

(2004) 12 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 239 of 2004

Sham Lal and Another

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 1 JKJ 1

Hon'ble Judges : S.N. Jha, C.J.; S.K. Gupta, J

Bench : Division Bench

Advocate : Sunil Sethi, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—This letters patent appeal is directed against the order by which the writ petition of the appellants, SWP No. 764/2003,

was dismissed by the learned Single Judge. The appellants had filed the writ petition for quashing order No. 390/HME/03 dated 21st April, 2003

by which their appointment on the post of Pharmacist (Medical Assistant) was cancelled, and for ancillary reliefs. The facts of the case, briefly

stated, are as follows.

2. On 29th April, 1997 an advertisement notice was issued by the Jammu and Kashmir Service Selection Recruitment Board (SSRB) inviting

applications for the post of Pharmacist. Matriculates possessing diploma in Medical Assistants Training Course of the State Medical Faculty were

eligible to apply. The appellants applied for the post. After interview etc., vide select list published on 8th December, 1997 they were selected for

appointment. They figured at serial nos. 8 and 19 respectively of the select list. On 31st December, 1997 appointment orders were issued.

3. One Vikas Sharma filed a writ petition, SWP No. 149 of 1998, challenging the selection of the appellants. On 31st May, 2001 the petition was

disposed of with a direction to the SSRB to communicate the break up of the marks secured by the petitioner, the respondents i.e. the appellants

herein and the last selected candidate. In course of implementation of the said direction, it transpired that the marks certificates produced by the

appellants were fake. In the circumstances, by order impugned in the writ petition dated 21st April, 2003, the appointment of the appellants was

rescinded / cancelled with immediate effect. The appellants approached this Court for quashing of the said order and for other incidental reliefs, as

indicated at the outset.

4. Vide order dated 29th April, 2004 in the connected writ case, in the facts and circumstances, the Vigilance Organization was directed to

enquire into genuineness of the marks certificates produced by the appellants leading to their appointment. The Vigilance Organization submitted

report dated 22nd September, 2004, the relevant part of which may be extracted as under:

The perusal of records and marks certificates and above comparison table reveals that the attested photocopies of marks certificate of Sh. Sham

Lal, furnished by SSRB has a mention of 105/150 marks in practical instead of 79/150 whereas the marks certificate of Sat Paul has a mention of

106/150 instead of 76/150.

Thus the suspects Sh. Sham Lal & Sat Paul, by fabricating a forged / fake document regarding the marks obtained in the one year Medical

Assistance Training Course for the year 1990 and 1989 respectively by increasing the marks in the practical examination from 79/150 to 105/150

thereby making a total of 155/250 instead of 129/250. And in respect of suspect Sh. Sat Paul the marks increased in the practical examination is

from 76/150 to 106/150 thereby making a total of 158/250 instead of 128/250. By fabricating marks in the practical examination by the above

two Medical Assistants Sh. Sham Lal s/o Charan Dass r/o Abdullian, R. S. Pura and Sat Paul s/o Ram Chand r/o Village Lovain, R. S. Pura made

them eligible for appointment in open merit category and thus depriving other genuine aspirants for the appointment with higher merit.

5. In the earlier part of the report the Vigilance Organization stated in a tabular

form the marks obtained by the appellants as per the marks

certificates furnished by Block Medical Officer, R. S. Pura; Chief Medical Officer, Jammu and the State Medical Faculty, Jammu showing that

appellant Sham Lal had obtained 129/250 and appellant Sat Paul had obtained 128/250 marks. However, as per the marks certificates produced

by the appellants before the SSRB, they were shown to have obtained 155/250 and 158/250 marks, respectively.

6. The learned Single Judge noticed that despite opportunity given to the appellants, they did not file any rejoinder to controvert the contents of the

said report or the relevant averments in the counter affidavit. The learned Judge held that the appellants had failed to establish that the certificates

produced by them were genuine or that they are in possession of any evidence to controvert the allegations against them. The learned Judge

noticed that the ground stated in the impugned order found support from the report of the Vigilance Organization. Having not denied the material

facts, there was no necessity of issuing any show cause notice as contended on behalf of the appellants. Observing that the principle of audi-

aletrampartem is not a mere formality and the object of affording opportunity is to enable the person to explain the circumstances / allegations

against him, and where the person had opportunity to disclose the marks to this Court but failed to avail of the opportunity to establish that the

selection was ""based on genuine certificates"", it cannot be said that there has been miscarriage of justice because opportunity of hearing was not

given before passing the impugned order, the learned Single Judge dismissed the writ petition with cost and a direction to the Sr. SP, Crime

Branch, Jammu to register a case against the appellants and proceed according to law.

7. From the order of the learned Single Judge it appears that the only point argued before him was violation of rules of natural justice. This indeed

was the thrust of the argument before us. It was additionally submitted before us that the appellants did not submit the marks certificates which are

said to be fake and fabricated, and in the absence of original marks certificates, as stated in the report of the Vigilance Organization, it cannot be

said that the marks certificates which the appellants had produced were fake. It was also submitted that as the appellants came within zone of

selection even on the marks reflected in the records of the State Medical Faculty or the Block Medical Officer, R. S. Pura / Chief Medical Officer,

Jammu, there was no occasion for the appellants to submit forged and fabricated marks certificates to secure appointment.

8. We will deal with the last limb of the submission first.

9. From perusal of the impugned order dated 31st April, 2003 it appears that the last selected candidate had secured 135/250 marks. Against this,

the appellants had secured, respectively, 129/250 and 128/250 marks i. e. less than the marks secured by the last selected candidate. However,

marks were shown as 155/250 and 158/250 in the marks certificates produced by the appellants and on that basis they were eventually selected.

Thus, submission of the counsel that the appellants even otherwise came within the merit zone is not correct. It is to be kept in mind that the

criterion of selection was marks secured at the Medial Assistants' Training Course Examination. The marks secured at the said examination being

decisive, it is clear that the appellants managed to be selected on the basis of fake and fabricated marks certificates.

10. The submission that the appellants did not submit the marks certificates in question is, if we may say so, a cry of desperation. Being

beneficiaries of the said certificates, it does not stand to reason that they were produced by some one else, as vaguely suggested by the learned

counsel in course of hearing. The submission deserves to be rejected out of hand.

11. The question for consideration is whether the appellants were entitled to show cause notice i.e. an opportunity of hearing. It is to be kept in

mind in this connection that the appellants figured as respondent nos. 4 and 5 in SWP No. 149/1998 wherein their selection had been called in

question by the said Vikas Sharma. Pursuant to notice, they entered appearance through Mr. Navneet Dubey, Advocate but did not file any

objection / counter affidavit. The specific case of the writ petitioner was that whereas he had obtained 144 marks at the qualifying examination,

respondent nos. 4 and 5 i.e. appellants had only 129 and 128 marks, but had been selected. The petition was disposed of, as stated above, with a

direction to disclose the marks secured by the said Vikas Sharma, the appellants herein and the last selected candidate. It was in course of

implementation of the said direction that the fraud came to light. The appellants,

therefore, cannot say that the impugned order of cancellation of their appointment came as a bolt from the blue and they were not aware what was going on.

12. The allegation that the marks certificates produced before the SSRB were forged and fabricated was got verified by this Court through

Vigilance Organization which submitted an independent report corroborating the finding recorded by the State authorities in the impugned order.

The appellants had an opportunity to rebut the findings but blissfully they chose not to put in any rejoinder. Rules of natural justice, as is often said,

cannot be expressed like strait-jacket formulae. The nature and extent of their application depends on facts of the case. We are satisfied that giving

a show cause notice would have been a formality. The appellants having approached this Court with unclean hands cannot claim any right in

equity. The dismissal of the writ petition, in the facts and circumstances of the case, therefore, cannot be said to be illegal.

13. In *U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others*, , it was held that where a candidate has secured

admission on the basis of fake judgment of the High Court, the rules of natural justice would not be attracted and the person would not be entitled

to any opportunity of hearing.

14. In *R. Vishwanatha Pillai Vs. State of Kerala and Others*, , the Supreme Court noticed with approval two cases of the Patna High Court

wherein the High Court had declined to interfere on the ground that appointment obtained on the basis of false caste certificates did not attract the

provisions of Article 311 of the Constitution of India - not even entitled to salary for the work done. It would be useful to quote the relevant

passage from the judgment of the Supreme Court as under:

In *Ishwar Dayal Sah v. State of Bihar* 1987 LabIC 390, the Division Bench of the Patna High Court examined the point as to whether a person

who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said

case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on

was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to

removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be

terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held

that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights

under Article 311 of the Constitution can possibly flow. It was held : (Lab IC pp.394-95, para 12)

'If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under

Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of

the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the

threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under

Article 311 is not attracted.'

The point was again examined by a Full Bench of the Patna High Court in Purushottampur Colliery Pvt. Ltd. and Another Vs. Union of India

(UOI) and Others, . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work

done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held (AIR P32, para 13)

'It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore,

these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal

and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In

particular, if the very appointment is rested on forgery, no statutory right can flow from it.'

We agree with the view taken by the Patna High Court in the aforesaid cases.

15. In view of the said decisions, any appointment secured on the basis of forged and fabricated document is non-est in the eye of law and the

same does not create any right in favour of the person.

16. In the above premises, we find no error in the order of the learned Single Judge dismissing the writ petition and, accordingly, dismiss this appeal.