
(2009) 01 GAU CK 0013
In the Gauhati High Court

State of Arunachal Pradesh

APPELLANT

Vs

Gita Balmiki

RESPONDENT

Date of Decision : 08-01-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Temporary Service) Rules, 1965 — Rule 2, 5(1)
Penal Code, 1860 (IPC) — Section 417, 419, 420

Citation : (2009) 4 GLR 340 : (2009) 2 GLT 797

Hon'ble Judges : P.K. Musahary, J;I.A. Ansari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.K. Musahary, J.—The State of Arunachal Pradesh has preferred this Appeal against the judgment dated 11.7.2005, passed by the learned Single Judge in WP(C) 208(AP)2005, whereby and wherein the order dated 15.5.2002, passed by the Chief Engineer, RWD, Govt. of Arunachal Pradesh, Itanagar, terminating the service of the respondent writ petitioner has been quashed.

2. Heard Ms. G. Deka, learned Addl. Senior Govt. Advocate, for the State-appellant and also Mr. J. Hussain, Learned Counsel appearing for the respondent writ petitioner.

3. The respondent writ petitioner claims to have been working as Sweeper in the Office, of the Executive Engineer, Rural Works Department (RWD), Yingkiong, Upper Siang District, with effect from 2.4.1990. The respondent writ petitioner was terminated from service vide order No. RWD/ESTT/669/90 dated 15.5.2002 in purported exercise of power conferred under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965, w.e.f. 1.11.1998 on the ground that she submitted her joining report as Sweeper "by managing an appointment order fraudulently w.e.f. 2.4.1990."The respondent authorities made an enquiry into the allegation on receipt of a "complaint from one Smt. Geeta Balmiki, W/o Sri Sudarsan Balmiki. After due enquiry, it was found that the respondent writ

petitioner fraudulently procured the appointment order of the complainant lady in whose favour the appointment order was actually issued. The said complainant also make a complaint with the police the police against respondent writ petitioner and a criminal case was registered under Sections 417/419/420 of IPC and after investigation, police submitted charge sheet against her. The Judicial Magistrate, First Class, Yingkiong, vide Judgment and Order dated 25.5.2000, having found that the accused impostor Smt. Geeta Balmiki, did not commit any offence, discharged her from the aforesaid charges. However, the respondent authorities ordered departmental enquiry against the respondent writ petitioner by appointing an Enquiry Officer, who conducted the enquiry. The Enquiry Officer by his letter dated 7.9.2001 furnished a questionnaire to the delinquent respondent writ petitioner asking her to submit reply. Accordingly, the respondent writ petitioner submitted her statement alongwith a reply to the questionnaire. In the reply to the question No. 7 of the said questionnaire, which relates to as to whether the respondent writ petitioner applied for the post of Sweeper during the year 1988 against the advertisement dated 22.9.1988 as a departmental candidate through proper channel, she replied in the negative. In reply to question No. 8 of the same questionnaire, which relates to whether she received any call letter for interview from the Chief Engineer, RWD, for regular appointment, she replied in the negative. Based primarily on the reply of the respondent writ petitioner to the effect that she did not apply for the post of Sweeper and she did not receive any call letter for the interview, the Enquiry Officer, came to the finding that the respondent writ petitioner is not the actual appointee for the post of Sweeper in the RWD, Yingkiong and submitted the Enquiry Report accordingly. Thereafter, based upon the said Enquiry Report, the respondent Chief Engineer, RWD, issued the impugned termination order dated 26.4.2002. The respondent writ petitioner on the strength of the Judgment and Order dated 25.5.2000 passed by the learned Judicial Magistrate, First Class, Yingkiong, aforesaid, claimed that since the criminal court has discharged the respondent writ petitioner from the charges levelled against her, the impugned termination order should be quashed.

4. The respondent authorities contested the case by filing an affidavit-in-opposition, contending therein, amongst other that the respondent writ petitioner fraudulently received the appointment letter of another lady knowing fully well that the appointment letter was not meant for her and she had been serving by impersonation, for which, after an enquiry being made, she was removed from service. The allegation of impersonation, according to respondents, has been admitted by the respondent writ petitioner herself in paragraphs 5 and 6 of affidavit-in-opposition.

5. The learned Single Judge came to a finding that the enquiry was not conducted as required under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, since no Presenting Officer was appointed and the Enquiry Officer played the dual role of Prosecutor as well as Judge. It was also observed by the learned Single Judge that the alleged statement given by the

respondent writ petitioner was recorded in English language and there is nothing on record to show that the said statement was explained to her as she was an illiterate lady. Besides, no defence Counsel/assistant was appointed nor was the respondent writ petitioner informed about her such right under the rules. The entire proceedings, as held by the learned Single Judge, have been conducted, ignoring the basic principle of natural justice. Based on such finding, the learned Single Judge quashed the Enquiry Report as well as the impugned termination order dated 15.5.2002, directing the respondent authorities to take her back to service.

6. We have carefully gone through the averments made by the respondent writ petitioner in the writ petition filed by her. In the said petition, it is nowhere stated by her that she ever made any application for the post of Sweeper in response to any advertisement issued by the respondent Department nor was any averment made by her to the effect that she was ever asked to appear in any interview for the said post of Sweeper. Interestingly, in the writ petition, she made no averment to the effect that she was appointed by the respondent Department as a Sweeper at any point of time. What the respondent writ petitioner has stated is that a person by name Smt. Geeta Balmiki, has been appointed as Sweeper, in the Office of the Executive Engineer, RWD, Yingkiong, vide order No. RWD/ESTT/27/178/Vol.-IV dated 5.2.1990, for a temporary period of 6 months but the said person did not come to join the duty at all. This was so stated in paragraph-5 of her writ petition. Such statement, in our considered view, amounts to admission of the fact/allegation that she was never appointed as Sweeper.

7. We have gone through the records as produced by the respondent authorities at the time of hearing. It is found that an advertisement was issued on 22.9.2008, inviting applications from intending candidates for filling-up the post of Sweeper. One Smt. Geeta Balmiki, W/o Sri Sudarsan Balmiki, who was actually working as a casual sweeper under the Assistant Engineer, RWSD, Daporijo, since June 1987, applied for the said post. The department received 61 applications for 8 vacant posts of Sweeper. The Selection Board concerned conducted the interview on 29.4.1989. In the said interview, out of 61 candidates, 32 remained absent and the Board interviewed only 29 candidates and the Board recommended 20 candidates for appointment. The name of Smt. Geeta Balmiki, appeared at serial No. 9 of the select list and she was appointed vide Order No. RWD/ESTT/27/78/Vol-IV dated 5.2.1990, a common order of appointment of 6 candidates. The said appointment letter did not reach Smt. Geeta Balmiki, W/o Sri Sudarsan Balmiki, but it reached Smt. Geeta Balmiki, W/o Sudarsan Sodai, the respondent writ petitioner, on the basis of which, she joined in the service. At the time of opening of the Service Book, the Bio-data of the respondent writ petitioner was recorded in which the name of her husband has been shown as Sudarsan Sodai showing her permanent home address at, Tharura Gaon, Delhi Cantontment-10.

8. The fact that the respondent writ petitioner was not appointed as Sweeper is established from the very averments made by her in paragraph-7 of her writ petition, which may be quoted gainfully herein below:

7. That a person appointed by order dated 5.2.1990 did not join her duty and did not serve for a month or even for a week or for a day, his/her service(temporary) cannot be extended for another 6(six) months and it is automatically cancelled. Unless by working service is found satisfactory temporary service cannot be extended for another 6 months and it is automatically cancelled and such non joining duty cannot claim any benefit and having no right to make a claim/compel after lapse of 8 years since 5.2.1990 and as such enquiry on such complaint is against the principle of law and justice.

9. The question now arises is as to whether the respondent writ petitioner is entitled to protection under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, on the face of the established fact that the respondent writ petitioner was never applied for and appointed to the post of Sweeper and thus, the respondent writ petitioner is not holding any civil post under the aforesaid Rules, to be precise, whether the respondent authorities should hold the departmental enquiry against the misconduct committed by her before removing her from service. The Central Civil Service and civil post has been defined under Rule 2(c) of the aforesaid Rules, as under:

(d). "temporary service" means the service of a temporary Government Servant in a temporary post or officiating service in a permanent post, under the Government of India.

10. Since the respondent writ petitioner was not appointed, there is no scope for treating the respondent writ petitioner as a civil servant holding the civil post under the aforesaid rules. Once it is found that the delinquent is not holding any civil post, the respondent-department, is no bound to order and conduct departmental proceeding to enquire into the alleged misconduct. We could not persuade ourselves to agree with the finding and decision arrived at by the learned Single Judge requiring the respondent authorities to hold departmental enquiry as contemplated under the aforesaid Central Civil Services(Temporary Services) Rules, 1965, and to hold the impugned termination order bad in law and to set-aside the same.

11. The established fact is that the respondent writ petitioner grabbed somebody's appointment letter and joined in the post by impersonation. This may be termed as a well played fraud whereby she obtained the appointment letter fraudulently. The respondent writ petitioner is nothing but an imposter and she has no right to hold the post and take the benefit of service. The expression "fraud" has been explained by the Apex Court in its Judgment delivered in the case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, as under, paragraph-9, which is quoted herein below:

9. By "fraud" is meant an intention to deceive; whether it is from any expectation

of advantage to the party himself or from ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare case where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

12. In the same Judgment, it is further observed that "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another and it is a deception in order to gain by another's loss. Furthermore, it is observed that "fraud" as is well known, vitiates every solemn act and that "fraud and justice never dwell together". In the case of Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, it is held that it is a "fraud" in law if a party makes representations, which he knows to be false and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. We may also refer to the case of Bank of India and Another Vs. Avinash D. Mandivikar and Others, which relates to appointment obtained by a person by obtaining certificate of ST on false representation and got appointed on the basis of such certificate obtained fraudulently, has been held to be no appointment in the eye of law and upheld the termination order holding the appointment as void and non-est due to the fraud.

13. We are firm in our view that the respondent writ petitioner knowingly obtained the appointment letter fraudulently depriving the genuine candidate of the same name, viz., Smt. Geeta Balmiki, W/o Sri Sudarsan Balmiki, who applied for, appeared in the interview, got selected and appointed by the appointing authority.

14. In view of the above discussions and considerations, we come to the conclusion that the learned Single Judge committed error in law in holding that the respondent writ petitioner is covered under the Central Civil Services(Classification, Control and Appeal) Rules, 1965, and setting aside the impugned termination order on the ground of not holding the enquiry in accordance with law and principles of natural justice and come to the conclusion that the same is liable to be interfered with and quashed. Accordingly, we set aside the impugned Judgment Order dated 11.7.2005, passed by the learned Single Judge. Consequently, the impugned termination order dated 15.5.2002 is declared valid and sustainable in law.

15. The appeal accordingly stands allowed.