

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.10153 of 2012

Date of Decision: 13.08.2015

A.S. Chawla

....Petitioner

Versus

Union of India and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ashok Bhardwaj, Advocate
for the petitioner.

None for respondent No.1-Union of India.

Mr. Ashwani Talwar, Advocate
for respondents No.2 to 5.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing/modifying order dated 12.05.2010 (Annexure P-6) passed by respondent No.4, whereby, 1/3rd pension of the petitioner has been withheld permanently. A further prayer has also been made for issuance of a direction to the respondents to release full pension including all pensionary benefits like gratuity, commutation of pension and leave encashment to the petitioner since the date of his retirement i.e. 30.09.2006.

The petitioner joined Common Wealth Insurance Company as Branch Secretary on 19.10.1965. However, the said Company was merged with the New India Assurance Company Limited. The petitioner was regularized in the cadre of Inspector Grade-I vide order dated 01.04.1970 and ultimately, he retired on 30.09.2006 on attaining the age of superannuation. The charge sheet was issued to the petitioner on 09.04.2007 after his retirement, alleging therein, that he tampered with his date of birth in his matriculation certificate while seeking employment with the company as the date of birth of the petitioner was mentioned as 15.09.1946 in stead of 15.09.1940. The petitioner submitted reply to the charge sheet. On retirement of the petitioner, his pensionary benefits were not released to him and hence, he filed **CWP No.10457 of 2009**, which was disposed of with a direction to the respondents to decide the representation of the petitioner regarding grant of pensionary benefits. Vide order dated 14.10.2009, the order of dismissal of the petitioner from service w.e.f. 30.09.2000 was passed. However, against the said order dated 14.10.2009, the petitioner preferred an appeal, which was kept pending but a direction was issued in **CWP No.2576 of 2010** to decide the appeal and the same was decided on **12.05.2010** and pension of the petitioner was ordered to be withheld permanently.

Order dated 12.05.2010 has been challenged in the present petition on the ground that the said order has been passed with retrospective effect without even giving any opportunity of hearing to the petitioner and that too after the date of his retirement. Learned counsel also submits that the punishment of dismissal is highly disproportionate to the alleged misconduct.

Learned counsel for the petitioner has also relied upon the judgment of this Court in case **R.K. Kochhar vs National Insurance Co.**

Ltd. and others 2003(6) SLR 546, judgment of **Madras High Court** in case **R. Raman vs National Insurance Company Ltd. rep. by its Chairman cum Managing Director, No.3 Middleton Stret, Kolkatta and another 2011(5) MLJ 849** as well as the judgment of **Gauhati High Court** in case **C. Sangkhuma vs State of Mizoram and others 2000(3) SCT 370**, in support of his contentions.

Learned counsel for respondents No.2 to 5 submits that the petitioner is guilty of tampering with the record as he altered his date of birth in the matriculation certificate and because of that reason, he continued to serve the said Company un-authorizedly for additional six years i.e upto 30.09.2006. The petitioner took undue benefit in the form of salary of 72 months and has caused financial loss to the respondents-Company. Learned counsel for the respondents also submits that the petitioner was given full opportunity of hearing during regular enquiry and the documents were also verified from the original record. The impugned order of deduction of pension cannot be said to be on the excessive side.

Learned counsel for the respondent has relied upon the judgments of Hon'ble the Apex Court in case **S.P. Changalvaraya Naidu (dead) by L.Rs vs Jagannath (dead) by L.Rs. 1994 AIR (SC) 853**, **Indian Bank vs M/s Satyam Fibers (India) Pvt. Ltd. 1996 AIR (SC) 2592**, **Union of India and others vs Amar Singh 2007(12) SCC 621**, **R. Vishwantha Pillai vs State of Kerala and others 2004(2) SCC 105**, in support of his contentions.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, the petitioner was working as a Branch Secretary in Common Wealth Insurance Company, which was later on merged with the New India Assurance Company Limited. Thereafter, the petitioner was

transferred to New India Assurance Company Limited and he was regularized there on the post of Inspector Grade-I. Ultimately, the petitioner got retired on 30.09.2006 on attaining the age of superannuation. A charge-sheet was issued to the petitioner alleging therein that he has tampered with his actual date of birth in his matriculation certificate while seeking employment with the Company. The date of birth of the petitioner was reflected as 15.09.1946 in stead of 15.09.1940. The petitioner submitted his reply to the charge sheet. The petitioner, on his retirement, filed **CWP No.10457 of 2009**, which was disposed of with a direction to the respondents to decide the representation of the petitioner regarding grant of pensionary benefits within a period of three months. The pensionary benefits were not granted to the petitioner as he was dismissed from service w.e.f. 30.09.2000 and the said order was challenged by way of filing appeal, which was also dismissed vide order dated 12.05.2010. The petitioner was allowed pension after deducting 1/3rd of it with permanent effect and the same has been challenged in the present petition.

Learned counsel for the petitioner submits that the impugned order has been passed without following the principles of natural justice. The petitioner was already retired on 30.09.2006 and the charge sheet was served upon him on 09.04.2007, whereas, the dismissal order was passed on 14.10.2009 w.e.f 30.09.2000, which is retrospective in nature and the same is permissible under law. Learned counsel also submits that the Chief Manager has no jurisdiction to dismiss the petitioner from service as he is not the competent authority. The petitioner has also worked during this period but still the order of deduction of 1/3rd pension has been passed. Learned counsel also submits that the alleged misconduct does not involve any financial irregularities or implications. A lenient view could have been taken but the same has not been done by the authorities concerned. It has

not been disputed by learned counsel for the petitioner that the date of birth of the petitioner was shown as 15.09.1946 in stead of 15.09.1940. The petitioner was to retire on 30.09.2000 but he continued to serve on the basis of forged entry in the certificate and unauthorizedly worked for a period of six years i.e up to 30.09.2006. The petitioner withdrew the salary for a period of 72 months and got other service benefits as well and as such, it caused a financial loss to the respondents. The certificate of the petitioner was got verified from Punjab University and a report with regard to his actual date of birth was also received. Thereafter, charge sheet was issued to the petitioner. A detailed inquiry was conducted and the petitioner was given full opportunity to put up his case. All documents, which were required, were supplied to the petitioner. Even during course of enquiry, two witnesses were examined on behalf of the prosecution i.e S.K. Sofat, Divisional Manager and Lt. Col. G.S. Sandhu, Investigator. The petitioner cross examined both the witnesses. After considering the verification report and the statement of the witnesses, it was proved on record that the date of birth of the petitioner was tampered by him with an ulterior motive. The petitioner was dismissed from service w.e.f. 30.09.2000 under Rule 23(i) of the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2003 [here-in-after referred to as "CDA Rules"]. The Punishing Authority has passed the order of dismissal but the punishment was modified by the Appellate Authority to withdrawal of 1/3rd pension with permanent effect. It is also relevant to mention here that even the Civil Suit filed by the petitioner was dismissed by the Civil Court on 14.03.2009 and thereafter, the appeal was also dismissed as withdrawn on 17.10.2011.

The arguments of learned counsel for the petitioner cannot be accepted as the petitioner continued to work on the basis of forged/fabricated date of birth and when this fact came to the notice of the

respondent-Company, the charge sheet was issued to the petitioner, to which he had filed reply. On finding the reply to be un-satisfactory, a regular enquiry was ordered to be conducted, wherein, sufficient opportunity was granted to the petitioner. As per CDA Rules, the Chief Manager is the disciplinary authority in respect of Development Officers Grade-I and as such, it cannot be said that the authority, who has passed the order, was not competent.

It has been held in **S.P. Changalvaraya Naidu's** case (supra) that a person, whose case is based on falsehood, has no right to approach the Court and he can be thrown out at any stage of the litigation. It has also been held that a litigant who approaches the court, is bound to produce all the documents, which are relevant for litigation.

In the present case, fraud has been played with the respondent-Department by producing a certificate, whereupon, a wrong date of birth was mentioned and it was done just to take undue advantage. The petitioner remained successful in taking advantage of service for a period of six years. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain anything by causing loss to another.

In **Amar Singh's** case (supra), it has been held that it is the responsibility of the person who seeks employment to place authenticated certificate about his educational qualification and community etc. Moreover, the right of pension and monetary benefits can be given only if the appointment was valid and legal. A person, who seeks equity, must come with clean hands. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false certificate by playing a fraud.

It has also been held in various judgments of Hon'ble the Apex

Court as well as of this Court that no sympathy and equitable consideration can come to rescue of a person whose case is based on falsehood. Equity or compassion cannot be allowed to bend the arm of law in a case where an individual acquired a status by practising fraud as has been held in judgment of Hon'ble the Apex Court in **R. Vishwantha Pillai's** case (supra).

Moreover, the punishment awarded by the Punishing Authority has been reduced from dismissal to forfeiture of 1/3rd pension with permanent effect by taking a lenient view. The petitioner has also enjoyed the service benefits for a period of six years on the basis of forged date of birth.

Keeping in view the seriousness of the offence and conduct of the petitioner, he does not deserve any leniency and as such, the present petition is liable to be dismissed.

Dismissed accordingly.

13.08.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE