

(2007) 07 PAT CK 0055
In the Patna High Court
Case No : CWJC No. 11258 of 2004

Rameshwar Pandey

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Citation : (2008) 1 PLJR 190

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Balmiki Pd. Singh, for the Appellant; Dharmeshwar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioner and learned counsel for the respondent Union of India. Vide order dated 18.3.2000 petitioner a constable under CRPF was ordered to be removed from service. This order of removal was also affirmed by appellate authority but the revisional authority in its discretion modified the order of removal from service after taking lenient view in the matter and allowed payment of compassionate allowance not exceeding two-thirds of pension and gratuity which would have been admissible to him under Rule 41(1) of CCS (Pension) Rules, 1972. Petitioner has challenged these orders in the present writ application.

2. The background to the present litigation is that the petitioner was enrolled in CRPF in the year, 1967. It is stated that he submitted a School Leaving Certificate issued by the Headmaster of Rai Saheb High School, Paiga District Saran. The date of birth of the petitioner in the School Leaving Certificate is 24.9.1951, meaning thereby at the time of recruitment he was less than 18 years of age, not otherwise eligible for recruitment. It is not understood under what circumstances he was allowed to file an affidavit stating that his actual date of birth was 24.9.1948 and that the date of birth recorded in the School Leaving Certificate was incorrect entry. This affidavit was sworn at the time of enrollment

of petitioner on 26th August, 1967. Based on the affidavit petitioner was enrolled in CRPF on the post of constable. He continued in service thereafter.

3. It seems that after more than two decades the service record of the petitioner was examined by Pay and Accounts Department. This was done to calculate the qualifying service of the petitioner. The authority discovered a discrepancy in the sense that his service book recorded his date of birth as 24.9.48 but his School Leaving Certificate, on record, showed his date of birth to be 24.9.1951. The matter was referred to the higher authority. The authority decided to issue a show cause to petitioner to reconcile the two dates and necessary action with regard to calculation of qualifying period of service can be made. From the pleading on record it emerges that petitioner submitted yet another School Leaving Certificate in the year, 1995. This time the School Leaving Certificate showed the date of birth of the petitioner to be 24.9.48. The authority confronted with two School Leaving Certificates showing two different dates of birth, referred the matter for verification to the Education Department, Government of Bihar.

4. The matter was verified and it was reported that petitioner had furnished a new forged and fabricated School Leaving Certificate in the year, 1995. The certificate furnished by petitioner contained the signature of the same Headmaster who had issued the earlier certificate in 1967, showing his date of birth to be 24.9.1951. The certificate was issued by the Headmaster who had already superannuated. The authority also reported that as per the school records the date of birth of the petitioner was actually 24.9.1951 and to that extent the earlier certificate submitted by petitioner at the time of entry into service was a correct certificate.

5. Thing could have been allowed to rest after so many years since the authorities had accepted the affidavit which was tendered by petitioner at the time of entry in service showing his date of birth as 24.9.1948 despite his School Leaving Certificate. There was no occasion for the authority to raise the issue that the petitioner had furnished a wrong date of birth to gain entry into service when he was not otherwise eligible. The Court would have taken a lenient view in the matter looking at the number of years the petitioner had put in service but the present situation is his own creation. Looking back in retrospect, it seems that the petitioner had actually filed a false affidavit to gain entry into service showing his date of birth to be 24.9.1948 and he deliberately disowned the School Leaving Certificate furnished earlier. To cover up the same he produced a third document which he all along knew was a forged document. On verification the authority not only found that it was issued by the Headmaster who was not in service but deliberately detained to supplement the earlier misleading affidavit filed by the petitioner.

6. Being confronted with the situation the authority decided to initiate a departmental proceeding against the petitioner. A show cause was issued to him and an enquiry was held and in the enquiry the petitioner did accept his guilt.

Based on the findings of enquiry the disciplinary authority decided to impose the punishment of removal. This was also based on Government of India Circular in this regard that if somebody gain employment under Government of India by making a false declaration then the order of dismissal ought to be passed. The necessary circular in this regard has been referred in the order and therefore the same is not reproduced here. The matter traveled up and the Director General, CRPF examined the issue in totality and looking at the length of service of the petitioner which was almost 32 years and the service record as such he used his discretion and diluted the punishment order.

7. Petitioner not being satisfied with the punishment which was meted out to him, he challenged the order of punishment basically on three grounds. The first submission is that he did not commit any fraud or misrepresentation at the time of entry into service because he categorically stated in his affidavit his age and has disowned to his School Leaving Certificate. His second submission is that the respondents are bound by principle of estoppel. He also submits that it was not open to the authorities to unsettle the settled position after so many years and the authorities have not really provided the reason for coming to the conclusion before imposing the punishment. Learned counsel for the petitioner also relied on two decisions of the Hon"ble Supreme Court reported in AIR 1965 285 and AIR 1988 1796. These decisions have been relied upon to show that there are Occasions where dispute of overage can arise and the School Leaving Certificate can be put to question.

8. Learned counsel for the respondent disputes the position taken by the petitioner. He submits that conduct of the petitioner is such that he is not entitled to any relief whatsoever. He not only gained entry into the service by filing false affidavit but gained entry into service when he was not even 18 years of age. He subsequently produced a fake certificate in the year 1995 to justify his initial entry into service on an affidavit of the year 1967. The fact that the petitioner not only used a fake document to cover up his action but also owned up the fact in the enquiry that he had produced wrong certificate before the authority in the year, 1995 to cover up the discrepancy between first School Leaving Certificate, and the affidavit which was filed by him at the time of entry into service. If this was the factual position then even law does not come in favour of petitioner. It is well established that fraud and misrepresentation takes away the right and equity and the petitioner is not entitled to any indulgence from the court of law.

9. After hearing learned counsel for the parties and keeping in mind all the issues and legal position, this Court is of the opinion that there is no occasion for this Court to interfere with the punishment order which has been imposed against petitioner. The subsequent conduct of the petitioner itself has disintitiled him for any relief as already taken note of. Petitioner furnished a fake certificate in the year, 1995 to reinforce his earlier affidavit when the fact stood hat actually in the record of school, the date of birth of petitioner is 24.9.1951 and 24.9.1948. The action of the petitioner of furnishing a new School Leaving Certificate which he

decided to produce himself in the year, 1995 had undone his initial affidavit furnished at the time of entry into service itself. If duly established the fact that petitioner had actually gained entry into service by producing a false affidavit before the authority. His date of birth was 24.9.1951 and not 24.9.1948. This being the position the authority could have ordered criminal prosecution also against the petitioner but probably keeping in mind the he is in the fag end of service they have taken a lenient view. This Court is inclined with the view which has been taken by the respondent. Now that the petitioner has been made to retire based on the decision of the disciplinary authority and ha has been granted 2/3rd of the pensions and gratuity in terms of the revisional order, the petitioner is not entitled to any further indulgence or mercy of the Court. In the given facts and legal position this writ application has no merit and the same is dismissed.