
Abhishek Chaturvedi Vs Union of India and 4 Others

Civil Misc. Writ Petition No. 19814 of 2016

Court: ALLAHABAD HIGH COURT

Date of Decision: May 24, 2016

Acts Referred:

Constitution of India, 1950 - Article 226

Citation: (2016) 6 ADJ 658 : (2016) 4 AILLJ 539 : (2016) 5 AllWC 4837 : (2017) 121 ALR 61 : (2017) 153 FLR 421

Hon'ble Judges: Ashwani Kumar Mishra, J.

Bench: Single Bench

Advocate: Radhey Raman Mishra and Kamlesh Shukla, Advocates, for the Appellant; A.S.G.I., Rakesh Kumar Mishra and Vivek Ratan Agrawal, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

Ashwani Kumar Mishra, J.â€”Petitioner is aggrieved by an order dated 11.1.2016, whereby he has been removed from the services of

respondent bank. The order of removal has been passed on the ground that petitioner has suppressed his higher qualification and had knowingly

suppressed relevant fact, which dis entitled him to be retained in employment of the bank.

2. Facts giving rise to filing of this petition are that an advertisement was issued by the respondent bank for the post of Housekeeper cum Peon,

which required that candidate should be 10th standard pass, but should not have passed 12th standard. Petitioner pursuant to such advertisement

made an application claiming that he has passed high school examination only and that he has not passed class 12th. An affidavit was also

submitted by the petitioner on 15.10.2013 in this regard. It was later found that petitioner had passed 12th standard in the year 2012, but such

higher qualification which was suppressed by him. Disciplinary proceedings, consequently, were initiated against the petitioner and charge sheet

was served.

3. It was pleaded by the petitioner in disciplinary proceedings that he was in dire need of employment and various other difficulties were also

pressed. The enquiry officer after considering the evidence brought on record returned a finding that petitioner had made false statement while

applying for employment in the documents submitted. Punishment of removal from service was proposed. A notice dated 7.12.2015 was

thereafter issued to the petitioner affording him an opportunity where after the order impugned has been passed. Aggrieved by the order dated

11.1.2016, petitioner has preferred the present writ petition.

4. Learned counsel for the petitioner submits that possessing of higher qualification cannot be to any disadvantage of the bank and it is unfortunate

that such qualification is being treated as a negative attribute of petitioner. Learned counsel has placed reliance upon decisions of the Apex Court in

Life Insurance Corporation of India v. Triven Sharan Mishra, (2014) 10 SCC 346 and Commissioner of Police and others v. Sandeep

Kumar, (2011) 4 SCC 644. Learned counsel for the petitioner has also placed reliance upon a decision of the Punjab and Haryana High Court in

Ram Kumar v. Oriental Bank of Commerce, delivered in C.M.W.P. No.20961 of 2014, dated 23.7.2015.

5. A counter affidavit has been filed by the respondent bank stating that petitioner was aware about the qualification required to be possessed by a

candidate, as it was clearly specified in the advertisement itself, but petitioner, knowing fully well that he was ineligible to apply, proceeded to make

false disclosure and obtained employment contrary to the terms of advertisement. It is submitted that such act of suppression on part of the

petitioner clearly disentitles him to grant of public employment and the order impugned suffers from no illegality. It is submitted that disciplinary

proceedings were held in accordance with the procedure worked out vide memorandum of settlement dated 6.5.2002. It is also pointed out that

the qualification of class 10th has been fixed by the bank considering peculiar facts and circumstances, which is in accordance with circular of

Ministry of Finance, Department of Economic Affairs, dated 8.9.2004.

6. Learned counsel for the respondent bank has also placed reliance upon a division bench decision of this Court in Special Appeal No.491 of

2015, Ritesh Kumar Mishra v. Union of India and others.

7. I have heard Sri Kamlesh Shukla, learned counsel for the petitioner, Sri Vivek Ratan Agrawal, learned counsel for the respondent bank and Sri

Rakesh Kumar Mishra, learned counsel for the respondent Union of India.

8. From a perusal of the material brought on record of this Court, it appears that the Ministry of Finance, Department of Economic Affairs,

Government of India, had issued a circular dated 8.9.2004 to the Chief Executives of public sector banks prescribing the qualification required to

be possessed by subordinate staff of the bank. The relevant portion of the circular dated 8.9.2004 reads as under:-

2. In this context, the fact that minimum qualifications for joining armed forces is matriculation and the banks are finding it difficult to appoint ex-

servicemen for the post of armed guards as per the existing qualifications for subordinate staff, as also keeping in view representations received

from certain banks demanding certain leverage with regard to the minimum marks or stipulation of special qualifications, the matter has further been

explained in consultation with IBA and it has been decided that the following qualifications may be stipulated by the banks in their recruitment

policy for appointment of employees/officers through direct recruitment:

(1) Subordinate Staff-A pass in Eighth standard or its equivalent but the candidate should not have passed 10+2 examination or its equivalent.

(2) Clerical Cadre-Minimum qualification of pass in 10+2 examination or its equivalent.

(3) Officer Cadre-Minimum qualification Graduate.

9. It is in furtherance of such direction that in the advertisement issued by the bank a specific provision was made that applicant must be high

school, but should not have passed class 12th. This stipulation in the advertisement was within the knowledge of petitioner. In case petitioner felt

that such restriction on possessing higher qualification was arbitrary, it was open for him to have challenged the advertisement or to have taken

recourse to law, but this was not done. Petitioner instead opted to apply by stating that he only possesses qualification of high school and has not

passed intermediate. An affidavit was also given before the bank, which has been annexed along with counter affidavit, dated 15.10.2013. The

contents of affidavit reads as under:-

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mlds le0 mPprj dksbZ ijh{k ikI@mRrhZ.k ugha dh gSA

eSa ;g Hkh ?kks""k.kk djrk@djr gwWa fd esjs }kjk nh x;h lkjh lwpuK;sa tkudKjh ds vuqlkj iw.kZr;k IR; gS rFkk

fdlh Hkh Lrj ij ;fn esjs }kjk nh xBz Fkh lwpuK vIR;@xYr ik;h tkrh gS rks esjh mEehnokjh jn~n djs rFkk esjs

fo:) dkuwuh dk;Zokgh djs dk lokZf/kdkj cSad ds ikI lqjf{kr gksxkA

10. Petitioner, therefore, has made a declaration, well within his knowledge that he possesses qualification of high school and that he has not

passed intermediate, and that if it is found at any stage that this declaration is false, then his candidature may be cancelled. It is not in dispute that

petitioner had passed intermediate examination in the year 2012 and the declaration made was false, well within his knowledge. On the basis of

such false disclosure, petitioner has proceeded to participate and has secured employment. It seems that at the time of verification of records, it has

subsequently came to the notice of bank that petitioner has made false disclosure. It is for such reason that the bank has proceeded to remove the

petitioner from service.

11. A division bench of this Court in Ritesh Kumar Mishra (supra) had an occasion to deal with an identical dispute and the judgment of learned

Single Judge, holding removal from service to be valid in such circumstances, has been affirmed. Para 2 to 4 of the judgment is reproduced:-

2. An advertisement was issued on 27 June 2013 for recruitment to the post of Housekeeper-cum-Peon. The appellant filed a declaration to the

effect that he was not a candidate who had passed his 10+2/intermediate examination. In the declaration dated 1 October 2013, the appellant

stated that he had passed his high school examination in 2008 and had not qualified at the intermediate examination. An affidavit was also filed to

that effect on 3 October 2013. The facts which were stated in the declaration and in the affidavit constituted a fraudulent misstatement inasmuch as

it is not in dispute that the appellant had passed his intermediate examination and was not eligible under the terms of the advertisement. On this

ground, disciplinary proceedings were held and the appellant was removed from service. The appellant filed a writ petition seeking to challenge the

order of termination and seeking his reinstatement in service. The writ petition was dismissed by the learned Single Judge on 22 May 2015. The

learned Single Judge has held that there was clear concealment of facts on the part of the appellant and, hence, he was dis entitled to relief. It was

urged on behalf of the appellant that the first respondent could not have imposed a condition to the effect that a candidate should not have passed

the intermediate examination. The learned Single Judge held that the appellant had laid no such challenge to the advertisement dated 27 June 2013

in which the condition was imposed and that the termination from service was not for breach of the condition of the advertisement but for the

concealment of material facts.

3. The submission of the learned counsel for the appellant based on a judgment of the Supreme Court in Mohd Riazul Usman Gani v. District

and Sessions Judge, Nagpur (AIR 2000 SC 919), is that the qualification prescribed is a minimum qualification and a higher qualification could

not disqualify a candidate from obtaining the job. The difficulty in accepting the submission is that the appellant responded to the advertisement and

participated in the process of selection. The condition imposed in the advertisement was not challenged at any stage. The appellant filed an affidavit

and a declaration which were admittedly false and contrary to facts which were in the knowledge of the appellant. Though the appellant had

passed the intermediate examination, he stated in his declaration that he was only a high school passed candidate. In his affidavit, he stated that he

has not passed the intermediate examination. A candidate who has made a fraudulent misrepresentation cannot be heard to now challenge the

terms of the advertisement. A disciplinary enquiry was held on a charge of fraudulent concealment which has been duly found to be established.

Hence, the dismissal of the writ petition by the learned Single Judge does not warrant any interference.

4. The special appeal is accordingly dismissed. There shall be no order as to costs.

12. Learned counsel for the petitioner, on the other hand, has relied upon a judgment of the Apex Court in Life Insurance Corporation of India

(supra). In that case also, respondent before the Supreme Court has applied for recruitment to the post of Peon and had concealed his higher

qualification of graduation. The High Court proceeded to allow the writ petition by observing that restriction imposed in possessing of higher

qualification is violative of Article 14 of the Constitution of India. It was also noticed that in similar circumstances other similarly placed persons

were awarded lesser punishment and consequently the writ petition was allowed. Para 12 to 14 of the judgment in Life Insurance Corporation of

India is reproduced:-

12. However, on behalf of the appellants it is contended that suppression of material information and making false statement to secure the

employment, is a serious offence to attract the dismissal of service. In this connection, learned senior counsel for the appellants referred to the case

of Kendriya Vidyalaya Sangathan and Ors v. Ram Ratan Yadav (2003) 3 SCC 437. But in our opinion, the aforesaid case referred on

behalf of the appellants cannot be applied to the present case for the reason that in the said case the employee had concealed the facts relating to

his character and antecedents. In said case, the employee who was selected for the post of a Teacher suppressed the information that a criminal

case relating to offences punishable under sections 323, 341, 294, 506B read with section 34 of Indian Penal Code was registered against him. As

such the facts in the present case cannot be equated with the case referred.

13. From the papers on record before us, it appears that for mentioning less qualification to secure the job, similarly situated another employee

(one Daluram Patidar) was let off by the Life Insurance Corporation of India by awarding punishment of stoppage of increments for two years with

cumulative effect. We are of the opinion that the High Court has rightly taken note of said fact while allowing the writ petition, and directing the

employer to consider the imposition of similar penalty after reinstatement of the writ petitioner.

14. Therefore in view of the above discussion, we do not find any sufficient reason to interfere with the impugned order passed by the High Court.

Accordingly, the appeal is dismissed. No order as to costs.

13. The primary reason assigned in the decision of the Apex Court to approve the judgment of the High Court was that similarly placed employee,

namely Daluram Patidar, was let off by the employer by awarding punishment of stoppage of two increment for two years with cumulative effect,

but different punishment was granted to the petitioner thereunder, which was held to be arbitrary.

14. In the facts of the present case, no such plea of discrimination has been alleged and proved. In such circumstances, the facts in the case of Life

Insurance Corporation (supra) are distinguishable.

15. The judgment of the Apex Court in the case of Commissioner of Police (supra) may not help the cause of petitioner inasmuch as the

subsequent judgment of the Apex Court in Devendra Kumar v. State of Uttaranchal and others, delivered in Civil Appeal No. 1155 of

2006, dated 29.7.2013, has been pleased to hold that an act of suppression in itself constitutes moral turpitude, for which employer would be well

within its right to remove the employee concerned. Para 24 of the judgment is reproduced:-

24. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he

had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts

to moral turpitude and is separate and distinct from the involvement in a criminal case.

In view of the above, the appeal is devoid of any merit and is accordingly dismissed.

16. The question as to whether the condition imposed of not possessing intermediate qualification is valid or violates Article 14 of the Constitution

of India may not be gone into at the instance of petitioner, as no challenge has been laid to it by the petitioner before applying for the post, and it is

only when petitioner was found to have suppressed material facts and an action as per law has been taken that petitioner has now challenged

relevant clause of the advertisement. In case such a challenge is entertained, it might otherwise infringe Article 16 of the Constitution of India, as

similarly placed persons may not have applied for the post, knowing that they were ineligible, but the petitioner would be rewarded for making a

false disclosure. This Court may not be justified in coming to the rescue of petitioner at the cost of denial of equal opportunity to other similarly

placed applicant. The bank would also be justified in taking an action against the petitioner, as a person who can make a false disclosure at the

stage of entry into the service itself, may not be reliable during course of employment as well, and apprehension expressed by the employers of loss

of confidence cannot be lightly brushed aside.

17. In view of the judgment of the division bench of this Court in Ritesh Kumar Mishra (supra), I am of the opinion that petitioner is not entitled to

grant of any relief by this Court.

18. Writ petition, consequently, fails and is dismissed.