

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16882 of 2009 (O&M)

Date of decision: 15.1.2015

Mahender Singh

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sunil K. Bhardwaj, Advocate for the petitioner.
Mr. Jasmeet Singh Bedi, Addl. Advocate General, Haryana.
Mr. R. K. Malik, Senior Advocate with
Mr. Tej Pal Dhull, Advocate for respondent No. 4.

None for respondent No. 5.

Mr. Wazir Singh, Advocate for
Mr. Harish Bhardwaj, Advocate for respondent No. 6.

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Rajesh Bindal J.

1. The petitioner, who was one of the candidates for the post of Family Welfare Extension Educator, has filed the present petition challenging the selection and appointment of respondents No. 4 to 6, being not eligible. Further prayer has been made for considering the candidature of the petitioner, who was at Sr. No. 2 in the waiting list.

2. Learned counsel for the petitioner submitted that Haryana Staff Selection Commission (for short, 'the Commission'), vide advertisement No. 9/2007 dated 22.7.2007, advertised 63 posts of Family Welfare Extension Educator. The educational qualifications required were Graduate from a

recognised University; two years experience relating to Community Education in Health and Family Welfare and knowledge of Hindi/Sanskrit upto Matric standard. The last date fixed for submission of applications was 21.8.2007. The petitioner applied for the post well within time. His performance in interview was also upto the mark, but still finding his name not in the select list but in waiting list, the petitioner was surprised. The candidate at Sr. No. 1 in the waiting list was already working as Multipurpose Health Worker, hence, not willing to join on the post. As there were some other candidates also, who may have not joined, the petitioner initially waited for the appointment, however, did not receive any communication. Thereafter, he came to know that certain candidates, who were not eligible, as lacking in requisite qualification in the form of experience, had been offered appointment. He referred to a communication dated 9.6.2008 from Civil Surgeon, Rohtak to Director General, Health Services Haryana, Panchkula, wherein it was mentioned that experience certificate produced by respondent No. 4-Ajit Singh son of Umed Singh from Haryana Gyan Vigyan Samiti, Rohtak (hereinafter referred to as 'the Samiti') was a bogus document, as neither the Secretary of the aforesaid Samiti had signed the same nor Ajit Singh ever worked there. Despite this fact, he was issued appointment letter on 31.7.2008. Thereafter, Ajit Singh produced another certificate of experience dated 10.7.2007 from Mansrover Hospital, Rohtak, where he worked as OT Assistant and Ward Staff and OPD Helper on a salary of ₹ 2,200/- per month. On verification, the certificate was found to be valid. He submitted that once the certificate produced by Ajit Singh along with the application was found to be forged, the appointment of respondent No. 4, being ineligible, deserves to be set aside.

3. As regards respondents No. 5 and 6, learned counsel for the petitioner, while referring to communication dated 19.6.2008 from Civil Surgeon, Sonapat to Director General, Health Services Haryana, Panchkula, submitted that even the experience certificates produced by them were found to be bogus. Both the aforesaid respondents were also lacking in essential qualification, hence, even their appointments also deserve to be set

aside. He further submitted that the petitioner, being at Sr. No. 2 in the waiting list, deserves to be offered appointment after setting aside the appointment of respondents No. 4 to 6.

4. Learned counsel for the State submitted that appointments were offered to the candidates after verification of the certificates produced by them. The original application submitted by respondent No. 4 was produced in court, in which only one experience certificate was annexed by him, which was found to be fake. Second experience certificate, which is claimed to have been verified and found to be genuine, was not annexed with the application. Learned counsel for the State did not dispute the fact that on verification, the certificate produced by respondent No. 4 along with the application was found to be fake, however, the second experience certificate was found to be genuine. Regarding verification of the genuineness of the experience certificates produced by respondents No. 5 and 6, learned counsel for the State could not dispute the report submitted by Civil Surgeon, Sonapat vide communication dated 19.6.2008.

5. Learned counsel for respondent No. 4 submitted that respondent No. 4 had attached two certificates with the application. No doubt, one of them was found to be fake but still the fact is that respondent No. 4 had been serving with the Samiti, however, he is not aware of the fact that any record was being maintained by the Samiti or not. The second experience certificate on verification was found to be genuine. The same is dated 10.7.2007, i.e., before the last date for submission of applications. He further submitted that appointment of respondent No. 4 was subject to verification of the certificate and in fact, he joined on 30.12.2008 after the certificate was duly verified. He had been working since December, 2008 to the entire satisfaction of the authorities without any complaint, hence, at this stage, it will be too harsh to set aside his appointment.

6. None appeared for respondent No. 5 despite service. No reply has also been filed.

7. Learned counsel for respondent No. 6 submitted that at the time of joining of respondent No. 6, the certificates were duly verified by Medical Officer, CHC, Pehowa, District Kurukshetra and he found all the

certificates to be genuine. An affidavit to that effect was submitted by him. It is claimed that the same was with reference to a communication dated 31.8.2009 from Director General, Health Services Haryana, Panchkula to all the Civil Surgeons. He further submitted that the experience certificate furnished by respondent No. 6 was genuine. Merely because the Club was not maintaining proper records, respondent No. 6 cannot be made to suffer. He is working to the satisfaction of the authorities for the last more than six years.

8. Heard learned counsel for the parties and perused the paper book and the official record produced.

FACTUAL ASPECT

9. The case in hand is a glaring example of misuse of process by the persons, who had access to the corridors of power.

10. Vide advertisement No. 9/2007, 63 posts of Family Welfare Extension Educator were advertised on 22.7.2007. The last date for submission of applications was 21.8.2007. The essential qualifications prescribed in the advertisement were as under:

- “E.Q. i) Graduate of a recognized University.
- ii) Two years experience relating to Community Education in Health and Family Welfare.
- iii) Knowledge of Hindi/Sanskrit upto Matric Standard.”

11. Challenge to the selection and appointment of respondents No. 4 to 6 has been made by the petitioner on the ground that they did not possess requisite experience, as the certificates of experience produced by them were found to be fake on verification.

12. As far as respondent No. 4 is concerned, from the record produced by the State, the original application submitted by him was perused. There is note with red ink by the scrutinising officer “experience of institute not regd./recognised”. In column No. 12, respondent No. 4 furnished the following information:

“12. Experience Years [3] Months [4] Days []

Name of Organization – Haryana Gyan Vigyan Samiti

Total Salary Rs. -----”

13. A handwritten certificate annexed with the application from Haryana Gyan Vigyan Samiti, Rohtak dated 15.7.2006 mentioned that respondent No. 4 had voluntarily participated in the programmes organised by the Samiti for the last 3 years. He had been committed to the cause of education, literacy and various issues of social relevance. He had been educating the society on these issues. The same contained reference No. HGVS/RTK/SPL-1 purported to have been signed by the Secretary of the Samiti.

14. Another certificate from the same Samiti with same number and same date but typed is also on file, where the period of working of respondent No. 4 has been mentioned from 5.6.2003 to 15.7.2006 with monthly salary of ₹ 2,400/-. There was contradiction in both the certificates as in the handwritten certificate, specific period and the salary had not been mentioned. The aforesaid experience certificate was found to be fake on verification by Civil Surgeon, Rohtak, as is evident from communication dated 9.6.2008 (Annexure P-5). The relevant part thereof is extracted below:

“3. Mentioned at Sr. No. 11-Regarding the experience certificate of Sh. Ajit Singh son of Sh. Umed Singh, the Secretary, Haryana Gyan Vigyan Samiti, Rohtak has given in writing on their letter pad that the experience certificate submitted by the applicant is bogus and this certificate has not been signed by me and nor the applicant has ever remained the worker of their institution.”

15. In the communication from the Samiti dated 23.5.2008, it was clearly stated that the Samiti never issued the certificate dated 15.7.2006, the same was bogus. The Secretary had not signed the same. Ajit Singh son of Umed Singh never worked with the Samiti. The Samiti is a self-financed social and cultural institution, where the workers work on non-payment basis. The relevant part of the aforesaid communication from the Samiti is extracted below:

“You have sought the information regarding the certificate of Ajit Singh son of Sh. Umed Singh village Bhali Anandpur. Said experience certificate is issued by Haryana Gyan Vigyan Samiti dated 15 July, 2006. We have seen this certificate. This is bogus. We have not issued this certificate. And the Secretary has also not signed this certificate. So, these certificates have not been issued from Haryana Gyan Vigyan Samiti, Rohtak. And nor Ajit Singh son of Sh. Umed Singh is our worker. Haryana Gyan Vigyan Samiti is a self financed social and cultural institution. Where all the workers works on non payment basis.”

16. Dr. Narveer Singh, Director General, Health Services Haryana, Panchkula stated in his reply dated 27.1.2010 that respondent No. 4 was issued appointment letter on 31.7.2008. However, the appointment letter, as is evident from the original record produced by the State, is dated 22.12.2008. The appointment of respondent No. 4 is sought to be justified on the basis of experience certificate produced by respondent No. 4 with his reply as Annexure R-4/1, wherein it is claimed that respondent No. 4 was working in Mansrover Hospital, Rohtak from 5.6.2005 till the date of issuance of certificate, i.e., 10.7.2007, where he was working as OT Assistant and Ward Staff and OPD Helper with monthly salary of ₹ 2,200/-, which reads as under:

“ TO WHOM IT MAY CONCERN

It is certified that Mr. Ajit Singh S/o Sh. Umed Singh, resident of Bhali Anandpur, Distt. Rohtak is serving in my Hospital from 05.06.05 to till date. He is working as OT assistant and Ward Staff & OPD helper. He is getting Rs. 2200/- per month as salary. He is also working as Educator to Educate the Society and all the patients & their attendents to get prevental for diseases at the earliest possible. So that disease can be prevented & treated at the early stage. He is working as Volunteer in health programme organised by hospital like free camps. He is liked by all patients, staff &

other member of society. I wish him all the success in his future life.”

17. The aforesaid certificate is neither mentioned nor forming part of the file containing the application and the documents submitted by respondent No. 4 at the time of filing of the application. The aforesaid certificate was got verified by the authorities and found to be genuine.

18. Two issues, which could not be explained either by learned counsel for the State or counsel for respondent No. 4, were as to how respondent No. 4 could be working at two places simultaneously. The certificate dated 15.7.2006 produced from the Samiti suggested that he had been working there for the last 3 years. Another certificate of the same date suggested that he had been working there from 5.6.2003 to 15.7.2006 at a monthly salary of ₹ 2,400/, whereas the experience certificate from Mansrover Hospital, Rohtak dated 10.7.2007 suggested that respondent No. 4 had been working there from 5/6/2005 till 10.7.2007 on a monthly salary of ₹ 2,200/-. The period during which respondent No. 4 claimed himself to be working with two different employers is over-lapping . Further, as to how the certificate from Mansrover Hospital, Rohtak came on record and sought to be verified for offering appointment to respondent No. 4 is a mystery. Once the certificate of experience annexed by respondent No. 4 along with the application was found to be fake on verification, there was no question of getting any further certificate from him, verify its genuineness and then offer appointment to him. The conduct of respondent No. 4 disentitled him for even consideration for appointment, what to talk of appointment. However, the cat was out of the bag on a perusal of the record produced by the State. The saying “*a man may lie but the circumstances do not*” is fully applicable. Respondent No. 4 claimed that after the issuance of appointment letter, he joined service on 30.12.2008. The note available on record from the office of Chief Minister, Haryana, clearly established that respondent No. 4 had access to the corridors of power, which was apparently mis-used to seek appointment and bend all the rules.

19. The note dated 9.4.2010 signed by OSD/CM, which is extracted below, suggested that Chief Minister has desired that respondent No. 4 be transferred from PHC Satnali (Mohindergarh) to CHC, Kalanaur (Rohtak):

“CM has desired that Sh. Ajit Singh, BLK. Extension Educator, Health Deptt., PHC Satnali (Mohindergarh) may be transferred to CHC Kalanaur (Rohtak) against the present incumbent and vice versa.”

20. In pursuance thereof, transfer order was issued by Director General, Health Services Haryana, Panchkula on 26.4.2010. There is another note dated 6.8.2010 from the office of Chief Minister suggesting that respondent No. 4 may not be transferred from his/her present place of posting, which is also extracted below:

“CM has desired that Sh. Ajit Singh, BLK. Extension Educator, Health Deptt., CHC Kalanaur may not be transferred from his/her place of posting.”

21. From the facts, as have been noticed above, it is established that the experience certificate produced by respondent No. 4 along with the application was found to be fake on verification. The second experience certificate, which though on verification was found to be genuine, was neither annexed along with the application nor there was any occasion therefor, for the reason that the period of experience in two certificates was over-lapping and further there was no such requirement, hence, the candidature of respondent No. 4, in fact, deserved to be rejected.

22. As far as respondents No. 5 is concerned, neither any reply has been filed on behalf of respondent No. 5 nor any one has appeared for him.

23. On verification by Civil Surgeon, Sonapat, vide communication dated 19.6.2008, the experience certificate produced by her was found to be bogus, as no supporting record was found to be available with the institution where she claimed to have been working. Still she was offered appointment.

24. On the application submitted by respondent No. 5, there is note by the Scrutinising Officer “not experience sic.” In column No. 12 of the

application, the following information was furnished:

“12. Experience: Years [04] Months [04] Days [17]

Name of Organization – Sonapat Cheritable Eye

Total Salary: Rs. 5000/-”

25. There is a communication dated 31.10.2007 by the Commission addressed to respondent No. 5 on record providing reason for non-fulfilment of condition of experience for rejection of her application. Thereafter, an undated request letter from respondent No. 5 to the Secretary of the Commission is on record requesting for issuance of roll number stating that she had submitted an application in pursuance to advertisement No. 9/2007. On that application, a note dated 15.11.2007 has been put by some official that “the applicant has removed the objection, hence, eligible”. The file only contains the undated experience certificate from Sonapat Cheritable Eye Hospital, as was mentioned in the application form. From the certificate, it could not be opined as to for how much period respondent No. 5 may have worked with the hospital. As per communication dated 19.6.2008, the experience certificate produced by respondent No. 5 was found to be bogus as the authority verifying the same found that though her name was mentioned in the attendance register but the same has not been verified by any one. Neither any ledger was maintained nor income-tax returns were being filed. Still, vide letter dated 31.7.2008, respondent No. 5 was offered appointment as Family Welfare Extension Educator and consequently she joined service as such. In the file, there is a note dated 18.8.2009 from the office of Chief Minister desiring that respondent No. 5 may be transferred from CHC, Balla (Karnal) to CHC, Juan (Sonapat) against vacancy, which is extracted below:

“CM has desired that Smt. Anita Kumari, Health Educator, Health Deptt., CHC Balla (Karnal) may be transferred to CHC Juan (Sonapat) against vacancy.”

26. There is another note dated 20.8.2009 from the office of Chief Minister desiring that respondent No. 5 may be transferred from CHC Ballah (Karnal) to CHC, Jaun (Sonapat) vice Sh. Jitender Singh and vice

versa, which is extracted below:

“CM has desired that Smt. Anita Kumari, Family Welfare Extn. Officer, Health Deptt., CHC Ballah (Karnal) may be transferred to CHC Jaun (Sonapat) vice Sh. Jitender Singh and vice versa.”

27. On the application submitted by respondent No. 6, there is a note by the Scrutinising Officer that “experience is without salary may be rejected”. In column No. 12 of the application, the following information was furnished:

“12. Experience: Years [2] Months [1] Days [-]
Name of Organization – Dr. A.V. Baliga Memorial Trust
Total Salary: Voluntary”

28. The file contained another experience certificate dated 10.8.2007 from Double S. Youth Club (Regd.), Delhi showing that respondent No. 6 worked with the Club as Social Worker for community education in health and family welfare from 10.2.2005 to 31.3.2007 on a monthly honorarium of ₹ 1,500/-. The aforesaid certificate was sent for verification. As per the report from Civil Surgeon, Sonapat vide communication dated 19.6.2008 addressed to Director General, Health Services Haryana, Panchkula, the aforesaid certificate was found to be fake, as it was found that there was neither any ledger maintained by the Club nor income-tax return was being filed and there was no record with the Club pertaining to the certificate, though the certificate contained serial number. Despite this verification report from Civil Surgeon, Sonapat, respondent No. 6 was issued appointment letter on 6.8.2008 and he joined his service on 9.8.2008. He was directed to join at PHC, Ladwa (Kurukshetra).

29. The case of respondent No. 6 is also similar to respondents No. 4 and 5 if considered in the light of their access to the corridors of power. There is a note dated 17.5.2013 from the office of Chief Minister desiring that respondent No. 6 be transferred from CHC, Pehowa (Kurukshetra) to CHC, Mudlana (Sonapat). There is a letter dated 5.7.2013 from Dr. Arvind Sharma, Member of Parliament (Lok Sabha), Karnal to Director General, Health Services Haryana for deputing respondent No. 6 from CHC, Pehowa

(Kurukshetra) to CHC, Firozpur Bangar (Sonapat) for 60 days. The order was complied with on 10/15.7.2013. There is another note from Jaiveer Singh, CPS, Haryana Government to Director General, Health Services Haryana dated 27.9.2013 that respondent No. 6 working at CHC, Pehowa, District Kurukshetra may be deputed to CHC, Firozpur Bangar, District Sonapat. On account of different recommendations made by the authorities pertaining to certain employees, the matter was sent to Chief Minister's office again and in terms of the directions of the Chief Minister, respondent No. 6 was transferred from CHC, Pehowa to CHC, Nissing (Karnal), as is evident from the office note dated 14.11.2013. The transfer order is dated 18.11.2013. The note dated 22.10.2013 from the office of Chief Minister, available in support of the aforesaid noting in the file, is extracted below:

“Subject: Regarding transfer of Blk. Extension Educator.

...

Hon'ble Chief Minister has seen. He has desired that Dr. Trilok Chand, BEE be transferred from CHC Pehowa (Kurukshetra) to CHC Nissing (Karnal) against vacancy.”

30. The contention of learned counsel for respondent No. 6 that the experience certificate produced by respondent No. 6 was duly verified by Medical Officer, CHC, Pehowa on a communication from Director General, Health Services Haryana, Panchkula is merely to be noticed and rejected for the reason that prior to that, vide communication dated 19.6.2008, Civil Surgeon, Sonapat had verified the experience certificate of respondent No. 6 and opined that the same was bogus. That report being available on record, there was no question of offering appointment to respondent No. 6, hence, subsequent verification or affidavit by the Medical Officer is meaningless.

LEGAL ASPECT

31. The issue regarding entry into service on the basis of a false certificate came up for consideration before Hon'ble the Supreme Court in Union of India v. Dattatray and others, (2008) 4 SCC 612, wherein, while referring to earlier judgments on the issue in Bank of India v. Avinash D. Mandivikar, (2005) 7 SCC 690 and Addl. GM-Human Resource, Bharat

Heavy Electricals Ltd. v. Suresh Ramkrishna Burde, (2007) 5 SCC 336, it was opined that when a person secures employment by making a false claim regarding caste, he deprives a legitimate candidate belonging to Scheduled Caste/Tribe of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of a false certificate so that post may be filled up by a candidate, who is entitled to the same.

32. Subsequently, the issue came up for consideration before Hon'ble the Supreme Court in Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others, (2008) 13 SCC 170, wherein while reversing the judgment of the Bombay High Court, Hon'ble the Supreme Court opined that when selection of an employee was conceived in deceit, the same could not be saved by equitable consideration. Even delay in verification of the certificate in such cases is not fatal and the same will not validate the certificate and consequential the illegal appointment. In that case, the employee had worked on a fake caste certificate for a period of 20 years, but still Hon'ble the Supreme Court opined that sympathy, equity or generosity have no place where the original appointment rests on a fake certificate, as the same results in depriving a genuine candidate of appointment. Paragraphs 15, 16, 18 to 20 are extracted below:

“15. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. 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 *R. Vishwanatha Pillai v. State of Kerala*, (2004) 2 SCC 105, *Bank of India v. Avinash D. Mandivikar*, (2005) 7 SCC 690, *BHEL v. Suresh Ramkrishna Burde*, (2007) 5 SCC 336, *Derry v. Peek*, (1889) 14 AC 337; *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education*, (2003) 8 SCC 311 and *Bhaurao Dagdu Paralkar v. State of Maharashtra*, (2005) 7 SCC 605.

16. In *Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319, this court had observed that fraud is anathema to all equitable

principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine.

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18. Having considered the matter in the light of the aforestated legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment.

19. We are also unable to persuade ourselves to agree with learned counsel for the employee that in the absence of any finding of fraud having been played by the employee, the order of the High Court is equitable and should not be interfered with. As noted above, the selection of the employee was conceived in deceit and, therefore, could not be saved by equitable considerations.

20. In view of the foregoing discussion, the impugned judgment and order quashing the order of termination of service of the employee and directing her reinstatement cannot be

sustained. The order of termination based on the report of the Scrutiny Committee does not suffer from any infirmity and the High Court should not have interfered with the same.”

33. In the case in hand, from the record, it is proved beyond doubt that the experience certificates pertaining to experience, which was one of the essential qualification, were found to be fake on verification, but still respondents No. 4 to 6 were given appointment. The same resulted in depriving other eligible candidates opportunity to get employment though more meritorious. Even if respondents No. 4 to 6 have been serving for four years now, the equity does not comes into play in such cases as the very foundation of their appointment vanished. The post was usurped by misrepresentation and deception. It was fraud.

34. For the reasons mentioned above, the selection and appointment of respondents No. 4 to 6 is set aside, being not eligible for the post and having obtained employment by fraudulent means by producing fake experience certificates. As is claimed by the petitioner that he was at Sr. No. 2 in the waiting list, in case it is found to be correct, he be offered appointment from the date respondent No. 4 was offered and joined service. The petitioner be given notional benefit from that date but he will not be entitled to any monetary benefits for the period he did not work.

35. The petition stands disposed of.

(Rajesh Bindal)
Judge

15.1.2015
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(Refer to Reporter)