

(2015) 07 JH CK 0037
In the Jharkhand High Court
Case No : W.P. (S) No. 5812 of 2010

Sudhir Kumar Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (2016) 1 AJR 417 : (2015) 3 JLJR 477

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Manoj Tandon, for the Appellant; Arup Kr. Dey, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In this writ application, the petitioner has inter alia prayed for quashing/setting aside office order dated 13.4.2010 whereby the services of the petitioner has been terminated and for direction upon the respondents to reinstate the petitioner in services with all consequential benefits, including back wages from the date of termination till the date of reinstatement and further prayer has been made for declaration that the respondents have no power and authority to terminate the petitioner from the services without inquiry and without following Article 311(2) of the Constitution of India. Sans details, the facts described in the writ application, in a nutshell is that an advertisement was made on the Notice Board of the office of District Education Officer, Palamau for appointment on Class-IV post in Rajkiyakrit/Project Girls High School and in pursuance to the said advertisement, the petitioner applied for appointment on the Class-IV post. In response to his application, a call letter/interview letter was given to the petitioner to present himself in the office of DEO, Palamau on 13.8.1990 along with all educational and other certificates, as evident from Annexure-1 to the writ application. The petitioner appeared on the date and time, as scheduled, before the District Education Establishment Committee, Palamau and was selected for Class-IV post to be appointed in Rajkiyakrit/Project

Girls High School. Thereafter, appointment letter was issued to the petitioner by memo No. 4949 dated 3.9.1990 for joining in Project Girls High School, Bhandaria in the district of Palamau and the petitioner submitted his joining on 22.7.1993 in Rajkiyakrit High School, Chandwa (Palamau). The service book of the petitioner indicates that the petitioner's service was confirmed because on the 6th page in the 2nd Column of the service book, which is meant for the nature of service permanent, the word "sthayee", has been written by the competent authority while granting increment to the petitioner with effect from 5.9.1993. It also appears from the service book that the arrears of increments from 1993 to 1996 has been paid to the petitioner on 4.1.1997. Since, the petitioner was a confirmed permanent employee of the Government of Jharkhand his pay was again revised in view of 6th pay revision as per resolution of the State of Jharkhand contained in resolution No. 660 dated 28.2.2009 and the unrevised pay scale of the petitioner being Rs. 2,550-3,200/-, was revised in the pay scale of Rs. 4,440-7,440/- at the grade pay of Rs. 1,300/- and as on 1.1.2006 the basic pay of the petitioner was fixed as Rs. 6,810/-. A show cause notice was issued to the petitioner by letter dated 23.1.2001 by District Education Officer, Palamau directing the petitioner to explain as to how he has been appointed, as evident from Annexure-4 to the writ application. The petitioner through his Headmaster explained the position to the District Education Officer, Palamau as evident from letter dated 2.2.2001, vide Annexure-5 to the writ application. But, to the utter surprise and consternation, after lapse of 20 years suddenly vide impugned order vide office (sic) in memo dated 13.4.2010 has been passed by the respondent No. 4 by terminating the services of the petitioner, as per Annexure-6 to the writ application. Thereafter, the petitioner submitted his representation on 12.6.2010 requesting the Regional Deputy Director of Education, Palamau to set aside the order of termination order dated 13.4.2010 but the representation submitted by the petitioner failed to evoke any response from the respondents. Being aggrieved, the petitioner has approached this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

2. Counter affidavit has been filed on behalf of the respondents controverting the averments made in the writ application. In the counter affidavit, it has been stated that similarly situated person, namely, Manoj Kumar Upadhyay who moved before this Court in W.P.(S) No. 5510 of 2002 was dismissed by order dated 4.7.2007, vide Annexure-A to the counter-affidavit. A review petition was also filed before this Court by said Manoj Kumar Upadhyay being Civil Review No. 68 of 2007, which has also been dismissed by order dated 6.3.2008 as evident from affidavit. In the counter-affidavit, it has further been stated that on the relevant records of Project Girls High School, Bhandariya, such as, attendance register of teachers, service book, bill register, acquaintance roll etc., it has been found that at any point of time, there is no working employee in the name of Sudhir Kumar Mishra. As such, it is crystal clear that he is neither appointed nor has been paid any kind of amount from the school and a copy of the order dated

20.2.2008 has been annexed as Annexure-B to the counter affidavit. It has further been submitted in the counter-affidavit that the District Education Officer, Palamau and District Education Officer, Latehar submitted joint enquiry report with regard to the concerned offices and schools and the copy of the said enquiry report has also been forwarded to the Regional Deputy Director of Education, Palamau Division, Medninagar as evident from Annexure-D to the counter-affidavit. It has further been submitted that the Director (Secondary Education), Jharkhand, Ranchi vide his letter No. 1034 dated 25.3.2010 directed the Regional Deputy Director of Education, Palamau Division, Medininagar to terminate the services of the petitioner, in accordance with, law as evident from Annexure-E to the counter-affidavit. On 7.4.2010, the meeting of the District Education Establishment Committee was held, in which, it has been decided to dismiss the petitioner from services, as on perusal of the issue register, it is crystal clear that the appointment letter of the petitioner is forged one and the copy, of the minutes of the proceeding of the meeting of the District Education Establishment Committee dated 7.4.2010 has been annexed as Annexure-F to the counter-affidavit. Thereafter, an office order, contained in Memo Nos. 273-277 dated 13.4.2010, has been issued under the signature of the District Education Officer, Latehar, whereby the petitioner has been terminated from service with immediate effect and the copy of the said order has been forwarded to the concerned authorities, as evident from Annexure-G to the counter-affidavit. With the aforesaid submissions, it has further been submitted that the impugned order dated 13.4.2010 is legally justified and the same does not warrant interference from this Hon"ble Court and, as such, the writ application is liable to be dismissed in limine.

3. In the supplementary counter-affidavit filed on behalf of respondent No. 4, it has been submitted that the copy of the letter No. 4949 dated 3.9.1990 which has been traced out and the respondents have been surprised to see the copy of the letter No. 4949/90 dated 3.9.1990 issued by District Education Officer, Palamau which appears to be signed by Bhola Ram. That as a matter of fact there are two letters bearing the same number and date viz. Memo No. 4949 dated 3.9.1990. By one letter the petitioner was appointed and by another letter one Manoj Kumar Upadhayay was appointed, both on the post of peon in Girls High School, Bhandaria, Palamau which was a project school being run by the private managing committee and not by the State Government, a photocopy of the both the letters bearing the same memo No. 4949 dated 3.9.1990 have been enclosed as Annexure-A series to the supplementary counter-affidavit. It has further been submitted that the aforesaid so-called letter of appointment appears to be forged and fabricated and the writer of the letter Sri Bhola Ram, the then District Education Officer, Palamau was also dismissed from services for committing several fraud on different place of posting which includes illegal appointments. Further, it has been submitted that the enquiry reports also reveals that the Principal of the +2 High School has stated that the petitioner was neither appointed in the school nor he was transferred from the school and

all the aforementioned facts in the enquiry only establish irregularity, fraud and forgery of the petitioner. It has further been submitted that from the enquiry report, page-7, table of (xii), that in the District Education Officer, Palamau four persons Mr. Indradev Oraon, Mr. Rajdev Oraon, Mr. Seberinius Ekka and Mr. Pramod Kumar were appointed in the year 1986, 1985, 1988 and 1991 and the name of the petitioner is not mentioned and also as per District Education Officer, Garhwa Memo No. 233 dated 26.2.2008, the petitioner never worked at the relevant school and initial appointment/joining is non-existent.

4. Heard Mr. Manoj Tandon, learned counsel appearing for the petitioner and Mr. Arup Kr. Dey, JC to GP-I, learned counsel appearing for the respondents. Perused the records.

5. Learned counsel for the petitioner has assiduously argued that impugned order of termination vide Annexure-3 is neither sustainable in law nor in facts, since the services of the petitioner has been terminated without holding regular departmental proceeding and the impugned order of termination vide Annexure 6 was assessed on that ground. Learned counsel for the petitioner further submits that the petitioner being a Government employee is entitled for promotion (sic) under Article 311 of the Constitution of India. In the instant case, there has been infraction under Article 311 of the Constitution of India. Learned counsel for the petitioner vehemently argued that the impugned order under Annexure-6 is the outcome of complete non-application of mind and violative of the principle of natural justice and apart from being a non-speaking and reasoned (sic) order was passed. In course of argument, learned counsel for the petitioner has drawn the attention of this Court to Rule 166 of Bihar Board Miscellaneous Rules which inter alia envisages without prejudice to the provisions of the Public Servants Enquiries Act, 1850 no order of dismissal, removal or reduction shall be passed on a Government servant, unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded a reasonable opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to be taken into consideration in passing orders on the case. He shall be enquired, within a fortnight, and may be granted to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, an oral enquiry shall be conducted. At the enquiry stage, oral evidence shall be heard as and to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses called, as he may wish. Provided that the officer conducting the enquiry may for special and sufficient reasons to be recorded in writing, refuse to call a witness.

6. Learned counsel for the petitioner has strenuously urged that in the instant case, the provision has been clearly made to inquire into the facts of the case.

7. On the other hand, learned counsel for the State has dexterously countered the submissions of learned counsel for the petitioner by submitting that, the very appointment of the petitioner has been made on concocted grounds and the appointment order also appears to be forged. Therefore, no regular enquiry was required, since the principle of fraud vitiates everything. In the instant case, in view of seriousness of allegations and misconduct committed by the petitioner, the impugned order of punishment i.e. termination order has been passed by the respondent authority which ought not to be interfered by this Court.

8. After having heard the counsels at length and the documents on records, I am of the considered view that the impugned order of termination vide Annexure-6 does not call for interference due to above mentioned facts, reasons and judicial pronouncements. From the counter-affidavit, it reveals that--

(i) on perusal of the relevant documents, it has been found that at no point of time there is no working employee in the name of Sudhir Kumar Mishra therefore the very initial appointment of the petitioner has been shrouded with forged documents.

(ii) In the instant case, it appears prior to the order of termination and joint inquiry was conducted to find out the genuineness of the appointment of the petitioner which clearly reveals that the very appointment of the petitioner is forged one, as is evident from Annexures-C and D to the counter-affidavit.

(iii) So far as fraud in appointment is concerned, the Hon'ble Apex Court in the case of Devendra Kumar Vs. State of Uttaranchal and Others, held, at paragraph Nos. 13, 14, 15, 16, 17, 18 & 25 which reads as under:--

"13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud vitiates all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu vs. Jagannath.) In Lazarus Estates Ltd. vs. Beasley the Court observed without equivocation that: (QB p. 712)

"... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

14. In A.P. State Financial Corpn. vs. GAR Re-Rolling Mills and State of Maharashtra vs. Prabhu this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law".

15. In Shrisht Dhawan vs. Shaw Bros., it has been held as under: (SCC p. 553, para 20)

"20. Fraud and collusion vitiate even the most solemn proceedings in any

civilised system of jurisprudence. It is a concept descriptive of human conduct."

16. In *United India Insurance Co. Ltd. vs. Rajendra Singh* this Court observed that "fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in *M.P. Mittal vs. State of Haryana*.

17. In *Ram Chandra Singh vs. Savitri Devi* this Court held that "misrepresentation itself amounts to fraud", and further held: (SCC p. 327, para 18)

"18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. 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."

The said judgment was reconsidered and approved by this Court in *Kendriya Vidyalaya Sangathan vs. Girdharilal Yadav*.

18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India vs. M. Bhaskaran* this Court, after placing reliance upon and approving its earlier judgment in *Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi*, observed as under: (*M. Bhaskaran case*, SCC p. 104, para 6)

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus*--a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial-or investigation. (*Vide Union of India vs. Major General Madan Lal Yadav and Lily Thomas vs. Union of India*) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

Applying the aforesaid principle of Hon"ble Apex Court as indicated hereinabove and on conspectus of the facts and on careful consideration of rivalized submissions, I am of the considered view that the impugned order of punishment, Annexure-6, does not warrant any interference by this Court. Accordingly, the writ petition is dismissed being devoid of merit.