false caste certificate and such person did not deserve any indulgence of the Court. It was also held that fraud was anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine.

8. Similarly in Raju Ramsingh Vasave (supra) the first respondent had got appointment claiming that he belonged to ST Category which appeared to be wrong as the ST category certificate given to him was cancelled. The action was upheld on the same principle namely fraud vitiates all solemn acts, even the principles of natural justice are not required to be complied with for setting aside the same.

9. The Tribunal in this behalf has rightly remarked that promotion obtained on the basis of false education certificate is to be treated as nonest and could be set aside at any time. The petitioner could not enjoy the promotion obtained fraudulently.

10. Therefore, insofar as cancellation of promotion of the petitioner to the post of ASI and treating him to have retired from the post of Havaladar is concerned, it is justified and the direction of the Tribunal does not call for any interference. In fact, the petitioner did not even questioned the same before us.

11. The second and most vital issue challenged is about the initiation of departmental proceedings. In order to appreciate the controversy, let us first have a look into the Rule 9. It reads as under:-

"9. Right of President to withhold or withdraw pension. -

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

9(2)(a) The departmental proceedings referred to in sub-rule 91), if instituted while the Government servant was in service shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. Provided that where the departmental proceedings, if not instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution,

(iii) Shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(emphasis added)

12. As mentioned above, as per Rule 9 (2) (b) (ii) of the Pension Rules, the Departmental Proceedings, if not instituted while the employee was in service, whether before his employment or during his employment, "shall not be in respect of any event which took place more than four years before such institution. As noted above, the Tribunal has rejected the contention of the petitioner observing that it is not a misconduct in the performance of his duties and, therefore, the aforesaid Rule does not apply. This is what the Tribunal has to say in this behalf:-

The departmental enquiry is for trying to secure promotion by submitting forged certificate, which is not a misconduct in the performance of his duties. In view of this, the limitation prescribed by the aforesaid rule would not apply.

13. This reasoning of the Tribunal appears to be ill founded. We fail to appreciate as to how the act of securing promotion by fraud is not a misconduct in the performance of his duties. If this reasoning is accepted then it is not misconduct at all. However, it is obviously wrong. The petitioner wanted promotion and for

this purpose, he submitted forged certificate. This would naturally be an act in the course of employment. No doubt, the event had occurred 24 years ago, at the same time, the DTC came to know thereof well in time when the petitioner was in the employment. He was to retire on 31st July, 2009. The complaint was received on 11th July, 2008. We do not know as to when the action was taken on the basis of this complaint and matter was referred to the Board of Higher Secondary Examination, U.P. for verification as that date is not available on record. It was well within the knowledge of the DTC that the petitioner is going to retire on 31st July, 2009. Therefore, they have not acted on the said complaint immediately. Even if we presume that it was so done, the DTC got the information from the Board on 27th July, 2009, there were still four days for the petitioner to retire. The DTC should have known the rigors of Rule 9. The departmental proceedings could always be instituted while he was in service. Even for an act which occurred 24 years ago as the DTC got the information about the forgery only in the year 2008 and which was verified in July, 2009. Therefore, the DTC should have acted with promptness to serve the chargesheet before the retirement of the petitioner and should have realized that once it is not done and the petitioner is allowed to retire then limitation of four years would become applicable as the event took place more than four years before the institution of the departmental proceedings. The DTC thus allowed this situation to happen for which it is to blame itself. The petitioner has now retired. We are of the opinion that substantial justice has already been done by treating his promotion to the post of ASI as null and void and treating him to have retired from the post of Havaldar. No doubt for such an act, the petitioner should have been punished as well. However, when law of limitation becomes applicable, the action now taken is clearly time barred. In effect, we have no option but to quash the said action.

14. The writ petition is partly allowed and the order of the Tribunal holding that limitation prescribed by the aforesaid Rule will not apply is set aside. As a result, OA of the petitioner is allowed to the aforesaid extent thereby quashing the impugned chargesheet dated 23rd February, 2010.