

(2011) 11 GAU CK 0059
In the Gauhati High Court
Case No : WA 18 of 2007

The State of Tripura

APPELLANT

Vs

Shri Sanjoy Deb Barma

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Motor Vehicles Act, 1988 — Section 113, 87

Citation : (2011) 11 GAU CK 0059

Hon'ble Judges : S.C. Das, J;B.K. Sharma, J

Bench : Division Bench

Advocate : A. Ghosh, GA, Tripura, for the Appellant; K.N. Bhattacharji Mr. S. Acharjee and Mr. D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This appeal is directed against the judgment and order dated 5.6.2006 passed in the writ petition being WP(C)154/1995. By virtue of the said judgment and order, the Petitioner, who is the Respondent in this appeal, is entitled to get reinstatement in service upon setting aside and quashing of the impugned order dated 15.2.1995, by which invoking the provisions of Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, his service was dispensed with on payment of one month's salary in lieu of the notice. By now, almost 17 years have gone by from the date of termination of the services of the Petitioner-respondent during which period he is not in service.

2. Shortly stated the fact leading to filing of the writ petition towards assailing the said order dated 15.2.1995 as stated in the writ petition are that the Petitioner was offered the post of Junior Operator (Pump) by the Chief Engineer, Irrigation, Flood Control and Public Health Engineering wing of the Public Works Department, Govt. of Tripura vide Office Order dated 7.5.1990. Pursuant to acceptance of offer of appointment, he was formally appointed vide Office Order dated 4.8.1990.

3. In paragraph 3 of the writ petition, the Petitioner has stated that his father is popularly known as Hiru Deb Barma although his good name is Hiran Chandra Deb Barma @ Hiralal Deb Barma. According to the Petitioner that there was mistake in the name of the village mentioned in the offer of appointment as the Petitioner actually resided in the Village Krishna Kishore Nagar. It has been WA 18 of 2007 Page 3 of 14 stated that he had submitted attestation form in respect of the employment mentioning his address as Krishna Kishore Nagar and also the good name of his father as Hiran Chandra Deb Barma. It has further been stated in the said paragraph that the Petitioner was temporarily residing in the Village Kalkalia in the year 1990.

4. The aforesaid statements made in the writ petition have been indicated in view of the stand of the Respondents that the Petitioner entered into the services of the Respondents by making fraud by way of impersonation, inasmuch as, in fact, one Shri Sanjoy Deb Barma (not the Petitioner) Son of Hiralal Deb Barma, Village - Kalikalia, PS Bishalgarh, West Tripura, was appointed to the post of Junior Operator (Pump) along with 100 others and that the Petitioner taking advantage of the identical name of the appointee joined the post with falsification of documents.

5. After joining of the Petitioner in the aforesaid service, he was issued with the Anenxure-3 Memorandum dated 25.11.1992 asking to clarify the reasons for the discrepancies noticed in the name of his father and address. For a ready reference, the said memorandum is quoted below:

URGENT

CONFIDENTIAL

No. F.4(1998)-IFC&PHE(E)/90

Government of Tripura

Public Works Department: IFC & PHE

Kunjaban: Agartala

Dated, Agartala, the 25/11/1992

MEMORANDUM

Subject: Verification of character & antecedent in respect of Sanjoy Deb Barma, Junior Operator (Pump). According to submission of offer of acceptance & production of attestation form etc., an appointment letter was issued to the following person in the post of Jr. Operator (Pump) vide this Office letter No. F.1(91)-IFC&PHE(E)/81(P-1) dated 4.8.90

Sri Sanjoy Deb Barma,

S/o. Hiralal Deb Barma,

P.O. & Vill: Kalkalia,

Tripura West.

But on scrutiny of the service books of Sri Sanjoy Deb Barma, Jr. Operator (Pump) it is observed that the service particulars have been recorded as follows:

Sri Sanjoy Deb Barma,

S/O. Late Hiran Ch. Deb Barma,

P.O. & Vill: Krishna Kishore Nagar,

PS - Bishalgarh, Tripura (W).

Now, Shri Sanjoy Deb Barma, Jr. Operator (Pump) is requested to clarify the reasons for such discrepancies within 15 (fifteen) days from the date of issue of this letter positively.

Sd/- 25.11.92

(A.K. GHOSH)

EXECUTIVE ENGINEER TO

CHIEF ENGINEER (IFC & PHE) PWD

KUNJABAN: AGARTALA

To

Sri Sanjoy Deb Barma,

Junior Operator (Pump),

C/O. Office of the Executive Engineer,

P.H.E. Div. No. III,

Udaipur, Tripura (S).

6. The Petitioner furnished the Annexure-4 reply, by which he purportedly furnished the correct address as follows:

Shri Sanjoy Deb Barma,

Junior Operator (Pump),

S/o. Late Hiran Chandra Deb Barma,

PO - Krishna Kishore Nagar,

PS- Bishalgarh, Tripura(West)"

7. In the said letter he also stated that his address was wrongly written in the offer of appointment. Thus, the Petitioner blamed the Respondents for alleged wrong recording of his address in the offer of appointment.

8. After the aforesaid reply furnished by the Petitioner, the Respondents vide letter dated 7.6.1993 once again asked the Petitioner to clarify the reason for discrepancies as was indicated in the Memorandum dated 25.11.1992. In response to the said communication, the Petitioner again reiterated his aforesaid stand vide letter dated 15.7.93 blaming the Respondents for wrong recording of his residential address as well as his father's name in the offer of appointment. He also stated that he had submitted the acceptance letter by depicting the correct residential address and the name of his father.

9. It was after the aforesaid developments, the services of the Petitioner was dispensed with by the aforementioned impugned order dated 15.2.1995 (Annexure-6).

10. In the counter affidavit filed by the Respondents, it was contended that the name of the actual incumbent of the offer of appointment is Shri Sanjoy Deb Barma, S/o. Hiralal Deb Barma of Vill WA 18 of 2007 Page 6 of 14 - Kalkalia, Tripura (West), as would be evident from the appointment order (Sl. No. 76) dated 4.8.1990. But the Petitioner S/o. Hiran Chandra Deb Barma of Krishna Kishore Nagar, Bishalgarh got himself appointed by impersonification. It was asserted in the counter affidavit that the Petitioner somehow managed to receive the offer of appointment and submitted his acceptance indicating therein his father's name as Hiralal Deb Barma, Vill- kalkalia, West Tripura, which is not his actual address.

11. The Respondents also stated in their counter affidavit that on receipt of the formal acceptance letter, the attestation form was issued in which also the Petitioner recorded the aforesaid address and not his actual address including the actual name of his father. Although the Petitioner was asked to clarify the position, he could not do so. In the mean time, verification of character and antecedent of Shri Sanjoy Deb Barma i.e. the Petitioner was called for from the District Magistrate and Collector, West Tripura, who in turn, enquired the matter through the local Police. As per the verification report, there was falsification of real identity. It will be pertinent to mention here that by letter dated 10.2.1994, Shri Sanjoy Deb Barma S/o. Hiralal Deb Barma, PO & Vill.- Kalkalia, Tripura (West) claiming himself to be the real appointee made a complaint to the Departmental Secretary alleging conspiracy hatched against him by the official staff, as a consequence of which he was deprived of appointment. In the letter, he also stated that he came to know about the impersonification only in the recent past and accordingly requested the authority to investigate the matter and then to pass appropriate order.

12. it is in the aforesaid backdrop, the services of the Petitioner was dispensed with by the impugned order dated 15.1.1995 invoking the provisions of Rule 5(1) of the CCS (Temporary Service) Rules, 1965. It will be pertinent to mention here that in the order of appointment, by which 101 candidates were appointed, it was WA 18 of 2007 Page 7 of 14 stipulated that the appointment would remain valid for one year with effect from the date of joining and that the terms and

conditions of appointment would be as in the offer of appointment including the general terms and conditions applicable to a temporary Govt. employee. This aspect of the matter is mentioned in view of the fact that there was no formal order of extension of the temporary service, although, the Petitioner continued in his service till the aforesaid impugned order was passed.

13. The learned Single Judge has interfered with the impugned order of termination primarily on the ground of being punitive in nature and that such a course of action could not have been adopted without giving an opportunity of being heard to the Petitioner. Assailing the Judgment, the State Appellants have contended that the learned Single Judge failed to appreciate the true import and purport of Rule 5(1) of the CCS (Temporary Service) Rules, 1965. It has been urged that the impersonification made by the Petitioner towards entering into the Govt. services is so glaring, the learned Single Judge ought not to have ignored the same towards adopting a mechanical approach to the matter. In this connection, the Appellants have also referred to the documents like transfer certificate and citizenship certificate furnished by the Petitioner, which according to them clearly depict the impersonification to which the Petitioner took recourse to towards entering into Govt. service. The Appellants have also urged that while invoking the provisions of Rule 5(1) of the aforesaid rules, there is no necessity to initiate a formal departmental proceeding.

14. We have heard Mr. A. Ghosh, learned State Counsel representing the Appellants as well as Mr. K.N. Bhattacharji, learned senior counsel assisted by Mr. S. Acherjee and Mr. D. Sharma, Advocates, for the Respondent-writ Petitioner. We have also carefully examined the materials available on records including the records produced by Mr. Ghosh, learned State Counsel.

15. As noted above, in paragraph 3 and 4 of the writ petition, the Petitioner has blamed the Respondents for wrong recording of the name of his father as well as the address. It has been asserted that the Petitioner had submitted his correct address as Village - Krishna Kishore Nagar and his father's name as Late Hiran Chandra Deb Barma. In this connection, his clarification furnished to the authority by his letter dated NIL of 1993 and 15.7.93 may also be referred to, in which he had categorically stated that in the acceptance letter, he had mentioned the correct address and his father's name as Krishna Kishore Nagar and Late Hiran Chandra Deb Barma respectively, but in the final appointment order, same was indicated wrongly. This assertion of the Petitioner is absolutely false as would be evident from his acceptance letter and the attestation form submitted by him, copies of which have been annexed to the counter affidavit and which are also available in the records produced by the learned State Counsel.

16. Annexure- R/1 is the acceptance letter in which the name of the Petitioner's father was indicated as Hiralal Deb Barma and the residential address as Village- Kalkalia, District - West Tripura. Likewise, in the attestation form also, which the Petitioner submitted on 25.5.1990 i.e. before appointment he had indicated his father as Hiralal Deb Barma, Village- Kalkalia, PS - Bishalgarh, West Tripura.

Thus, the Petitioner has falsely blamed the Respondents of wrong mentioning of his father's name and address, although, the fact of the matter is that the Petitioner on receipt of the offer of appointment indicating the candidate's father as Hiralal Deb Barma of village - Kalkalia responded to the same by submitting acceptance and attestation from mentioning therein his father as Hiralal Deb Barma and address as Village- Kalkalia.

17. During the course of hearing, on being pointed out the above aspect of the matter, the learned Counsel for the Respondent-writ Petitioner has submitted that such indication instead of actual address WA 18 of 2007 Page 9 of 14 and name of father was to tally with the father's name and address indicated in the offer of appointment as well as order of appointment. We are not at all impressed with this submission for the simple reason that the Petitioner never asserted as such but has stated in his clarifications that although he had submitted his correct address and father's name but the Respondents wrongly mentioned the same in the offer of appointment.

18. The file produced by the learned State Counsel contains the citizenship certificate of Shri Sanjoy Deb Barma S/o. Hiran Chandra Deb Barma of Krishna Kishore Nagar, Bishalgarh, which is dated 15.6.1988 and the School transfer certificate of the same person of the same village and with same father's name. The said certificate is dated 28.1.1988. In the citizenship certificate, the signature of the Petitioner appears, which when tallied with the acceptance letter (Annexure R/1) along with the original available in the file, clearly bears altogether a different signature of Sanjoy Deb Barma.

189 There is absolutely no manner of doubt that the offer of appointment was made in favour of the candidate, namely, Sanjoy Deb Barma of village - Kalkalia, West Tripura and not in favour of Shri Sanjoy Deb Barma, S/o. Late Hiran Chandra Deb Barma of Village -Krishna Kishore Nagar.

20. Never before, the Petitioner had ever contended that his father was known by 3 (three) names, namely, Hiran Chandra Deb Barma/Hiralal Deb Barma/Hiru Deb Barma. While in the acceptance letter and attestation form, he named his father as Hiralal Deb Barma of Village- kalkalia but in the Service Book as has been produced by the learned State Counsel, he mentioned his father as Late Hiran Chandra Deb Barma and permanent home address as Village and PO - Krishna Kishore Nagar, PS- Bishalgarh, West Tripura. Signature appearing in the said Service Book clearly bears the variation with the signature WA 18 of 2007 Page 10 of 14 appearing in the acceptance letter. On being asked to clarify the said variation, the learned Counsel for the Respondent-writ Petitioner fairly submitted his inability to do so. However, he has submitted that a fresh enquiry be conducted associating the Petitioner to find out the veracity of otherwise of the claim of the writ Petitioner that his father is also known by the name of Hiran Chandra Deb Barma and that he is also resident of Krishna Kishore Nagar, Bishalgarh and depending upon the outcome of the said enquiry, the future course of action regarding employment or otherwise of the Petitioner may be

adopted.

21. Opposing the aforesaid submission, Mr. Ghosh, learned State Counsel submits that while on the face of it, falsification and impersonation made by the Petitioner are writ large, there is no question of any further enquiry. He also submits that the approach of the learned Single Judge entering into the area of termination of service simplicitor and/or stigmatic, was wrong inasmuch as, it is not because of any misconduct attributable to the service of the incumbent, which resulted in termination of his service but the termination was in view of the fact that the very inception of the service of the Petitioner was founded on the wrong identity and impersonification, which was revealed as per the own disclosure of the Petitioner and also upon necessary verification.

22. The learned Single Judge has passed the impugned judgment and order dealing with the provisions of Rule 5(1) of the aforesaid rules in the context of the order being stigmatic. The whole approach of the learned Single Judge is in the context of misconduct purportedly attributed to the Petitioner pertaining to his service. However, as noted above, the service of the Petitioner was dispensed with not because of any misconduct but because of entering into the service by way of impersonification.

23. The decision reported in B.R. Singh and others Vs. Union of India and others, on which the learned Counsel for the Petitioner has placed reliance is of no help to his case. In that case, a particular penal action was taken by the management against the employee. His appointment was cancelled because of his conviction u/s 87 and 113 of the Motor Vehicle Act and his so called outrageous behaviour with the Dealing Assistant on the particular day. It was in that context, the Apex Court interfered with such penal action. Unlike the said case, in the instant case and as indicated above, the impugned action against the Petitioner is not on account of any conduct relating to his service but on account of falsification of truth, while entering the service. When the very foundation of his service is based on impersonification, there is no question of order of termination being stigmatic.

24. In Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, the Apex Court upholding the termination of service of the Respondent on the ground of suppression of material information in the attestation form, held that the High Court was wrong in maintaining the service of the Respondent. Similarly, in Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, dealing with the object of requiring information in various columns in the attestation form and the declaration thereafter by the candidate, it was held that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.

25. In the instant case, the Petitioner made false declaration in the attestation form as noted above. The beginning sentences of the attestation form reads as follows:

1. The furnishing of the false information or suppression or suppression of any factual information in the Attestation Form would be disqualification and as likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. Subsequent to submission of this form the details should be communicated to the Tripura Public Service Commission or the authority to whom the attestation form has been sent earlier, as the case may be failing which it will be deemed to be a suppression of factual information.

If the act that false information has been furnished on that there has been submission of any factual information in the attestation form comes to the notice at any time during the service of a person, his/her services would be liable to be terminated.

26. Above apart, when the motive behind the verification/enquiry conducted by the Respondents was not to determine any misconduct on the part of the Petitioner but merely to decide the question of retention in service, the termination cannot be held punitive. It is well settled principle of law that the principles of natural justice should not be stretched too far and the same could not be put in a straight jacket formula. In Vice Chairman, KVS v. Girdharilal Yadav reported in (2004) 6 SCC 325, noticing the fact that the Respondent had committed fraud in the matter of appointment by way of submitting fraudulent Cast certificate, upheld the cancellation of appointment.

27. It was argued by the learned Counsel for the Respondent that before arriving at the conclusion of impersonification and terminating the services of the Petitioner, he ought to have been provided with an opportunity of being heard. Suffice is to say that in case of committing fraud at the very inception of the service, the Petitioner cannot invoke the principles of natural justice. He was also given opportunity twice to clarify his position and as to what was his clarification, has been noted above. When he was asked to clarify the discrepancies in the matter of address and his father's name, he attributed the fault to the Respondents by stating that it was the Respondents who had wrongly mentioned his father's name and address as Hiralal Deb WA 18 of 2007 Page 13 of 14 Barma and village - Kalkalia instead of Late Hiran Chandra Deb Barma of Krishna Kishore Nagar, Bishalgarh.

28. As noted above, the verification of the records have revealed otherwise. Both in the acceptance letter and in the attestation form, the Petitioner named his father as Hiralal Deb Barma and address as Kalkalia. Admittedly, such a course of action was adopted by the Petitioner so as to tally with the name and address indicated in the appointment order and offer of appointment.

29. The truth came out when the aforementioned complaint was made against the appointment of the Petitioner and when the Petitioner in his Service Book divulged his actual address and father's name. As noted above, at no point of time, the Petitioner had ever indicated and / or informed that he had two different addresses and that his father was known by three names. It will be

pertinent to mention here that in paragraph 5 of the writ petition, the Petitioner himself has stated that his father's good name is Hiran Chandra Deb Barma and that he did not mention his father's name as Hiralal Deb Barma. The fact of the matter is that both in the acceptance letter and in the attestation form, the Petitioner named his father as Hiralal Deb Barma. That apart, if the good name of his father is Hiran Chandra Deb Barma, it is not understood as to why he would have named his father as Hiralal Deb Barma.

30. Because of what has been discussed above, we are of the considered opinion that the impugned judgment and order is not sustainable in law and accordingly the same is set aside and quashed upholding the impugned order dated 15.2.1995 (Annexure-6) to the writ petition.

31. At this stage, Mr. K.N. Bhattacharji, learned senior counsel for the writ Petitioner-Respondent submits that if the Petitioner can satisfy the Respondents that his father is also known as Hiralal Deb Barma in addition to his real name Hiran Chandra Deb Barma and that his present address is village - Krishna Kishore Nagar, the Respondents may be directed to take necessary follow up action towards reinstatement in service. It will be entirely upto the Petitioner to satisfy the Respondents that he is the actual appointee and that the discrepancies noted above, have got nothing to do as he is the actual appointee. If the Petitioner makes any approach the Respondents with such a plea, the Respondents may once again verify the same in association with the Petitioner and depending upon the outcome of such process, shall take appropriate follow-up action in accordance with law including such proceedings as and if warranted on facts of law.

32. Writ Appeal is allowed. There shall be no order as to costs.