

(2006) 10 DEL CK 0077
In the Delhi High Court
Case No : Writ Petition (C) 9390 of 2005

Shri Virender Singh

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Citation : (2006) 92 DRJ 647

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; A.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, petitioner has challenged the Award dated 27.06.2002 whereby the reference was answered against the petitioner by Labour Court- X, Karkardooma Courts, Delhi.

2. Petitioner alleged that he worked with the management as Charge Mate for more than three years. He reported for duty on 22.2.1987 and Executive Engineer told to him that his services were no longer required. He claimed reinstatement with full back wages. Following disputes were referred for adjudication by the appropriate government to the Labour Court:

Whether the termination of services of Sh. Virender Singh is illegal and/or unjustified and if so to what relief is entitled and what directions are necessary in this respect?

3. The stand of the respondent in written statement was that workman had been working with the management since December 1985. However, workman got entry in the office by fraud on the basis of a forged appointment letter. As soon as department got suspicious about bonafide of his appointment in DDA, letters were issued to the concerned division for verification and it was found that no such appointment was made nor he was an employee of the DDA. Since the

workman got appointment on the basis of fake/forged appointment letter, there was no legal contract of employment between the workman and DDA. The investigation was handed over to the police as well as to the vigilance department of DDA to find out as to how this forgery was committed and who were the persons involved in it. When the workman came to know of the forgery having been detected by the DDA, he stopped coming to the office or at site for discharging his duties and abandoned his job in order to save himself from criminal action. Workman never claimed any dues from the department as he was avoiding Police investigation and investigation by Vigilance Department. The contract of the workman was void ab initio since it was based on fraud and fabricated documents. A complaint was lodged with SHO, Paharganj regarding forgery.

4. The workman while appearing as a witness did not deny that a CBI case was pending against him in respect of this very forgery or that he was absent from duties from 22.2.1987. The Tribunal came to the conclusion that workman had failed to place on record any documents that he worked with the management for 240 days in preceding 12 months. The onus to prove the same was on the petitioner and since he failed to discharge the onus, he was held not entitled to reinstatement on the ground that he was retrenched.

5. The Award has been challenged by the petitioner on the ground that there was no dispute between the parties about the petitioner having worked for 240 days because the respondent admitted in the written statement that the petitioner was working since December 1985 and the Labour Court wrongly entered into the issue whether he had worked for 240 days or not. It is submitted that Labour Court exceeded its jurisdiction by entertaining this issue. Labour Court went astray and failed to look into the fact that the petitioner in his statement of claim stated that he worked for three years and there was an admission of the respondent that petitioner worked from December 1985.

6. I have heard learned Counsel for the parties and perused the record.

7. An appointment obtained on the basis of fraud is no appointment in the eyes of law. A forged appointment letter creates no legal right. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, - Supreme Court observed that " Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Adward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree- by the first court or by the highest court- has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings. Supreme Court in the above case held that a party who does not discloses all facts to the Court and files a suit or a claim must be non suited for non production and not mentioning of the material facts. Non-production of relevant documents amounted to playing fraud at Court. A litigant, who approaches the court, is bound to produce all the documents executed by

him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

8. Petitioner in this case got service in the DDA on the basis of fake appointment letter. He did not mention this fact in his statement of claim nor he attached a copy of the appointment letter nor did he give date of his appointment. He made vague allegations that he had worked with DDA for last three years. He did not disclose to the Court that there was a CBI case registered against him and CBI was investigating the case and the allegations were that he forged the appointment letter. His non disclosure of the material facts and not disclosure of his date of appointment and withholding the letter of appointment, all amounted to playing fraud with the Court and his claim should have been dismissed by the Labour Court on these grounds itself.

9. Labour Court entered into the issue whether he worked for 240 days or not. The petitioner did not claim that he was a regular employee of DDA appointed against an appointment letter. All those persons who are not appointed on the basis of regular appointment letters are either daily wager or muster roll employees and a daily wager and muster roll employee, for becoming entitled to claim as a workman has to prove that he had worked for 240 days. The averments made by the respondent in the written statement in respect of claim of the petitioner cannot be looked into in isolation. The petitioner if wants to rely upon the admission of the respondent the entire statement of the respondent has to be looked into. The entire statement shows that petitioner played a fraud and he entered into DDA by fraud and his contract was void ab initio.

10. R. Vishwanatha Pillai Vs. State of Kerala and Others, , the case pertained to termination of services of the of the petitioner on the ground that he got appointment on the basis of a false caste certificate. Supreme Court observed that the right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment to the post meant for Scheduled Caste, thus depriving the genuine Scheduled Caste of appointment to that post, does not deserve any sympathy or indulgence of the Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favor. No sympathy and equitable consideration can come to his rescue. In Ram Saran Vs. I.G. of Police, CRPF and Others, - Supreme Court held that no leniency can be shown to a person who has obtained appointment on the basis of forged documents, otherwise it shall amount to giving premium to a person who committed forgery.

11. I find no force in this writ petition. Petition is hereby dismissed with costs of

Rs. 5000/-.