

---

**(2007) 11 DEL CK 0033**

**In the Delhi High Court**

**Case No :** Writ Petition (Criminal) No. : 1986 of 2006

Ved Vrat Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

---

**Date of Decision :** 23-11-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 1 ILR Delhi 907

**Hon'ble Judges :** G.S. Sistani, J

**Bench :** Single Bench

**Advocate :** J. Buther, for the Appellant; Rajat Arora and Mr. M.K. Dutta  
Advocates, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

G.S. Sistani, J.—The petitioner has filed the present writ petition impugning the award dated 5.10.2005 passed by the Industrial Tribunal cum Labour Court - II, New Delhi in ID No. 77/2000. Some undisputed facts, leading to the present petition, are that the petitioner, while seeking employment in the Bank of India (respondent no. 3 herein) as subordinate staff (sepoy), had submitted an Educational Certificate dated 24.6.1970 wherein his date of birth was shown as 1.12.1954 and his roll no. was shown as 17170. On the basis of the age of the petitioner as exhibited in the Educational Certificate dated 24.6.1970, the bank authorities found him eligible and appointed him in the Sub-Staff Cadre w.e.f. 11.2.1980. Subsequently, when the bank authorities got the Educational Certificate dated 24.6.1970 verified it was revealed that the said certificate was fake and the information regarding the age of the petitioner provided therein was false. Accordingly, a departmental inquiry was initiated against the petitioner and a charge sheet dated 20.7.1993 was issued to him on the ground that he had submitted a forged and doctored certificate as proof of age in order to get employment in the bank. The charges levelled against the petitioner were found to be true and he was consequently dismissed from service w.e.f. 27.12.1996.

2. Pursuant to the dismissal of his services with respondent no. 3, the petitioner raised an industrial dispute. The industrial dispute was referred by the Central Government to the Industrial Tribunal cum Labour Court - II, New Delhi vide notification L-12012/42/2000 IR(B-II) dated 17.7.2000. The reference was in the following terms:

Whether the action of the General Manager, Zonal Office, Bank of India, Connaught Place, New Delhi and the Branch Manager, Bank of India, Chitranjan Park, New Delhi in dismissing from services of the bank to Shri Ved Varat Singh, Ex. Subordinate Staff w.e.f. 27.12.1996 is justified, valid and reasonable? If not, what relief and benefits he is entitled to.

3. On the basis of the facts and documents on record, the Labour Court vide award dated 5.10.2005 came to the conclusion that the petitioner had obtained employment with respondent no. 3/bank by submitting a forged certificate and thus the action of the respondent no. 3 in dismissing the petitioner from service was just, valid and reasonable.

4. It is contended by learned counsel for the petitioner that at the time of seeking employment with respondent no. 3 (hereinafter, "the respondent"), the petitioner had wrongly submitted his the date of birth as 1.12.1954 only on the instructions of the employer and not due to his fault. However, to show his bona fides the petitioner had handed over the original certificates showing the correct date of birth as 15.10.1949 to the employer. It is submitted that the petitioner had asked his original certificates be returned to him but the respondent did not return the same. The respondent conducted a formal inquiry after which the services of the petitioner were terminated. The appeal against the order of termination was also rejected on 1.8.1997. Despite legal notice no proper response was given by the respondent and the petitioner was forced to file a writ petition before the Delhi High Court, which was dismissed as withdrawn with liberty to move the Industrial Tribunal.

5. The petitioner has assailed the award dated 5.10.2005 on the ground that the Labour Court has failed to appreciate that the petitioner was discriminated by respondent as similarly situated persons were let off with a minor punishment of withholding three increments. It is contended that the Labour Court failed to appreciate the submissions of the petitioner that the petitioner had requested the respondent to return back his original certificates which were deposited by him with the respondent at the time of his interview in 1997 but the same were never returned back. It is also contended that the principles of natural justice were not followed by the respondent in dismissing the services of the petitioner.

6. Per contra, the case of respondent is that the petitioner while seeking employment in the Bank had submitted an educational certificate dated 24.6.1970, in which his date of birth was shown as 1.12.1954 and his roll number was shown as 17170. The petitioner was found eligible for the bank's employment on the basis of his age as shown in the certificate. The petitioner

was given employment on the basis of the said certificate w.e.f. 11.2.1980. The bank's authorities subsequently got the certificate verified and it was revealed that the certificate had been tampered with in which not only the roll number was changed but the date of birth was also changed from 15.10.1949 to 1.12.1954 with the object of obtaining the employment in the Bank, and thus the petitioner despite being over-age had obtained appointment in the Bank by fraudulently misrepresenting his age and by forging documents. A departmental inquiry was initiated against the petitioner and a charge-sheet dated 20.7.1993 was issued to him. A report was submitted by the Inquiry Officer dated 11.4.1994, wherein the charges levelled against the petitioner stood proved. Counsel for the respondent contends that the inquiry was conducted in consonance with principles of natural justice. Each and every opportunity was given to the claimant to prove his defence and the Inquiry Officer held the charges of submitting forged educational certificate as proved. The report dated 11.4.1994 of the Inquiry Officer was considered by the Disciplinary Authority of the Bank. A copy of the report was also forwarded to the petitioner along with a show cause notice dated 18.6.1996 bringing to his notice the proposed punishment of dismissal without notice. A personal hearing was also given to the petitioner and the Disciplinary Authority after giving personal hearing passed the orders imposing the punishment of dismissal without notice on the petitioner vide order dated 23.12.1996. Against the order of the Disciplinary Authority the claimant preferred an appeal dated 8.2.1997 to the Appellate Authority of the Bank. The Appellate Authority of the Bank again granted a personal hearing to the petitioner confirmed the order of the Disciplinary Authority vide order dated 1.8.1997.

7. Counsel for the respondent contends that the award dated 5.10.2005 has been passed after due consideration of the facts of the petitioner and the findings recorded therein are all findings of fact, which should not be interfered with in the present proceedings under Article 226 of the Constitution of India. Elaborating on the scope and extent of the jurisdiction of the Court under Article 226 in matters pertaining to departmental inquiries, counsel for the respondent has relied upon Harbans Lal Vs. Jagmohan Saran, and Sudhoo Vs. M/s. Haji Lal Mohd. Biri Works and others, . It has been held in the Harbans Lal (supra) case as under:-

The findings of both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court.

(emphasis supplied)

8. Learned counsel for respondent has vehemently contended that the petitioner was guilty of submitting a false certificate to procure employment upon verification of a school records it was found that the petitioner had submitted a false/fabricated document and had wrongly stated his date of birth as 1.12.1954 whereas his actual date of birth was 15.10.1949. The petitioner was considered and appointed on the basis of the said certificate. The counsel for the respondent has drawn the attention of the court to the form filled up by the petitioner, appended at page 48 of the paper book, wherein the petitioner has filled his date of birth as 1.12.1954 in column 3. The said form has been filled up by him and also bears his signatures. It is the document, which was annexed along with this form, which was sent for verification to the Principal/Manager Shri Nehru Smark Inter College, Saman (Mainpuri). Counsel for the petitioner relies upon the reply received from the Principal, which is dated 3.2.1992. This communication is reproduced below:-

From:-

Principal/Manager

Shri Nehru Smark Inter College

Saman (Mainpuri)

Letter No. IV/50/157/91-92

Sir,

Kindly refer to your letter No. Aka(Personnel) SK 6635 dated 14.1.92, I am to state that the certificate alongwith Mark-sheet No. 17170 submitted by Shri Ved Vrat Singh. S/o. Shri Babu Singh are correct as per cross list. But his date of birth as per certificate sent by you in the letter 1.12.1954 instead of 15.10.1949 is incorrect. Also in the certificate in your letter, the roll number has been given 37370 which is incorrect. But the subjects are correct. So, it is for your kind information.

Sd/-

Principal

3/2/92

SHRI NEHRU SAMARAK

INTER COLLEGE,

SAMAN (MAINPURI)

(emphasis supplied)

9. Counsel for the respondent has strongly urged this court that the present case

is not a fit case for exercise of judicial review in view of the fact that the petitioner has obtained an appointment with the respondent Bank by submitting a false/fabricated document. It is further urged that no lenience should be exercised by this court in favour of the petitioner. On this aspect of his contentions, Counsel for the respondent has relied upon the cases of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and Bank of India and Another Vs. Avinash D. Mandivikar and Others, , wherein the Apex Court has categorically equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. In Kumari Madhuri Patil (supra), for instance, the object for granting certain benefits to persons belonging to the Scheduled Castes and Scheduled Tribes and the approach to be adopted in matters where benefits are fraudulently obtained were highlighted, at paragraph 13 of the judgment, the Apex Court, inter alia, observed:

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude.

(emphasis supplied)

10. Counsel for the respondent has also denied the allegations of the petitioner that the original certificates were not returned to the petitioner. To substantiate his point, Counsel has relied on the evidence of the witness who had deposed before the Tribunal on 7.7.2005 and also that the Bank generally never keeps the original certificates of its employees. As regards the plea raised by the petitioner with regard to discrimination, counsel for the respondent has drawn a distinction between the case of the petitioner and that of one Suraj Prakash Bhandari, a staff member posted at the Ghaziabad branch. Counsel for the respondent submits that when the charge-sheet/show cause notice dated 18.12.1993 was issued to Shri Bhandari, he accepted and admitted the charges and therefore the punishment of stoppage of 3 stagnation increments permanently was imposed on him.

11. I have heard the learned counsel for the parties, who have taken me through the records of the case as well as perused the award dated 5.10.2005.

12. The scope of interference of writ courts with respect to quantum of punishment has been the subject matter of various judicial decisions.

13. In *B.C. Chaturvedi Vs. Union of India and others*, , it was observed:

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(emphasis supplied)

14. In *V. Ramana Vs. A.P.S.R.T.C. and Others*, , the Apex Court, while relying upon various judgments dealing with the seminal issue of scope of interference of writ courts in deciding the quantum of punishment, the Apex Court observed:

10. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

11. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

(emphasis supplied)

15. Very recently, in *U.P.S.R.T.C. Vs. Ram Kishan Arora*, , the Apex Court has opined that the High Courts while exercising powers under writ jurisdiction cannot deal with aspects like whether quantum of punishment meted out by Management to a workman for a particular misconduct is sufficient since it is for a Labour Court/Industrial Tribunal to modify the punishment that too by stating

supporting reasons.

16. Coming back to the present case, a copy of the application form which the petitioner had submitted at the time of applying for the job shows that the petitioner had filled up his date of birth as 1.12.1954. A copy of the communication received from the Principal of Shri Nehru Smark Inter College, Saman (Mainpuri), has also been filed and reproduced above. The record also reveals that a charge sheet was issued to the petitioner in fact part of the cross-examination conducted by the petitioner has also been filed. The Labour Court in its award dated 5.10.2005 has taken into consideration the documentary evidence and has categorically come to a finding that the petitioner herein has not produced any original certificate during the inquiry proceedings and thus the petitioner has not produced any document either during the inquiry or before the Labour Court to establish the fact that his date of birth was in fact 1.12.1954. Based on the confirmation from the Principal of Shri Nehru Smark Inter College, Saman (Mainpuri), the Labour Court in its award dated 5.10.2005 has come to a categorical finding that the petitioner is guilty of producing fake certificate and thus guilty of forgery and falsification and thus his services have been rightly terminated by the respondent no. 3. The findings and observations of the Labour Court on pages 8 and 9 are relevant and reproduced thus:

It transpires from perusal of the inquiry that the workman has been given sufficient opportunity to cross-examine the witnesses of the management and he was also afforded opportunity to produce evidence in defence. In case the fake certificate has been produced the only documentary evidence is the original certificate or the certified duplicate copy thereof but the workman has not produced any original certificate during the inquiry proceedings. The Principal Shri Chandra Pal Singh Rathor has informed the management that the Roll No. in the certificate of High School Examination, 1970 is 17170 and the Date of Birth is 15.10.1949. A photocopy of High School Certificate has been filed on the record and that paper has been admitted. In the High School Certificate the age of the applicant is 15.10.1949. The workman has not produced any certificate. Duplicate copy of the certificate has been obtained by the management and in that certificate also his Date of Birth is 15.10.1949. As such the workman applicant has not filed any document during inquiry or even in the Court to establish the fact that his Date of Birth is 01.12.1954 so this fact goes in rebutted that the Date of Birth of the workman applicant is 15.10.1949 whereas he has shown it as 01.12.1954 in his application form. The workman applicant could not disprove the fact that he had not made a false representation to the respondent regarding the actual Date of Birth. The management verified from certain sources the Date of Birth of the applicant and an inquiry was held and the workman applicant was found guilty of producing fake certificate and he was found guilty for forgery and falsification and was dismissed from service and the same was maintained up to the stage of Appellate Authority.

XXX XXX XXX

It was further submitted that the respondent have not provided sufficient opportunity for cross-examination of the witnesses and there is no observation of the principles of natural justice. The workman has been denied the reasonable opportunity of leading his own evidence and the inquiry is based on perverse and concocted evidence. There is no substance in this argument of the workman applicant. The sole question is regarding his Date of Birth and the workman applicant has to establish this fact by filing documentary evidence but the workman has not filed any documentary evidence regarding his age i.e. its Date of Birth 01.12.1954. In such case the principles of natural justice are not attracted. It was the duty of the workman to substantiate his stand that his Date of Birth is 01.12.1954 as alleged by him. The point of principles of natural justice and reasonable opportunity are considered when there is no concealment of fact and when it does not relate to documentary evidence. It was the duty of the workman to establish the fact that he has produced genuine certificate and his Date of Birth is 01.12.1954 as alleged. He has not proved it even before the Tribunal. As such principles of natural justice have been followed in this case. The workman applicant has been given ample opportunity to cross-examine the witnesses and to produce his own evidence. It has been held by the Hon"ble Supreme Court in 2004 (1) SLR 744 that in case appointment has been obtained on the basis of a forged certificate there is no appointment in the eyes of law. By representing falsely that he was within age, the workman has usurped the post and, thus, he has infringed the rights of the other legible candidates. He cannot be permitted to take advantage of his own misrepresentation and concealment. I have perused the proceedings of the inquiry. The inquiry has been conducted according to the principles of natural justice. The workman applicant has failed to prove the case of his claim statement.

17. It is common knowledge that in matters pertaining to employment, when information with regard to the antecedents of a candidate is called for, it is intended to verify and cross-check the the suitability of the candidate for job. If the candidate indulges in suppressio veri and suggestio falsi, he proves himself unfit to be employed. In the instant case, by producing a forged and fabricated certificate not only did the petitioner secured a job but he was also responsible in depriving of a genuine candidate to the post. The appointment of the petitioner is void and non est in the eyes of law. I am thus of the view that the punishment that has been awarded to the petitioner befits the misconduct committed by him, and thus, any modification in the award dated 5.10.2005 with respect to the quantum of punishment will only amount misplaced sympathy.

18. There is another important angle to the present case which I must delve upon before disposing of the present petition. The petitioner in his pleadings before this Court has vehemently contended that the inquiry conducted against him was after two decades of rendering service and thus the said inquiry is vitiated by mala fide on account of delay.

19. An important question that thus arises is as to whether delay in reference



can be a circumstance for mitigating the quantum of punishment awarded to a delinquent workman.

20. A similar plea about long years of service was considered by the Apex Court in *R. Vishwanatha Pillai Vs. State of Kerala and Others*, , was considered to be inconsequential. In paragraph 21 of the said case, it was observed:

The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate meant for a scheduled caste, thus depriving a genuine scheduled caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in case where the individual acquired a status by practicing fraud.

(emphasis supplied)

21. "Like a gun that fires at the muzzle and kicks over at the breach, a cheating transaction hurts the cheater as much as the man cheated." (per Henry Ward Beecher in *Proverbs* from Plymouth pulpit, 1887). *Lazarus Estates Ltd vs. Beasley* , "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud."

22. It is trite fraud is established when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, whether it be true or false. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. [See, *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, , *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, ].

23. That the petitioner has indulged in fraud is now incontrovertible in light of the findings and observations in the foregoing paragraphs. I am of the considered view that when a plea is premised on fraud, *suppressio veri* and *suppressio falsi*, the considerations are different. Therefore, when the foundation of the petitioner's appointment is itself rooted in fraud, any plea qua delayed reference

loses significance in the eyes of law. For the reasons aforesaid, I find no merit in this writ petition and the same is accordingly dismissed leaving the parties to bear their own costs.