
(1998) 02 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3374 of 1995

Ratan Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 322, 332
Probation of Offenders Act, 1958 — Section 12, 4

Citation : (1998) 2 RLW 728 : (1998) 2 WLC 608 : (1998) 1 WLN 185

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, J.—The instant petition has been filed challenging the order of discharge dated 31.3.1994 (Ann. 4) from Boarder Security Force (hereinafter called B.S.F.).

2. The factual gamut of the case reveals that at the time of entering into service the petitioner was asked to fill up the form which contained a clause for furnishing information specifically whether he had ever been involved in a criminal case or not. The petitioner replied in no. On the basis of the said form the petitioner's candidature was considered and he was enrolled in B.S.F. a disciplined force. On verification from the Collector, Jodhpur, it came to the knowledge of the respondents that the petitioner had been involved in a criminal case and after getting this report a show cause notice was issued to him and after considering his reply he was discharged from service vide order dated 31st March 1994 contained in Ann. 4 to this writ petition. Hence this petition.

3. The petitioner was specifically asked as what was the reason for furnishing the false information at that time to seeking appointment when he applied for the service on 7th August 1993 as the petitioner stood convicted vide judgment and order dated 3rd Feb. 1993 in case No. 159/1992 passed by the learned Munsif and Judicial Magistrate. First Class, Bilara, for the offences punishable under

Sections 147- r/w 332 and Section 322/149 I.P.C. However, considering the age and back ground of the petitioner he was given benefit of provisions of Section 4(1) of the Probation of Offenders Act. 1958, (hereinafter called "the Probation Act"). The petitioner has urged in this petition that if a convict is given benefit under the provisions of Section 4(1) of the Probation Act, the mandatory requirement of Section 12 of the said Act takes away the fact of conviction as well as of punishment awarded to the accused. This view stands fortified by the judgment of the Apex Court in the case of Itha Chadra Rao us. State of A.P. 1981 (Suppl) SCC 17. This case was reconsidered by the Hon"ble Apex Court in the case of Hari Chand v. Director of Schools 1988 (1) JT 124 and it has categorically been held that Section 12 of the Probation Act applies in respect of disqualification that goes with the conviction under the law which provides for offence punishable and its punishment and it cannot be held that conviction should not be considered for dismissal of a person from Govt. service. Hence the submission/ground taken by the petitioner is preposterous.

4. Thus, in view of above, the petitioner is not entitled to claim benefit under the provisions of Section 12 of the Probation Act and the case remains that the petitioner entered into service by making mis-representation that amounts to fraud.

5. In such a case even opportunity of hearing" is not required as in Indian Bank Vs. Datla Venkata Chinna Krishnam Raju, the candidate got admission in M.B.B.S courses by playing fraud and making mis-representation. The Supreme Court rejected the plea of applicability of rules of natural justice and observed that under the circumstances in which such benefit had been taken by the candidates concerned do not justify attraction of the application of rules of natural justice of being provided an opportunity of being heard.

6. It is not necessary that the employment has been obtained by mis-representation or by fraud only by the concerned candidate even if there had been a fraud in the selection and the duly selected candidates had not played any fraud or mischief and there has been no mis-representation on their part, even then the selection vitiates because of the fraud played by the members of the selection committee or any body else.

7. In Krishna Yadav v. State of Haryana AIR 1994 SC 2166, the Apex Court held that when the entire selection was stinking "conceived in fraud and delivered in deciet" individual innocence has no place as "fraud unravels everything."

8. The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear that fruits and pay dividends to the persons who played fraud or made misrepresentation and in such circumstances the Court cannot be a party to perpetuate the fraud.

9. In Union of India and Ors. v. M.Bhaskaran 1995 Suppl. 4 SCC 100 the Apex Court 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.

10. While deciding the aforesaid cases, the Apex Court placed reliance upon its earlier judgment in District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, wherein it had been observed that as fraud vitiates everything, the employment obtained by mis-representation cannot be permitted to continue.

11. Similar view has been taken by a Division Bench of this Court in Mangi Lal and Ors. v. State of Rajasthan and Ors. 1997 (3) RLW 2017 and Temple of Thakurji Village Kansar v. State of Rajasthan 1998 (1) RLW 127 , where reliance was placed on the judgment in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Lajarus Estate Ltd. v. Beasley, EIR 1956 All 341.

12. It is settled proposition of law that fraud enervates everything and thus petitioner's appointment order itself vitiated as it had been obtained by misrepresentation.

13. Thus, in view of the above, the instant petition is devoid of any merit and hence dismissed. No costs.