
(1971) 10 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 882 of 1970

Ram Narain

APPELLANT

Vs

Municipal Board and Another

RESPONDENT

Date of Decision : 11-10-1971

Acts Referred:

Citation : (1971) WLN 452

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—The petitioner entered service as a clerk in the Jodhpur Municipality on September 4, 1933 and was ultimately transferred to the office of Municipal Board, Pali on July 12, 1948. He served there as upper division clerk from 1951 onwards. He has stated that an incorrect entry came to be made in his service book and "his date of birth came to be shown therein as 25.8.1914." According to the petitioner, that incorrect entry appears to have been made on some information given in that behalf at the time the petitioner entered into service" but that he "did not care much about it" under the impression that no age of superannuation had been fixed for Municipal service. The situation, according to him, altered when the Rajasthan Municipal Subordinate and Ministerial Service Rules 1963 were promulgated where by the Rajasthan Service Rules were made applicable to municipal employees, The matter acquired "great urgency" when in 1967 the Rajasthan Service Rules were altered so as to reduce the age of superannuation from 58 to 55 years. Apprehending that he might be retired on that basis, the petitioner applied to the Chairman of the Pali Municipal Board for a certified copy of the scholar's register of the Sumer Pushtikar Higher Secondary School, Jodhpur According to that certificate (Ex. 1), the date of birth of the petitioner was July 23, 1920. The Chairman made enquiries and passed an order on April 1, 1961 correcting the entry relating to the petitioner's date of birth to July 23, 1920, in place of August 26, 1914. The term of the Municipal

Board expired, and an Administrator was appointed to discharge its functions. He made an order on January 22, 1970 stating that the alteration in the date of birth of the petitioner was made irregularly and illegally by the Chairman and it was not therefore acceptable, so that the petitioner was relieved of his duties with immediate effect on the ground that he had already reached the age of 55 years. The petitioner felt aggrieved against that order on the grounds that it was made without hearing him and without making any enquiry, and also because he was a workman and was governed by the Industrial Disputes Act. He therefore filed the present writ petition on May, 28 1970 along with a stay application for restraining the respondents from retiring him until after the disposal of the petition.

2. The Municipal Board of Pali, respondent No. 1, has filed a reply traversing the claim of petitioner altogether. The State of Rajasthan, respondent No. 2, has not filed a reply, but learned Deputy Government Advocate has supported the stand taken by learned Counsel for the Municipal Board.

3. I would have gone into the controversy, but a preliminary objection, which goes to the root of the case, has been raised by the learned Counsel for the respondents. It has been raised by the learned Counsel for the respondents. It has been urged that a prerogative writ should be refused because the petitioner obtained an interim order on June 6, 1970 by concealment of facts which ought not to have been concealed and by a statement which was not in accordance with the facts. Reliance for this submission has been placed on the decisions in *Rex v. Kensington Income Tax Commissioners* [1917] 1 K.B. 486, *Kabool Chand v. Deputy Custodian, Alwar* ILR 1958 Raj. 364, *Ganga Dutt v. Bhagwan Das Taparia and Ors.* ILR 1958 Raj. 364, *Hindustan Motors Ltd. Vs. Union of India (UOI)* and *Another*, and *Haji Abdul Shakoor Vs. The Rent Control and Eviction Officer, Kanpur and Others*, . The learned Counsel for the petitioner has, on the other hand, argued that there is no force in the contention of the learned Counsel for the respondents that the interim order was obtained by concealment of facts. He has however conceded that the law laid down in the cases cited by the learned Counsel for the respondents is the correct law for application in a case in which there has been a suppression of material facts on the part of the petitioner and a statement has been made which is not in accordance with the facts.

4. I have gone through the relevant record and it appears that the facts were like this. The impugned order of the Administrator of the Pali Municipal Board relieving the petitioner from the service of the Board forthwith was made on January 22, 1970. The petitioner filed his writ petition on May 28, 1970, along with the aforesaid stay application. The Hon'ble vacation Judge made an order on May 29, 1970 for the issue of notice to the respondents, with the further direction that the stay application may be listed for orders as soon as the Municipal Board was served. The Deputy Registrar directed the office to comply with that order and to put up the case on July 6, 1970. He directed further that the process fee

and notices should be filed by the petitioner by June 13, 1970. The petitioner filed the notices, in which July 6, 1970 was entered as the date for the appearance of the respondents. The learned Counsel for the petitioner, however, filed an application on June 3, 1970 reporting that service of the notices had been effected on the respondents of May 30, 1970 and stating that "despite, the fact that the case should be listed before the Court after one week", it had been fixed for the scrutiny of the service on July 6, 1970. He stated that the period of one week would expire on June 5, 1970, and prayed that the case may be ordered to be listed for orders "immediately". The case thus came up before the Hon"ble Vacation Judge on June 9, 1970 when he made the following order-

No one appeared to oppose the stay application. In the circumstances the operation of the order of the Administrator date 22.1.70 - amending the date of birth of the petitioner shall remain stayed.

The learned Counsel for the Municipal Board, however, made an application on July 6, 1970 for the withdrawal of that order on the ground that the Board had been served for appearance in court on July 6, 1970 whereas the stay application was taken up for order on June 9, 1970 and the stay order was obtained on the basis of a mis-statement before the court. The petitioner opposed that application in his rejoinder dated July 15, 1970. The matter was heard on September 16, 1970 when the stay order was recalled and the stay application was rejected on the ground that the order dated June 9, 1970 was improperly obtained from the Hon"ble Vacation Judge by giving an incorrect impression about the date for the appearance of the respondents.

5. The above facts go to show that on May 29, 1970 when the stay application came up for consideration before him for the first time, the Hon"ble Vacation Judge did not fix any date or period of time for its consideration beyond directing the issue of notices to the respondents and the listing of the application as soon as the Municipal Board of Pali was served. This order was made in the presence of the learned Counsel for the petitioner who was therefore aware of it. The Deputy Registrar made an order the same day for the filing of the process fee and the notices by June 13, 1970 and for taking up the case on July 6, 1970. July 6, 1970 was therefore mentioned in the notices which were filed on behalf of the petitioner as the date for the consideration of the stay application, so that it is quite clear that the petitioner's learned Counsel was aware of that fact also. There was therefore no occasion or justification for the filing of the application dated June 2, 1970 by the learned Counsel for the "immediate" listing of the case for the orders of the court. Moreover, there was no justification for stating in that application that the case "should be listed before the court after one week" which period would expire on June 6, 1970. What is more, when the case came up before the Hon"ble Vacation Judge on June 9, 1970, the learned Counsel for the petitioner was present whereas no one was present on behalf of the respondents. The learned Counsel knew that as June 9, 1970 was not the date for the consideration of the stay application, there was no question of the appearance of

the respondents on that date. The Hon''ble Vacation Judge however remained under the impression that no one had appeared to oppose the stay application, and under that impression he made the stay order mentioned above in favour of the petitioner. It is thus abundantly clear that it was the duty of the learned Counsel for the petitioner to point out to the Hon''ble Vacation Judge that there could be no question of non-appearance of the respondents because they were not aware at all that the case would be taken up for orders on Jun 9, 1970 as they had been intimated that it would be taken up on July 6, 1970. He did not discharge that duty, and this led the Hon''ble Judge to make the interim order in favour of the petitioner, to the detriment of the Municipal Board. What is worse, the petitioner continued to take the benefit of that order for more than 3 months until it was vacated on September 16, 1970 He did so inspite of the fact that the Municipal Board protested against the order and specifically stated that it was obtained by misrepresentation. In fact he persisted in defending the order instead of admitting in a forthright manner that he was not entitled to a hearing of the stay application on June 9, 1970.

6. It is settled law that a petitioner is not entitled, as a matter of course, to a writ of certiorari or mandamus, and he must be perfectly frank and open to the court. He is under an obligation to the court to make a full and correct disclosure of all material facts within his knowledge, and if he does not do so, and suppresses any material fact and thereby obtains a rule nisi or a stay order, the court will not grant any relief to him on merits. Reference in this connection may be made to the decision in *Rex v. Kensington Income Tax Commissioner* [1917] 1 K.B. 486 cited by learned Counsel for the respondents. In that case rule nisi was obtained by concealment of facts and their Lordships refused to decide the cause on the merits. It is a leading case on the subject and has been followed all through. It has been followed in a Bench decision of this Court in *Kabool Chand v. Deputy Custodian Alwar* ILR 1951 Raj. 958. In that case, the applicant deliberately suppressed material and relevant facts from the court in order to obtain an interim order. It was held that he had thereby dis-entitled himself from getting any writ, order or direction in his favour. That decision has been followed in another Bench decision of this Court in *Ganga Dutt v. Bhagwan Das Taparia and Ors.* ILR 1958 Raj. 364 . In that case also the petitioner was able to get interim orders by deliberately concealing the fact of a meeting held on August 22, 1957, and the main writ petition was therefore dismissed without hearing him on the merits. A similar view has been taken in *Hindustan Motors Ltd. Vs. Union of India (UOI)* and *Another*, and *Haji Abdul Shakoor Vs. The Rent Control and Eviction Officer, Kanpur and Others*,

7. I have therefore no doubt that the petitioner is not entitled to be heard on the merits, and his writ petition is dismissed with costs.