

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 672/2014

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Decided on : 19.11.2014

IN THE MATTER OF:

BALJIT SINGH DAHIYA

..... Petitioner

Through: Mr. Vimal Wadhawan, Advocate with
petitioner in person

versus

B.S.E.S.RAJDHANI POWER LTD. & ANR.

..... Respondents

Through: Mr. S.N.Choudhri,
Ms.Shruti Choudhri & Mr.Varun Rajpal,
Advocates for R-1
Ms.Meenakshi Midha and
Mr.Siddhartha Nagpal, Advocates for R-2

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The petitioner has filed the present petition praying *inter alia* for issuance of directions to the respondent No.1/BSES RPL to fix his salary on the basic pay, equivalent to one Mr.D.K.Sharma, w.e.f. 1.1.1994, with all the consequential benefits.
2. A counter affidavit was filed by the respondent No.1/BSES RPL wherein, it was averred that the present petition is a gross abuse of the process of law inasmuch as the petitioner who had availed of SVRS on 31.12.2003, has concealed material facts from the court. Learned counsel for the respondent No.1/BSES RPL had stated that

earlier hereto, the petitioner had filed a writ petition, registered as WP(C) No.934/2013, seeking time-bound promotion to the scale of Executive Engineer w.e.f. 7.10.1992 and the scale of Superintending Engineer w.e.f. 7.10.2000. Vide judgment dated 18.2.2013, the aforesaid petition was dismissed by the learned Single Judge on the ground of delay and laches. Aggrieved by the said dismissal order, the petitioner had filed an intra-court appeal, registered as LPA No.326/2013. The said appeal was also dismissed by the Division Bench along with other connected appeals by a common judgment and order dated 6.5.2014, reported as **210(2014) DLT 470(DB)** and holding *inter alia* that the writ petition filed by the petitioner and other similarly placed employees suffered from gross and unexplained delay and laches of more than twelve years and that apart, the petitioner's claim for time bound promotion, was not maintainable as he had taken voluntary retirement in the year 2003, which was without any protest and had resulted in cessation of the jural relationship. Further, the Division Bench observed that while filing the writ petition, the petitioner was guilty of deliberately concealing the most important fact of his having taken voluntary retirement. As a result, his appeal was dismissed as an abuse of the process of law, with costs quantified at ₹25,000/-.

3. It was urged by learned counsel for the respondent No.1/BSES RPL that drawing an analogy from Order II Rule 2 CPC, the petitioner had an opportunity to ask for the relief as prayed for in the present petition with regard to the purported anomaly in his salary when he had filed the earlier petition and having failed to do so, or reserve his right to file a separate petition for additional relief arising from the same cause of action, the present petition ought to be dismissed on the principles of constructive *res judicata*.

4. Learned counsel for the petitioner had stated that aggrieved by the decision of the Division Bench taken on 6.5.2014, the petitioner had preferred an appeal before the Supreme Court but the same had yet to be listed for admission.

5. As it transpired that the common thread in all the aforesaid litigations initiated by the petitioner and the present petition is Mr.Vimal Wadhawan, Advocate, he was asked to explain as to why had the petitioner filed a separate petition for relief arising out of his service with the very same employer,. i.e., respondent No.1/BSES RPL, when he had already approached the court in the earlier proceedings asking for reliefs arising in the course of his employment, with BSES RPL and particularly when he had opted for and was granted voluntary retirement as long back as in the year 2003, and he had elected not to litigate all this while.

6. Learned counsel for the petitioner had offered a lame excuse to the effect that the cause of action in the present case is different and that the petitioner is well entitled to approach the court for seeking relief against the respondents, by filing separate petitions based on different sets of causes of action arising out of his tenure of employment with the same employer. He however did not dispute the fact that the petitioner did not refer to the earlier writ petition filed by him in this Court, either at the time of filing the present petition on 27.1.2014, or even after the said petition was permitted to be amended, vide order dated 12.3.2014. Pertinently, by March 2014, when the petitioner had filed an application seeking amendment to the writ petition, the appeal preferred by him against the order dated 15.2.2013 passed by the learned Single Judge in W.P.(C) No.934/2013, was pending consideration before the Division Bench.

7. In view of the petitioner's aforesaid conduct amounting to concealment of material facts, it was deemed appropriate to direct him to file an affidavit explaining his stand. The petitioner was also directed to explain the delay in approaching the court for the relief for fixation of his salary for the year 1994 and onwards, which is after the passage of over two decades from the date the cause of action had

arisen in his favour and after over a decade of his opting for the SVRS.

8. Pursuant to the aforesaid order, an affidavit has been filed by the petitioner, under index dated 12.11.2014 wherein, it has been averred that against the order dated 15.2.2013 passed in WP(C) No.934/2013 filed by him for grant of time bound promotion scale, the petitioner had filed an appeal which was dismissed by the Division Bench on 6.5.2014, holding *inter alia* that once a person retires under SVRS, he is not entitled to claim his past service benefits. It is averred that aggrieved by the said decision, the petitioner had filed an appeal before the Supreme Court that was taken up for hearing on 13.10.2014. On the said date, the petitioner's counsel had sought leave to withdraw the said appeal, which was accordingly dismissed as withdrawn. It is now stated that after losing the legal battle on the issue of retired officers' rights to claim their past service benefits after opting for retirement under SVRS, the petitioner may be permitted to withdraw the present petition unconditionally.

9. Before dwelling any further on the facts of the case and proceeding to examine whether the petitioner had discharged his obligation as a litigant when approaching this Court for redressal of his grievance as a consequence of his service with the respondent No.1/BSES RPL, it is relevant to consider the principles that would apply to a case, where the allegation is that the petitioner is guilty of

suppression of material facts and has not approached the Court with clean hands, thereby abusing the process of the Court.

10. The first principle is that a party, who approaches the Court with unclean hands, is liable to be non-suited on account of failure to make candid disclosure of the relevant and material facts which itself invite dismissal of the present at the threshold without considering the merits of the claim. If a petitioner suppresses material facts or does not reveal all the facts before the Court that are necessary for deciding the *lis*, it would amount to an abuse of the process of the Court. It is the obligation of a litigant to honestly disclose the true and correct facts to the Court and failure to come clean would amount to suppression and concealment of material facts. On the aspect of "full and true disclosure of facts", there are a number of judicial pronouncements, including R. vs. Kensington Income Tax Commissioner reported as **(1917) 1 KB 486**, Tilokchand Motichand vs. H.B. Munshi reported as **(1969) 1 SCC 110**, Chandra Shashi vs. Anil Kumar Verma reported as **(1995) 1 SCC 421**, Prestige Lights Ltd. vs. State Bank of India reported as **(2007) 8 SCC 449**, Abhyudya Sanstha vs. Union of India reported as **(2011) 6 SCC 145**, State of M.P. vs. Narmada Bachao Andolan reported as **(2011) 7 SCC 639**, Kalyaneshwari vs. Union of India reported as **(2011) 3 SCC 287**, A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu

Madalaya Nandhavana Paripalanai Sangam reported as **(2012) 6 SCC 430**.

11. In the case of K.D. Sharma vs. SAIL reported as **(2008) 12 SCC 481**, the Supreme Court had observed that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, the petition may be dismissed at the threshold without considering the merits of the claim.

12. In the case of Kishore Samrite vs. State of UP and Ors. reported as **(2013) 2 SCC 398**, while examining a case where allegations were levelled against the petitioners therein that they were guilty of suppression of material facts and having approached the Court with unclean hands, had abused the process of Court, the Supreme Court had taken pains to cull out the principles that should guide the courts while examining whether a litigant has discharged his obligations

when approaching the Court for redressal of his grievance. Some of the broad principles laid down are as below:-

“32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with “unclean hands”. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

32.2. The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the *lis* well justifies it."

13. Thus, it is clear that when a party approaches the High Court and seeks to invoke its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on behalf of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter.

14. Coming back to the facts of the instant case, the explanation offered by the petitioner for explaining the failure on his part to refer to the previous litigations initiated by him against the respondents is found to be quite unsatisfactory. By the time the present petition was filed on 17.1.2014, the petitioner was well aware of the fate of his earlier petition. Subsequently, on 10.3.2014, the petitioner had filed

an application for seeking amendments of the present petition and by then, he had taken steps to file an appeal against the rejection order passed by the learned Single Judge in W.P.(C) 934/2013. However, he chose not to apprise the court about the filing of the said appeal or that it was pending adjudication before the Division Bench.

15. Pertinently, vide judgment dated 6.5.2014, the Division Bench had dismissed the petitioner's appeal and the present case was listed before this court for further proceeding one week thereafter, on 13.5.2014, but even on the said date, the petitioner did not reveal to the court the fact that the aforesaid appeal had been dismissed with scathing comments against him. Only when this matter was taken up on 10.9.2014, that at the instance of the learned counsel for the respondent No.1/BSES RPL the history of the earlier litigation between the parties came to be revealed to the court for the first time and it was in those circumstances that the petitioner was called upon to explain his conduct.

16. When the matter was taken up for hearing on 18.11.2014, the petitioner had appeared in person and said that he had acted on the legal advise of his counsel. But as an adjournment was sought by him on the ground that his counsel was unavailable, he was duly accommodated and the matter was adjourned for today.

17. Today, both the petitioner and Mr. Wadhawan, Advocate are present. Learned counsel concedes that it was on account of an error of judgment on his part that at the time of filing the first petition he did not advise his client to seek all the reliefs that were available in the course of his employment with the respondent No.1/BSES RPL. It is also not denied that the present petition does not mention the earlier round of litigations initiated by the petitioner for claiming grant of time bound promotion scale from the respondent, when the said facts ought to have been brought to the notice of the court at the earliest, or at least by 13.5.2014, the date when the matter was taken up and adjourned to 10.9.2014 as by that time, the petitioner had suffered adverse orders in his appeal.

18. On a query posed to learned counsel for the petitioner as to whether the costs of ₹25,000/- imposed on the petitioner by the Division Bench vide judgment dated 6.5.2014, have been paid to the other side, he states on instructions that the same have not been paid and adds that it is for the respondents to recover the same by following the due process of law.

19. While deprecating the conduct of the petitioner as noted above and the irresponsible manner in which the learned counsel has sought to discharge his duty, towards both, his client and the court, the petitioner's request for unconditional withdrawal of the writ petition is rejected. Instead, on account of the deliberate attempt on

the part of the petitioner of withholding material information from the court and failure to come clean, it is deemed appropriate to dismiss the present petition as a gross abuse of the process of law with costs of ₹25,000/-. The costs shall be paid to the respondents through counsel in equal share, within three weeks. It is further directed that if the petitioner files any petition in this court in future against the respondents, the same shall be entertained by the Registry only after he is able to show proof of deposit of costs imposed in the present proceedings.

NOVEMBER 19, 2014
mk/rkb

(HIMA KOHLI)
JUDGE