
(2013) 7 ADJ 170 : (2013) 3 UPLBEC 2184

Allahabad High Court (Lucknow Bench)

Case No: Civil Misc. Writ Petition No. 1885 of 2011

Nupur Verma

APPELLANT

Vs

Central Ware Housing
Corporation and
Another

RESPONDENT

Date of Decision: April 15, 2013

Acts Referred:

Constitution of India, 1950 – Article 12, 16, 21#Evidence Act, 1872 – Section 58

Citation: (2013) 7 ADJ 170 : (2013) 3 UPLBEC 2184

Hon'ble Judges: Uma Nath Singh, J; Satish Chandra, J

Bench: Division Bench

Advocate: Rajesh Singh Chauhan and Vikramaditya Gupta, for the Appellant; Anish Srivastava "Lal", Hari Prasad Gupta, S.M. Royekwar and Shishir Jain, for the Respondent

Final Decision: Dismissed

Judgement

Satish Chandra, J.

By this petition, the petitioner has assailed the termination order dated 28.9.2011 (Annexure-1) passed by the opposite

party No. 2. The brief facts of the case are that the petitioner obtained a Degree known as ""Master of International Business Administration

Degree"" (in short, "MIBA"). She submitted on-line her application for the post of Management Trainee (General) for the Central Warehousing

Corporation, by mentioning her qualification as MBA (Marketing). After qualifying the written test and interview, she was selected on the post and

had undergone for the training. When she was likely to complete training, her services were terminated by the impugned order dated 28th

September, 2011 by mentioning that the petitioner is not possessing the MBA (Marketing) i.e. essential qualification. Being aggrieved, the

petitioner has filed the present writ petition.

2. With this background, Sri Rajesh Singh Chauhan, learned counsel for the petitioner submits that the qualification for the Management Trainees

(G) is MBA (Marketing). The petitioner has mentioned in on-line application, her qualification as MBA (Marketing). He submits that the MIBA

Degree is at par with MBA Degree as per the clarification dated 1.4.2008, issued by the Banaras Hindu University, Varanasi (in short, "BHU"),

from where the petitioner obtained the MIBA Degree. He further submits that the syllabus/curriculum and eligibility criteria are identical to the

MIBA and MBA Degrees. He further submits that the recruitment for the post in question will have to be made under the Regulation 20(i) of the

Central Warehousing Corporation (Staff Regulations), 1986. So, all the rules applicable to the Government Servant will apply in the present case.

3. It is also a submission of the learned counsel that interview was held on 25.10.2010 and before the aforesaid interview, her complete documents

were verified by the competent authority and she was selected. In the call letter, it was clearly mentioned that the ""candidate will not be permitted

to appear for interview, in case you do not possess requisite criteria pursuant to the qualification, age, etc."" After the interview, the offer was made

to the petitioner vide OM dated 14.1.2011, and the petitioner has joined at Central Warehousing Corporation, Shahjahanpur (U.P.). However,

the petitioner was serving in the Regional Office, Lucknow at the time of issuance of the impugned termination order. He again submitted that

before joining the service, the petitioner submitted all the original documents before the competent authority, but nowhere she was prevented to

join her duties. He relied on the ratio laid down on the following cases:

(i) Commissioner of Police, Delhi and Another Vs. Dhaval Singh, ; and

(ii) Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, .

4. Learned counsel has drawn the attention to the letter of the BHU from where the petitioner has obtained the Degree of MIBA. In the said letter,

it is clearly mentioned that the students of MIBA are eligible for financial and marketing jobs and the same is at par with MBA Degree. Moreover,

in the academic session 2010-11, the MIBA course was renamed as MBA (IB) (Annexure-7). So, the MIBA and MBA are the same specially

when both have identical syllabus and course. Thus, the petitioner is fulfilling all the minimum qualification prescribed for the post. The documents

of the petitioner were duly scrutinised/verified twice and were found in order as per the verification made by the BHU. There is no misconduct on

the part of the petitioner. The termination order dated 28.9.2011 is not only illegal, arbitrary, discriminatory and violative of Articles 12, 16 and 21

of the Constitution but also violative of relevant provisions of Regulation, 1986. So, he made a request that the impugned termination order

(Annexure-1) may kindly be set aside.

5. On the other hand, Sri Shishir Jain, learned counsel for the Central Warehousing Corporation justified the impugned order. He submits that the

petitioner had submitted self-attested documents at the time of interview as well as joining report and a certificate from the Assistant Registrar,

Faculty of Management Study, to claim that the MIBA is at par with MBA. He further submits that on-line application, the petitioner has wrongly

mentioned her qualification as MBA (Marketing), which she never possessed. In the Bio-data also she has shown her qualification as MBA

Marketing (BHU). In fact, the petitioner possesses MIBA Degree which may be equivalent to MBA but certainly not MBA. The post in question

i.e. Management Training was published by AIMA on behalf of Central Warehousing Corporation. The AIMA, after making inquiries to their

satisfaction as per the eligibility requirement, MBA Marketing Degree was laid down by the Corporation. The AIMA in consultation with the

interview Board, cleared her candidature to proceed for the interview.

6. Learned counsel further submits that proper opportunity was provided to the petitioner to represent her case before passing the impugned

termination order. The Assistant Registrar, BHU vide letter dated 19.4.2011 as stated that MIBA Course now re-named as MBA(IB) from

Academic Session 2010-11. But during the academic session (2006-08), when the Degree was awarded to the petitioner, the MIBA was not

MBA.

7. Learned counsel further submits that neither the Central Warehousing (Staff) Regulations, 1986 nor in the advertisement it was mentioned that

the candidates having equivalent or at par qualification will be eligible for appointment. Thus, the candidates who possessed the qualification of

management other than MBA and specialisation other than as prescribed in the aforesaid Regulations were not eligible for appointment.

8. It is also a submission of the learned counsel that in view of the false information supplied by the petitioner, she was called for written

test/interview. The petitioner also submitted bio-data alongwith a check list on 24.10.2010 and in both the documents, the petitioner mentioned her

qualification as MBA and not MIBA. After issuance of appointment letter as Management Trainee (General), she submitted her joining report on

1.2.2011 at Central Warehouse, Shahjanpur and, in the joining report also the petitioner has mentioned her educational qualification as MBA. The

petitioner has also enclosed attestation form, wherein also she mentioned her qualification as MBA. It has been clearly mentioned in the documents

like online application that in the event of any information being found false or incorrect at any point of time, her candidature/appointment may be

cancelled/terminated. So, the services of the petitioner were rightly terminated. For this purpose, he has relied the ratio laid down in the following

cases:

(i) Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, ;

(ii) Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, ;

(iii) State of Kerala Vs. Zoom Developers Pvt. Ltd. and Others, ;

(iv) State of M.P. and Others Vs. Shyama Pardhi etc. etc., ;

(v) Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, ;

(vi) Mohd. Sartaj and Another Vs. State of U.P. and Others, ; and

(vii) State of Rajasthan and Another Vs. Kulwant Kaur, .

9. Learned counsel further submits that the petitioner is not holding the MBA Degree, which is the essential qualification as per the recruitment rules

prescribed in the Central Warehousing Corporation (Staff Regulations), 1986 and amended vide notification dated 18.7.2008 in the Gazette of

India. The essential qualification is Degree with 1st Class MBA, specialisation in Personnel Management or Human Resource or Industrial Relation

or Marketing Management or Supply Chain Management from recognised University/Institution. The recruitment rules do not mention essential

qualification equivalent to MBA. So, she is not having the requisite qualification of being MBA and, therefore, the petitioner is not eligible for the

Management Training (G) in the Corporation.

10. Learned counsel further submits that this Hon"ble Court has passed interim orders dated 4.11.2011 and 23.1.2012, where the impugned

termination order was stayed, but the said interim orders passed by this Hon"ble Court were vacated by the Hon"ble Apex Court in Civil Appeal

No. 4138 of 2012 vide order dated 30.4.2012. So, presently, no order exists in favour of the petitioner.

11. Learned counsel also relied on the ratio laid down in the case of Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, . Lastly,

he justified the impugned termination order.

12. After hearing both the parties and on perusal of the record, it appears that the petitioner obtained a Degree of MIBA in the Academic Session

2006-08. At that time, the MIBA was not recognised as MBA. This is only in the Academic Session 2010-11, the Degree of MIBA was renamed

by the BHU as MBA. So, the petitioner was possessing the MIBA Degree which may be equivalent to the MBA but certainly not MBA. The

essential qualification for the post in question was MBA (Marketing). There was no provision mentioned for the equivalent Degree. When the

petitioner submitted her application, she specifically mentioned her qualification as MBA (Marketing). She claimed that MIBA is equivalent to

MBA (Marketing), but fact remains that she has concealed her MIBA Degree in the application.

13. The Hon"ble Apex Court, in the case of Vice-Chairman, Kendriya Vidyalaya Sangathan and another, (2004) 6 SCC 325, held as under:

That in terms of Section 58 of the Evidence Act, 1872, facts admitted need not be proved. Furthermore, the respondent herein has been found

guilty of an act of misrepresentation. In our opinion, no further opportunity of hearing is necessary to be afforded to him.

14. It is not necessary to dwell into the matter any further as, in the case of Ram Chandra Singh Vs. Savitri Devi and Others, . In Deny v. Peek,

(1889) 14 AC 337: (1886-90) All ER Rep 1 : 58 LJ Ch 864 : 61 LT 265 (HL), it was held that:

...a false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not

necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it

liable to an action of deceit.

15. Further, the Hon"ble Apex Court in the case of Union of India (UOI) and Others Vs. Alok Kumar, , held that:

Whether the de facto prejudice was a condition precedent for grant of relief and if so, whether respondents had discharged their onus.

In the submission of the appellants, there is no violation of any statutory rule or provision of the Act. Departmental inquiry has been conducted in

accordance with the Rules and in consonance with the principles of natural justice. The respondents have not suffered any prejudice, much less

prejudice de facto, either on account of retired employees of the railway department being appointed as inquiry officers in terms of the Rule 9(2) of

the Rules or in the case of Alok Kumar, because of alleged non-furnishing of CVC report. The contention is that the prejudice is a sine qua non for

violation of any disciplinary order. However, according to the respondents, they have suffered prejudice ipso facto on both these accounts as there

are violation of statutory rules as well as the principles of natural justice. In such cases, by virtue of operation of law, prejudice should be presumed

and judgment of the Tribunal and the High Court call for no interference.

16. In the instant case, it appears that the recruitment of the trainees for the post in question, the Central Warehousing Corporation has hired the

services AIMA. On the basis of information supplied by the petitioner, she was called for written test as well as for interview. The agency selected

the candidates. On 14.1.2011 offer for appointment was issued in her favour. She has joined her training on 1.2.2011 in the Central Warehouse

Corporation at Shahjahanpur. Later, she was shifted at Regional Headquarter, Lucknow of the Central Warehouse Corporation. Only when she

joined her services at Lucknow, the misrepresentation made by her was deducted and on 28.9.2011, her services were terminated after following

due procedure. Thus, services were terminated within a short period of seven months. When the period is too short than the benefit of the equity

cannot be extended.

17. Further, it may be mentioned that for the post in question, the qualification was MBA and there was no provision for the equivalent

qualification. The petitioner in her application, bio-data and attestation form in triplicate, has shown her qualification as MBA (Marketing), which

was never possessed by her. Thus, the petitioner is guilty of furnishing of false information in the attestation form where it was clearly mentioned

that "the furnishing of the false information or suppression of any factual information in the Attestation Form would be disqualification, and is likely

to render the candidate unfit for employment as Management Trainee under the Corporation".

18. In the instant case, false information was submitted by the petitioner initially in her online application and she repeated the same. Her services

were terminated after giving a show-cause notice dated 30.8.2011. Her reply dated 6.9.2011 was also considered and then only then the

termination order was passed on 28.9.2011.

19. In the case of Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, , the Hon"ble Apex Court observed that unless it is specifically

mentioned in the advertisement that the persons having equivalent or other qualification is also eligible for appointment, the post could not be filled

up by the persons having equivalent/other qualification.

20. Further, in the case of State of M.P. and Others Vs. Shyama Pardhi etc. etc., , the Hon"ble Apex Court has held that where the rules provides

for qualification as condition for appointment on the post and prescribed qualification has not been satisfied, the initial selection to under go training

is peruse illegal.

21. In the case of Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, , the Hon"ble Apex Court has held that possession of requisite

qualification is mandatory. A person not holding requisite qualification is not eligible for the post. Similar views were expressed in the case of

Mohd. Sartaj and Another Vs. State of U.P. and Others, , where the Hon"ble Apex Court observed that when there is basic lack of qualification,

the candidate could not have been appointment nor he could have been continued and the candidate could not hold any right over the post.

22. In the instant case, the candidate did not possess the requisite qualification and continuously she wrongly declared her qualification as MBA

(Marketing), which was never possessing by her. The equivalent qualification can be admitted when the rules permit the same. In the instant case,

no rule has been brought to the notice for the equivalent qualification. Though, we have sympathy with the candidate, but fact remains that her

services were terminated when she was likely to complete her training i.e. within seven months and after providing proper opportunity where her

entire submissions have been considered as mentioned in the termination order. Initially, her testimonials were verified by an out source agency i.e.

AIMA. When the misrepresentation was deducted by the employer i.e. Central Warehousing Corporation, her services were rightly terminated.

23. In view of above, the impugned termination order suffers no illegality and the same is hereby sustained alongwith the reasons mentioned therein.

In the result, the writ petition filed by the petitioner is dismissed. No cost.