

(2006) 04 AHC CK 0059
In the Allahabad High Court
Case No : Special Appeal No. 295 of 2004

Ramesh Prasad Patel

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 379
Probation of Offenders Act, 1958 — Section 12

Citation : (2006) 6 AWC 6475 : (2006) 3 UPLBEC 2855

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : A.K. Srivastava, for the Appellant; B.N. Singh and Aradhana Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This Special Appeal has been filed against the Judgment and order of a learned Judge of this Court dated 13.02.2004 dismissing the writ petition filed by the present appellant on the ground that he obtained the employment by misrepresentation.

2. The facts and circumstances giving rise to this case are that the petitioner-appellant was enrolled in the Army as a recruit on 30th August, 1986 and stood discharged with effect from 31.07.1989 on the ground that he had given a false declaration at the time of his enrolment to the effect that no criminal case was pending against him, which was found to be false on verification. He challenged the said order of discharge dated 31.07.1989 by filing a writ petition in 1996 which was dismissed vide impugned judgment and order dated 13.02.2004 recording the following findings of fact:

I. At the time of enrolment, the petitioner was involved in Criminal Case No. 114 of 1983 u/s 379, IPC.

II. While filling up the application for enrolment, he did not disclose in his

declaration the pendency of the said criminal case against him.

III. It came to the knowledge at the time of verification that the petitioner had suppressed the material information particularly asked about his involvement in criminal case.

IV. The petitioner stood discharged as he had obtained the employment by misrepresentation as he was not likely to become an efficient soldier.

V. The petitioner was found guilty in the said criminal case, though released on probation.

3. Shri A.K. Srivastava, learned Counsel appearing for the appellant has submitted that no opportunity of hearing was given to the petitioner-appellant before passing the order of discharge and the procedure prescribed for discharge under the Rules was not followed. As the petitioner-appellant has been given the benefit of Probation of Offenders Act, 1958 (hereinafter called the "Act 1980, the termination/discharge order was liable to be set aside. It is submitted that the criminal Court while deciding the case has made an observation that his conviction would not adversely affect his service career in view of the provisions of Section 12 of the Act 1958.

4. On the contrary, Smt. Anuradha Chauhan, learned Counsel appearing for the respondents has vehemently opposed the appeal contending that the petitioner-appellant had played fraud while gaining employment, therefore, it stood vitiated and in such a fact situation, as the appellant had not disclosed the pendency of the criminal case and subsequently has been convicted by the Court, no indulgence should be given to him. More so, granting the benefit of Act 1958 would not entitle the appellant any relief for the reason that it takes away the effect of sentence and not of conviction. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties and have perused the record including the original records produced before us by Smt. Anuradha Chauhan, learned Counsel for the respondents.

6. The application form had been filled up by the appellant in 1986 wherein column no, 8 requires the applicant to furnish the information as to whether the applicant had ever been imprisoned or had been put under trial for any offence or any complaint or report had ever been made against the applicant to the Magistrate or Police for any offence. The petitioner-appellant filled up the said column by writing the word "no". Therefore, there is no dispute that he had not furnished the correct information sought for in this regard. The application form had been filled up by someone else in English but has been signed by the appellant himself. The appellant had been tried in a criminal case which has subsequently been decided vide judgment and order dated 12.07.1995 (Annex,4), wherein he stood convicted for the offence punishable u/s 379 IPC, however, he has been given the benefit of the provisions of Act 1958. It has

further been observed that the conviction would not adversely affect his civil rights in view of the provisions of Section 12 of the Act 1958,

7. It is settled proposition of law that where an applicant gets an order/ office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, In Lazarus Estate Ltd. v. Besalay 1956 AII.E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

8. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, and State of Maharashtra and Others Vs. Prabhu, the Hon'ble Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law.

9. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, it has been held as under;-

Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

10. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, the Apex Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries. Similar view has been reiterated by the Hon'ble Supreme Court in M.P. Mittal Vs. State of Haryana and Others,

11. The ratio laid down by the Hon'ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf. In M. Bhaskaran v. Union of India and Ors. the Apex Court, after placing reliance upon and approving its earlier judgment in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, observed as under:

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.

12. Similar view has been reiterated by the Apex Court in S. Pratap Singh Vs. The State of Punjab, Ram Chandra Singh Vs. Savitri Devi and Others, ; and Vice Chairman, Kendriya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav : (2004)6SCC325 .

13. The Common Law doctrine of public policy can be enforced wherever an

action affects/ offends public interest or where harmful result of permitting the injury to the public at large is evident.

14. More so, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Subla Fundamento cedit opus*"-a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case legal maxim *Nullus Commodum capere Potest De Injuria Sua Propria* applies. (Vide *Union of India and others Vs. Major General Madan Lal Yadav (Retd.)*, The violators of law cannot be permitted to urge that their offence cannot be subject matter of Inquiry, trial or Investigation. (Vide *Lily Thomas v. Union of India and Ors.* AIR 2000 SC 1650).

15. Nor a person can claim any right arising out of his wrong doing. (*Juri Ex Injuria Non Oritur*).

16. In *Delhi Administration through its Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar*, , the Hon''ble Supreme Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under:

It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and Interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority In the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service.

17. In *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, ; and *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, , the Hon''ble Supreme Court examined a similar case, wherein, the employment had been obtained by suppressing the material fact that criminal proceedings were pending against him at the time of appointment The Court rejected the plea taken by the employee that the Form was printed in English and he did not have good knowledge of that, and therefore, could not understand as what information was sought. The Apex Court held that as he did not furnish the information correctly

at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. "The requirement of filling column Nos. 12 and 13 of the Attestation Form" was for the purpose of verification of the character and antecedents of the employee as on the date of filling In the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuance in service.

18. The submission made by the learned Counsel for the appellant to the effect that the impugned orders could not have been passed without giving him an opportunity is also preposterous for the reason that in such case where an order is obtained by misrepresentation or fraud, the principles of natural justice are not attracted to rectify the mistake which the Authority had committed because of the fraud played by the applicant. In such eventualities, termination is automatic.

19. In State of Uttar Pradesh Vs. Om Prakash Gupta, , the Hon''ble Apex Court had observed that Courts have to examine whether the non-observance of any statutory provision or principle of natural justice have resulted in deflecting the course of justice. In S.L. Kapoor Vs. Jagmohan and Others, , the Hon''ble Supreme Court has held that where from admitted or undisputed fact, only one conclusion is possible and under the law only one course is permissible to be adopted, the Court should not enforce the observance of principles of natural justice for the reason that it would amount to Issuing a futile writ.

20. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court observed as under:

The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in the areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it.... Whenever a complaint is made before the Court that some principles of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

21. Therefore, whether the principles of natural justice should be applied in a given case, depends upon the facts and circumstances of that case. In case the principles have not been applied but if even after their observation result could have been the same, enforcing the observance of such principles would be a futile exercise. (Vide Khem Chand Vs. The Union of India (UOI)and Others, and Laxmi Shankar Pandey Vs. Union of India and others,

22. In the instant case, as it remained undisputed and undeniable that petitioner had not furnished the information sought at the time of enrolment correctly, we are unable to imagine as how the application of principles of natural justice would materially alter the result of the case.

23. In U.P. Junior Doctors" Action Committee Vs. Dr B. Sheetal Nandwani and

Others, , the students had got admission in M.B.B.S. Course by making misrepresentation. The Hon"ble Supreme Court rejected the plea of applicability of the Rules of Natural Justice observing that under the circumstances in which such benefit had been taken by the candidates concerned, do not justify attraction of the Rules of Natural Justice by providing them an opportunity of hearing. Even in a case where an applicant may not be responsible for playing fraud, his appointment can, also, be cancelled without affording an opportunity of hearing to him in case the Authority comes to the conclusion that the appointment had been made by playing fraud by the Members of the Selection Committee though the candidate had not played any part/mischief in the said selection in Krishan Yadav and another Vs. State of Haryana and others, , the Hon"ble Apex Court observed that when the entire selection was stinking "conceived in fraud and delivered in deceit", individual"s innocence has no place as fraud unravels everything.

24. The ratio laid down by the Hon"ble Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf.

25. Thus, it Is the antecedent, conduct or character of the candidate to be appointed to the services which is of paramount consideration, not of the result of the criminal case in which he has been involved.

26. In view of the above, the appellant has obtained the employment by misrepresentation, i.e., suppressing the material information sought by the appointing authority. The information was required to verify his character and antecedents. Thus, neither the result of the prosecution nor the nature of the offence, in which he had been involved, has any bearing on the case.

27. It is settled legal proposition that once a person signs a document and admits that he has signed It, It is not permissible for him to say he has signed it without realising what had been the contents of the said document Similar averment stood rejected by the Hon"ble Apex Court in Kendriya Vidyalaya Sangathan (Supra) observing as under:

In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief, if he could not understand the contents of column Nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted.

28. Thus, In view of the above, the submissions in this regard lack merit and are liable to be rejected.

29. The next contention of the learned Counsel for the appellant that once the trial Court has accorded the appellant the benefit under the Act 1958, the effect

of the conviction stands washed away and the impugned order is liable to be set-aside, is preposterous and, thus, cannot be accepted.

30. The issue of benefit of probation under the Act in a criminal case, was considered by the Hon"ble Supreme Court in Aitha Chander Rao v. State of Andhra Pradesh 1981 (Supp.) SCC 17 and the Court made the following observations-

As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of Offenders Act.

31. The said judgment in Aitha Chandra Rao (supra) was not followed by the Hon"ble Supreme Court in Harichand Vs. The Director of School Education, observing that due to the peculiar circumstances of the case, the benefit of the provisions of 1958 Act had been given to him and as in that case there had been no discussion on the words "disqualification, if any, attaching to a conviction of an offence under such law" had not been considered, the said judgment cannot be treated as a binding precedent. The Apex Court interpreted the provisions of Section 12 of the Act, 1958 and held as under-

In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not by reason of Section 12, suffers the disqualification. It cannot be held that by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service.

(Emphasis added).

32. In Trikha Ram v. V.K. Seth and Anr, 1987 Supp. SCC 39 , the Hon"ble Apex Court has held that if a person stands convicted and is given the benefit of the provisions of the Act of 1958, his services can be terminated only on the ground that he stood convicted. But by virtue of the provisions of Section 12 of the Act, 1958, his removal cannot be a "disqualification" for the purposes provided in other Statutes. The same view has been reiterated in Union of India and others Vs. Bakshi Ram, Karam Singh Vs. State of Punjab and another, and Additional D.I.G. of Police, Hyderabad v. P.R.K. Mohan, (1997) 11 SCC 571

33. Similarly, in Shankar Dass Vs. Union of India (UOI) and Another, , the Hon"ble Apex Court has held that the order of dismissal from service, consequent upon a conviction, is not a disqualification within the meaning of Section 12 of the Act, 1958. "There are Statutes which provide that the persons, who are convicted for certain offences, shall incur certain disqualification; for example, Chapter III of the Representation of Peoples Act, 1951 entitles

"disqualification" for Membership of Parliament and State Legislatures, and Chapter IV entities "disqualification" for voting, contains the provisions which disqualify persons convicted on certain charges from being the Members of Legislatures or from voting at election to the legislature. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the High Court that Section 12 of the Act takes away the effect of conviction for the purpose of service also.

34. In *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, , the Hon"ble Supreme Court observed that the conviction of an accused, or the finding of the Court that he is guilty, does not stand washed away because that is the sine-qua-non for the order of release on probation. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. Thus, the factum of guilt on the criminal charge is not swept away merely by passing the order under the Probation of Offenders Act,

35. In *State of U.P. Vs. Ranjit Singh*, the Hon"ble Apex Court has held that the High Court, while deciding a criminal case and giving the benefit of the Act, 1958, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil consequences. The Court has held as under-

We also fail to understand, how the High Court, while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break, and, therefore, he should be paid his full pay and dearness allowance during the period of his suspension. This direction and observation is wholly without jurisdiction....

36. Thus, in view of the above, the law in this regard can be summarised that the benefit of the Act 1958 takes away the benefit of sentence and not of conviction and the submissions made on behalf of the appellant that the appellant has been granted the benefit of the Act 1958 cannot be sustained, being preposterous. More so, the Court dealing with the criminal case has no competence to make any observation which may have bearing on civil rights of the parties, particularly in service matters.

37. In view of the above, the appeal lacks merit and is accordingly dismissed.