(2015) 05 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (S.) No. 4214 of 2009

Sambhu Kant Dubey — APPELLANT

Vs

The State of Jharkhand and Others — RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2015) 146 FLR 327 : (2015) 3 LLN 427

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Anjani Kr. Verma, for the Appellant; A. Allam, and Priya Shrestha, J.C. to Sr. S.C. II, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the aforesaid writ application the petitioner has inter-alia prayed for quashing of the memo No. 257/1-2 dated 18.05.2009 (Annexure-20) issued by the respondent No. 8 whereby the petitioner has been dismissed from services and for direction to respondent to reinstate the petitioner''s services with consequential benefits and for direction to respondents for payment of all arrear salary since 2007.

2. The facts of the case in a nutshell is that in pursuance to advertisement published for appointment in vacancy to the post of Tax Collector in Madhupur Municipality by the Executive Officer, Madhupur Municipality, the petitioner applied for the said post and the appointment order was issued on the post of Tax Collector vide order No. 369/1-2 dated 31.07.1979 vide Annexure-3 to the writ application. After serving for more than 2 years, the petitioner was dismissed form service without any notice and the decision taken in the meeting of Municipal Board on 25.09.1981, was declared ab initio void by the then Deputy Commissioner, Dumka and as such vide letter No. 2853 dated 3.12.1981, the Additional Deputy Commissioner, Dumka the petitioner was allowed to continue on his post as earlier is evident from Annexure-4 to the writ application.

Thereafter, the petitioner was promoted to the post of Assistant Tax Daroga vide Memo No. 591/1-2 dated 6.1.1990 issued by the Executive Officer, Madhupur Municipality. That on the basis of the complaint, the petitioner was placed under suspension with immediate effect in contemplation of departmental proceedings vide memo No. 524 dated 10.9.1996. The petitioner was served a charge memo by the then Special Officer-cum-Executive Officer, Madhupur Municipality vide Memo No. 696/1-2 dated 20.1.1997 levelling allegations that the petitioner has obtained his appointment on the basis of showing higher marks in Matriculation Examination depriving the other candidate as per Annexure-7 to the writ application and in pursuance to the said charges, the petitioner submitted his reply refuting all the charges levelled against him.

On the basis of the inquiry, the Deputy Commissioner, respondent No. 3, on 9.3.2000 passed an order for revocation of the suspension of the petitioner vide letter No. 321 dated 9.3.2000 and the petitioner submitted his joining in the office of the then Special Officer-cum-Executive Officer, Madhupur Municipality.

3. Being aggrieved by the illegal dismissal, the petitioner filed a writ petition bearing CWJC No. 8311 of 2000 before Hon''ble Patna Hight Court for quashing of entire departmental proceedings initiated against him by the then Special Officer, Madhupur Municipality and the said writ petition was heard on 30.08.2000 and notices were issued.

On 15.11.2000 the State of Bihar was bifurcated and the Madhupur which is situated near Deoghar comes within the jurisdiction of newly created Jharkhand State. Since the many cases have been transferred to the Jharkhand High Court but the case of this petitioner was not transferred. Again, the petitioner filed CWJC No. 1326 of 2001 before this Court which was disposed of on 6.4.2001 with a direction to the respondents authority to conclude the proceeding within the period of six weeks from the date of receipt/production of copy of the order failing which the departmental proceeding shall stands automatically quashed vide Annexure-9 to the writ application.

4. In pursuance to the order passed on 6.4.2001 in CWJC No. 1326 of 2001, the petitioner was directed to file show cause for the second time on the aforesaid charge Memo dated 20.1.1997 (Annexure-7) and vide memo No. 373 dated 19.7.2001 the Executive Officer, Madhupur Municipality terminated the petitioner from services with retrospective effect with effect from 16.07.2001. Again the petitioner challenged the order passed on 19.7.2001 vide W.P.(S.) No. 5004 of 2001 vide order dated 19.4.2002 this Court quashed the order of termination of the petitioner issued vide letter dated 19.7.2001. As per Annexure-12 to the writ application. In pursuance to the order dated 19.04.2002, the petitioner on 29.4.2002 submitted his joining before the Executive Officer, Madhupur Municipality and the said officer vide letter No. 288/1-2 dated 12.06.2002 accepted the joining of the petitioner and thereafter the petitioner worked on the post of Assistant Tax Daroga (Class III) in Madhupur Municipality.

5. One Shri Suresh Prasad Roy who had filed a Title Suit No. 1/95 challenging the appointment of the petitioner in the Court of Sub-Judge, Deoghar for declaring the service of the petitioner as illegal. The said suit was dismissed on 22.9.1998 by the then Sub-Judge, Deoghar. Shri Suresh Prasad Roy filed a complaint before the respondent No. 6 alleging therein that the petitioner has joined his services on the basis of forged certificates and on illegal gratification and the respondent No. 6 vide letter No. 17 dated 5.1.2009 directed the respondent No. 8 to inquire the matter and the respondent No. 8 has submitted a inquiry report opining therein that the petitioner has obtained his services by forged matriculation mark sheet as per Annexure-15 to the writ application i.e. letter No. 93/1-2 dated 17.2.2009. The report submitted by the respondent No. 8 which is forwarded to Deputy Commissioner, Deoghar, by the respondent No. 6 vide memo No. 202 dated 19.02.2009.

6. The Deputy Commissioner, Deoghar (respondent No. 3) vide his letter No. 420 dated 12.3.2009 directed the Executive Officer, Madhupur Municipality that the Municipal Board is itself competent to take action against the Municipal Board employees. Thereafter the petitioner was directed to file show cause vide memo No. 207 dated 8.4.2009 issued by the respondent No. 8 and the petitioner submitted a detailed show cause reply on 25.4.2009 before respondent No. 8 vide Annexure - 19 to the writ application.

7. Without considering the show cause filed by the petitioner vide memo No. 257/1-2 dated 18.5.2009 issued by the respondent No. 8, petitioner has been dismissed from services without holding any regular departmental inquiry as per article 311(2) of the Constitution of India.

8. Being aggrieved by the impugned order of dismissal from services the petitioner has approached this Court invoking the extra ordinary jurisdiction under article 226 of the Constitution of India for redressal of his grievance.

9. Per contra the respondent Nos. 3 to 5 has filed a counter-affidavit controverting the averments made in the writ application. In the counter-affidavit it has been, inter-alia, stated that it is settled principle of law that fraud vitiates every thing and in the instant writ application the petitioner is also guilty of committing fraud on the appointing authority by placing forged marks sheet showing 522 marks in Matriculation while actually the petitioner has secured 436 marks, on account of this fraudulent misrepresentation the private respondent No. 9, who would otherwise have been qualified for appointment for the said post became disqualified and this is also a sufficient ground for dismissal of the writ petitioner.

10. It is also further stated that the most important issue for adjudication is whether the benefit which has been received by a person by practicing fraud is required to be withdrawn forthwith or whether any fulfledged enquiry is required in this matter.

But, in the instant case the appointment of the petitioner as Tax Daroga was wrong and illegal on account of fraudulent misrepresentation made by the petitioner. The copy of the merit list published for the purpose of appointment of Tax Daroga in the year 1979, would show that the petitioner had produced certificate showing his marks 522 corresponding to 52.2 percent which led to the disqualification to the private respondent No. 9 a photo copy of the merit list has been annexed as Annexure-A to the counter-affidavit. A copy of the proceeding book for appointment has been annexed as Annexure-B to the counter-affidavit and a copy of the attested marks sheet showing 522 marks is annexed as Annexure-C to the counter-affidavit. It has been further stated that the petitioner has never produced either of the certificates before the appointing authority rather produced forged mark sheet with wrongful attestation from a Gazetted Officer showing his marks to be 522 as per Annexure-C to the counter-affidavit.

On perusal of Annexure A and B would disclose that his appointment was made on the basis of the claim to have secured 522 marks, though he never produced original copy of the same. When this forgery and fraudulent misrepresentation was detected, then the present writ petitioner has taken recourse to various manipulative efforts and has somehow managed to continue his job at Madhupur Municipality. It has been further submitted that Sri Suresh Prasad Roy was not selected on account of less marks compared to that of the petitioner as the petitioner then had produced forged and fraudulent marks sheet showing 522 marks while Suresh Prasad Roy had produced genuine marks sheet showing 450 marks. Thus, the non selection of Suresh Prasad Roy was on account of wrongful and illegal act of the petitioner. If the petitioner would have come with genuine marks sheet then definitely Suresh Prasad Roy would have been selected in place of the present writ petitioner. In any view of the matter, the writ petitioner cannot be allowed to perpetuate illegality which he had committed to secure job.

11. Counter has been filed on behalf of the respondent Nos. 7 and 8 repelling the contentions raised in the writ application apart from raising the question of maintainability of the writ petitioner. It has also been stated in the counter, inter-alia, stated therein that the petitioner is guilty for fraud and forgery and has obtained his job in total suppression of real state of affairs as it was result of fraudulent misrepresentation and presentation of forged marks sheet.

12. Heard Mr. Anjani Kumar Verma, learned counsel appearing for petitioner and Mr. A. Allam Sr. counsel on behalf of the respondent Nos. 3 to 5 and Mr. Rajesh Kumar on behalf of respondent Nos. 7 and 8.

13. Learned counsel appearing for the petitioner filed a reply to the counter-affidavit filed by the respondent Nos. 3 to 5, that advertisement was published in 1978 inviting application from eligible candidate having qualification of matriculation. The petitioner has applied for the said post and was selected for appointment as Tax Collector in Madhupur Municipality vide appointment letter No. 369/1-2 dated 31.07.1979 and the petitioner having been appointed has already rendered 29 years of services and the petitioner has been dismissed from services without holding any regular departmental enquiry in gross violation

of Rule 9 of the Municipal Officers and Servants (appointment, Duties, Discipline and Appeal) Rules which reads as follows:-

Rule 9: No order of dismissal, removal or reduction or pay shall be passed on an officer or servant, of the commissioners, unless he:-

(I) Has been informed in writing of the ground on which it is proposed to take action,

(ii) Has been served with a copy of the grounds on which it is proposed to take actions, reduced tot he from of a definite charge or charges, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case;

(iii) Has been afforded an adequate opportunity of defending himself and to state whether he desires to be heard in person;

(iv) Has been afforded adequate opportunity to adduce such evidence as may be considered to be reasonable;

(v) Has been allowed to be present during any enquiry that may be made at his request or at the discretion of the authority concerned and has been permitted to cross examine such witnesses as may be produced against him; and

(vi) Has been afforded a reasonable time to show cause against the imposition of a punishment of dismissal, removal or reduction in rank or scale if the enquiring officer has arrived at a provisional conclusion that such a punishment should be imposed.

14. It has been admitted by the Municipal-respondent in counter-affidavit that the order of dismissal cannot be made without holding proper inquiry and as such it was mandatory for the respondents to conduct a regular departmental inquiry after appointing an Enquiry Officer, framing of charges and holding of regular departmental inquiry giving proper opportunity to defend and to adduce evidences, cross examine the witnesses and after submission of Enquiry report by the Enquiry officer to afford reasonable time to show cause against the punishment of dismissal and only thereafter to impose the punishment of dismissal but the Municipal respondent without following mandatory provision of the aforesaid Rule-9 of Municipal Officers and Servants (Appointments, Duties, Discipline and Appeal) Rules passed an order of dismissal from service of the petitioner which is illegal and as such vitiates dismissal order as per the settled principles of law laid down by Constitution Bench of Hon''ble Supreme Court of India, in case of Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, AIR 1973 SC 855 : (1973) 26 FLR 150 : (1973) 1 LLJ 226 : (1973) 1 SCC 409 : (1973) 3 SCR 348 : (1973) 1 SLJ 525 .

15. It has also further been submitted that the writ petitioner has been dismissed without holding any regular departmental enquiry as per Article 311(2)

of Constitution of India and that too, at the instance of private respondent No. 9 namely Sri Suresh Prasad Roy, who is instrumental to harass the petitioner since the date of appointment of the petitioner on 31.07.1979.

16. After perusing the documents on record and hearing counsels at length, I find the impugned order at Annexure-20 does not warrant any interference of this Court due to the following facts, reasons and judicial pronouncement:

I. It appears from the Annexure-A to the counter-affidavit that the petitioner on the basis of misrepresentation of the facts that he secured 522 marks has entered into service which resulted in non selection of respondent No. 9 Sri Suresh Prasad Roy who is said to have secured 450 marks, but it has come to light through inquiry that the petitioner secured 436 marks. If the authority has taken 436 marks of the petitioner then the petitioner would not have been selected. Therefore, the petitioner producing forged marks sheet secured the job and therefore petitioner is guilty for committing fraud and forgery. Fraud vitiates everything and there is no limitation in setting aside things which are result of fraud.

17. A persons claiming any right arising out of his own wrongdoing cannot be permitted to take advantage and urge that their offence cannot be subjected to inquiry, trial or investigation, held by the Hon''ble Apex Court reported in Devendra Kumar Vs. State of Uttaranchal and Others, AIR 2013 SC 3325 : (2013) 139 FLR 284 : (2013) 10 JT 566 : (2013) LabIC 4279 : (2013) 4 LLN 450 : (2013) 9 SCALE 703 : (2013) 9 SCC 363 : (2014) 1 SCC(L&S) 270 : (2013) 4 SCT 482 : (2013) AIRSCW 4938 . Paragraph 13 and 25 of the said judgment held as under:

"13. It is settled proposition of law that whether the applicants gets office by misrepresenting the facts or by applying fraud upon the competent authority, such order cannot be sustained in the eye of law. "Fraud avoids all judicial acts, ecclesiastical or temporal".

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato Fundamento cadit upus - a foundation being removed, the superstructure falls. A persons 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 the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (vide Union of India V. Major General Madal Lal Yadav and Lily Thomas v. Union of India) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non aritu)."

18. Hon''ble Apex Court in R. Vishwanatha Pillai Vs. State of Kerala and Others, AIR 2004 SC 1469 : (2004) 2 CTC 196 : (2004) 1 JT 88 : (2004) 1 SCALE 285 : (2004) 2 SCC 105 : (2004) SCC(L&S) 350 : (2004) 2 SCR 360 : (2004) AIRSCW 419 : (2004) AIRSCW 4826 : (2004) AIRSCW 3038 : (2004) 4 Supreme 77 :

(2004) 6 Supreme 306 : (2004) 1 Supreme 436 held that a person having obtained appointment by playing a fraud, held, not entitled to invoke equity jurisdiction to claim such a relief.

19. In the instant case, the petitioner after three rounds of litigation approached this Court. But, due to unimpeachable and clinching documentary evidences relating to fraud being committed by the petitioner for securing job, applying the aforesaid principles of Hon''ble Apex Court-refer to supra, I find no ground to interfere with the impugned order of dismissal vide Annexure 20 to the writ application.

20. On cumulative effects of the facts and reasons and of the judicial pronouncements, I do not find any reasons to interfere in the impugned order passed for dismissal from service of the petitioner vide Annexure-20.

21. Hence, the writ petition is dismissed being devoid of any merit.

