

**(1996) 03 DEL CK 0003**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 3226 of 1995 and Civil Miscellaneous Appeal No. 357 of 1996

S.N. Aggarwal

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 21-03-1996

**Acts Referred:**

**Citation :** (1996) 2 AD 565 : (1996) 63 DLT 865

**Hon'ble Judges :** Dalveer Bhandari, J

**Bench :** Single Bench

**Advocate :** K.C. Dua, Tarun Dua and Sanjay Kapoor, for the Appellant;

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## **Judgement**

Dalveer Bhandari, J.

(1) This is an application under Order 23 Rule 1 of the Code of Civil Procedure, filed on behalf of the respondent. It is prayed in this application that because of false assertions and misleading statements in this writ petition. Rule be discharged and the writ petition be dismissed with heavy costs.

(2) The petitioner has filed the present writ petition challenging inter alias the order dated 17th August, 1994 passed by the Appointing Authority inflicting major penalty on the petitioner.

(3) In this application, it is submitted by the learned Counsel for the respondents that the petitioner has filed an identical petition before this Court, i.e., Civil Writ Petition 4307/94 in which the petitioner has prayed for exactly identical relief. The prayer of the said writ petition reads as under :

"(I) issue a writ of certiorari or any other appropriate writ, order or direction quashing the order imposing major penalty on the petitioner vide respondent's letter No. VIGL/1390 dated 17.8.1994; (ii) issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent-Bank to release the Post Qualification Allowance of Rs. 250.00 arbitrarily and illegally

withheld by the respondent-Bank; (iii) pass such other and further order or direction as their Lordships may deem fit and proper in the interest of justice."

(4) The said writ petition came up for admission hearing before a Division Bench of this Court in a Bench comprising of Hon"ble Mr. Justice Mahinder Narain and Hon"ble Mr. Justice A.K. Srivastava. The Court after hearing learned Counsel for the petitioner passed the following order on 19th October, 1994.

"19.10.94Present : Mr. P.K. Srivastava, for petitioner. Cw 4307 & Cm 7794/94 Counsel wishes to withdraw this petition. Dismissed as withdrawn."

(5) In this petition no leave has been sought from the Court to file a fresh petition. The earlier petition was filed by Mr. P.K. Srivastava, Advocate, and thereafter the present Petition No. Civil Writ Petition 3226/95 was filed by Mr. K.C. Dua, Advocate.

(6) This writ petition was filed with the following prayer :

"1.Issue writ/order/direction in the nature of Certiorari quashing the order dated 17.8.1994 passed by the Appointing Authority on the recommendation of the I.A. (Annexure 1) inflicting the penalty of reduction of the increments; 2. Issue Writ/Order/Direction in the nature of Certiorari quashing the findings of the Inquiry Authority dated 11.10.93 and issued by the Disciplinary Authority which resulted in inflicting the penalty of reduction of increment by three stages. (Annexure II); 3. Issue Writ/Order/Direction in the nature of Certiorari quashing the order dated 5.4.94 passed by the Appellate Authority/Deputy Managing Director. (Annexure III);

(7) Alternatively issue Writ/Order Direction in the nature of mandamus directing the implementation of the order dated 17.8.94 in accordance with Rule 5 of the State Bank of India Officer? Service Rules because the professional qualifications allowance is in lieu of the increments in the case of the petitioner.

(8) ( Issue Writ/Order/Direction in the nature of mandamus directing the respondents to promote the petitioner in accordance with the result of the interview held during July/August 1990 for the post of M.M.III Officer w.e.f. 1.8.1989 and fix his seniority accordingly.

(9) Call for the records of the case -

(I)Record of Inquiry proceedings. (ii) Record of the Committee which held the" interview in July/August, 1990.

7.Award the costs of the petition."

(10) In this writ petition, the petitioner has specifically incorporated and mentioned on affidavit following averments (Ground 0 page 23)

"THAT the petitioner has not filed any writ petition earlier in this Hon"ble Court challenging the orders passed by the respondent seeking the same relief as given in the writ petition".

(11) The writ petition came up for hearing before a Bench comprising of Hon''ble Mr. Justice P.K. Bahri and Hon''ble Mr. Justice J.B. Goel. On the basis of the averments mentioned in the petition that no petition challenging the orders passed by the respondent has been filed, the following order was passed on 4th September, 1995.

"4.9.95Present: Mr. K.C. Dua, for petitioner. Civil Writ 3226/95 : We limit the rule in this writ petition only confined to the question of awarding of penalty as according to the Counsel for petitioner in spite of awarding penalty of reduction of three stages the petitioner virtually has been awarded punishment of reduction in 5 stages. Rule. CM. No. 5408/95 : Dismissed."

(12) It is submitted by the learned Counsel for the applicant/respondent that the aforesaid statement of the petitioner that no petition has been filed challenging the orders of the respondent is obviously false and incorrect. The petitioner by suppressing this material fact has tried to mislead this Court. This writ petition was posted before another Division Bench which has resulted in the order dated 4th September, 1995 passed by the Division Bench. Learned Counsel for the petitioner Mr. Dua submits that this earlier petition was filed by Mr. P.K. Srivastava and he was not aware of the fact that earlier petition Civil Writ 4307/94 was filed by the petitioner through Shri P.K. Srivastava.

(13) To say the least, the petitioner has not approached this Court with clean hands. This is a clear case where the petitioner has suppressed the most material fact of dismissal of the earlier petition by this Court seeking almost identical relief. This is clearly an abuse of the process of law.

(14) Consistently from the very inception Courts in all countries have taken the view that ordinarily the Courts take the statement of facts and grounds contained in the petition at their face value and it would be unfair to betray the confidence of the Courts by making statements which are untrue and misleading. The Supreme Court in Hari Narain Vs. Badri Das, , observed as under :

"....It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

(15) In Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody, , the Court reiterated its earlier viewpoint. The Court observed as under:

"EXERCISE of the jurisdiction of the Court under Art. 136 of the Constitution is

discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised, in revoking the leave to appeal granted even at the time of hearing of the appeal."

(16) In *Firm of Harbanslal Jagmohandas and Another Vs. Prabhudas Shivilal*, , the Court observed that, misstatement and untrue averments in the SLP would entail revocation of leave already granted.

(17) Similar view has been taken by another judgment of the Supreme Court. In *The Punjab National Bank Vs. Union of India (UOI) and Another*, , where the Court held as under :

"THIS Court has been very strict in its requirement that, in a petition under Article 136, the applicant should state all material facts which have a bearing on the question of the exercise of the discretion, correctly. And, if any statement is made in the petition which has a bearing on its maintainability, and which is calculated or likely to mislead, the Court would revoke the order granting special leave."

(18) The Apex Court in another leading case *Udai Chand Vs. Shankar Lal and Others*, , revoked the leave already granted and vacated the stay order and dismissed the appeal when it was brought to the notice of the Court that the SLP filed by the petitioner contains false assertion and misstatement of facts. Next in the series is the case of *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*, . In this case, the employee tried to obtain employment by deliberately suppressing material facts and deceiving the Municipal Corporation. The Court observed that suppression veri and suggestio false would constitute misconduct. The Court rejected the SLP filed on behalf of the employee because he suppressed material facts.

(19) In *Jaishri Engineering Co. (P) Ltd., Vs. Collector Of Central Excise, Bombay*, , the appellant who was guilty of fraud, collusion, willful mis-statement and suppression of fact was held not to be entitled to any relief from the Court.

(20) In the relatively recent case, *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, , the appellant obtained admission on giving false information. The question arose whether such appellants are entitled to their further continuance in the status. The Court said that normally plea of equities or promissory estoppel are put forth for continuance and completion of further course of studies and usually would be found favor with the Courts. The Courts have constitutional duty and

responsibility in exercise of the power of judicial review, to see that constitutional goals set down in the Preamble, fundamental Rights and Directive Principles of the Constitution are achieved. A party that seeks equity must come with clean hands. He who comes to the Court with false claim cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour.

(21) The English Courts have taken the same view and in cases where false assertions have been made to mislead the Court or where the petitioners have suppressed the material facts from the Court, the Courts have dismissed their petitions with costs.

(22) The English Courts also have always been extremely particular that all the statements and assertions made before the Court must be absolutely correct. Any person who is guilty of false assertion or misstatement is not entitled to any indulgence from the Court.

(23) In *The King v. Williams*, (1914) 1 KB 608, the Court held as under :

"BY Section 15 of the Bread Act, 1836, no person who shall be concerned in the business of a baker shall be capable of acting or shall be allowed to act as a justice of the peace under the Act, and if any baker shall presume so to do he shall for every such offence forfeit a penalty. A baker was charged u/s 4 of the Act with selling bread otherwise than by weight and was convicted in presence of two justices. He obtained a rule nisi for a writ of certiorari to quash the conviction on the ground that one of the justices alleged to have taken part in the conviction was a person concerned in the business of a baker. The affidavit on which the rule nisi was obtained did not state that any objection to the competence of the Court was taken at the hearing before the justices, nor did it state that at the date of that hearing the applicant was without knowledge of the facts alleged to disqualify one of the justices: Held, that this defect in the affidavit disentitled the applicant to the issue of a writ of certiorari ex debito justitiae. Held, also on the facts, that the granting of the writ being discretionary, the discretion should be exercised by refusing the writ."

(24) In *Rex v. Kensington Income Tax Commrs.* (1917) 1 Kb 486, the Court held as under:

"IF on the argument showing cause against a rule nisi the Court comes to the conclusion that the rule was granted upon an affidavit which was not candid and did not fairly state the facts, but stated them in such a way as to mislead and deceive the Court, there is power inherent in the Court, in order to protect itself and prevent an abuse of its process, to discharge the rule nisi and refuse to proceed further with the examination of the merits."

(25) I have carefully considered the facts and circumstances of the instant petition and case law which has been consistently declared by our Supreme Court and English Courts. The principle that one who approaches the Court must approach the Court with clean hands is universally accepted and adhered to.

(26) Looking to the very nature of the functioning of Courts, the Courts rightly impose implicit faith and trust in whatever is mentioned in the petition or stated in Court either by the client or his Counsel. Sanctity of this convention has to be maintained in the larger interests of all concerned. No one can be permitted to betray the confidence or shake that implicit faith. Any endeavor by any one to betray the implicit faith has to be curbed effectively. Otherwise, there is a serious danger that the entire edifice of the judicial system would be demolished.

(27) In the instant case, the petitioner had earlier approached the Court and filed a writ petition with almost identical relief. That petition was dismissed as withdrawn. Thereafter, the petitioner has now filed another writ petition. Not only that the fact of dismissal of the writ petition was withheld from the Court but deliberately an incorrect and a false statement has been made on affidavit that the petitioner had not filed any petition before this Court challenging the order passed by the respondent. The petitioner undoubtedly has misled the Court by deliberately making false assertions in the petition. The petitioner has clearly abused the process of law and is entitled to no sympathy or indulgence.

(28) When the conduct of the petitioner is examined in the light of well settled norms and accepted conventions prevalent in all civilized judicial systems, this Court is left with no option but to allow the application filed by the respondent and to dismiss the writ petition filed by the petitioner with costs, which is quantified at Rs. 3.000.00 .