

(2013) 07 DEL CK 0588

In the Delhi High Court

Case No : Writ Petition (C) 4500 of 2013

Sri Surender Singh (Ex. Constable)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2013) 07 DEL CK 0588

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rana Ranjit Singh, for the Appellant; Sana Ansari and Ms. Zubeda Begum, Advocates for R-2 and R-3, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—While seeking appointment as a Constable (Ex.) in Delhi Police the petitioner submitted a matriculation certificate issued by the Board of High School & Intermediate Education recording his date of birth as November 27, 1971. A complaint was received that the certificate produced was forged and fabricated. The department conducted a preliminary inquiry and chanced upon a Class-X examination record conducted by the Central Board of Secondary Education in the year 1978-79 which evidenced that the petitioner had cleared the Board examination as a student of Government Boys Senior Secondary School, Rampura, Delhi with his date of birth recorded as November 09, 1963. Further that the petitioner was a student of B.A. (Pass) course from the year 1981 to 1984 in Swami Shardanand College, Alipur and as per the record of the college date of birth of the petitioner was November 09, 1963. The petitioner was charged for having obtained employment on the strength of a forged certificate disclosing a wrong date of birth. Evidence was recorded by the Inquiry Officer and the report indicted the petitioner, relying whereupon the disciplinary authority dismissed petitioner from service as per order dated May 14, 1998 against which appeal filed was rejected on October 27, 1998. Challenge before

the Tribunal vide O.A. No. 934/1999 failed when the Tribunal dismissed the Original Application vide order dated February 09, 2001, and the matter rested. An FIR was also registered against the petitioner for having committed offences punishable u/s 420 /468 /471 IPC on the allegation of cheating the Government by obtaining employment on the strength of forged documents. At the trial, in view of the evidence led, the Metropolitan Magistrate convicted the petitioner for offences punishable u/s 420 /471 IPC vide order dated June 30, 2008 against which appeal filed by the petitioner succeeded before the Court of Sessions as per decision dated March 31, 2009 solely on the ground that the certificate pertaining to the Class-X examination conducted by the Board of Secondary Education, Ex. PW-1/A was not properly proved, and as we understand, the reasoning in the reverse was that it could not therefore be held that the certificate relied upon by the petitioner when he took employment, issued by the Board of High School & Intermediate Education, Uttar Pradesh was forged.

2. After he was acquitted at the criminal trial by the Court of Sessions in appeal the petitioner submitted a representation on November 15, 2010 calling upon the competent authority to re-engage him in service which was turned down by a communication dated May 10, 2011, challenge where to before the Tribunal vide O.A. No. 1980/2011 has been negated by the Tribunal on the reasoning that res judicata barred the petitioner to challenge his service being terminated and secondly that the acquittal at the criminal trial was not on merits but on account of prosecution having failed to prove Ex. PW-1/A.

3. Whereas reasoning of the Tribunal pertaining to application of the principle of res judicata is not sound because the petitioner was not reopening the matter/issue pertaining to the domestic inquiry by challenging the same on merits, which he did when OA No. 934/1999 was filed by him. The grievance of the petitioner in OA No. 1980/2011 was to the decision dated May 10, 2011 refusing to reinstate petitioner in service notwithstanding that at the criminal trial the petitioner was acquitted.

4. But the second reasoning of the Tribunal is correct. Petitioner acquittal was not on merits. An acquittal on merits would mean that all relevant and admissible evidence is duly proved and considering the same a Court acquits the accused. But where the prosecution omits to lead relevant and admissible evidence, and with respect to a document, fails to prove the same as required by law, the acquittal cannot be said to be on merits.

5. At the domestic inquiry all relevant record was considered with respect to the evidence led and especially evidence pertaining to the Class-X Board examination conducted by the Central Board of Secondary Education as also the record of Swami Shardanand College; both records establishing petitioner's date of birth being November 09, 1963. Accordingly, we dismiss the writ petition in limine without any order as to costs.