

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 18464 of 2009

DATE OF DECISION: 16.07.2015

Ex. Constable Dalbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Gaurav Mohunta, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Mr. Vivek Chauhan, Advocate
for respondent No.5.

DAYA CHAUDHARY, J.

The prayer made by the petitioner in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 13.5.2009 (Annexure P-1), whereby, the revision filed by the petitioner against order of dismissal of his services has been dismissed.

Briefly, the facts of the case are that the Government of Haryana advertised some posts for recruitment of Constables in the State of Haryana, wherein, some posts were kept reserved for the candidates having distinguished achievement in the field of sports. The petitioner, who claims himself to be a sports personnel applied in the sports quota. He

was selected and appointed as Constable vide order dated 6.2.2002 on temporary basis and was allotted regimental No. 4/868 in 4th Battalion, Haryana Armed Police (HAP), Madhuban and thereafter, he was posted as Constable with respondent No.3. On 21.2.2006, an order of regular departmental inquiry was passed for producing bogus sports certificate at the time of recruitment. A charge-sheet dated 31.7.2006 was issued to the petitioner stating therein that he had produced bogus sports certificate, which was found to be lower in grade and thus he has lowered the image and prestige of the Police Department. In pursuance of the aforesaid charge-sheet, Inquiry Officer was appointed and notice to show cause was issued to the petitioner on 23.11.2006 as to why he should not be dismissed from service on account of producing bogus sports certificate of lower gradation so as to get recruitment in Haryana Police. The petitioner submitted reply to show cause notice on 8.12.2006 and he was ordered to be dismissed from service vide order dated 24.10.2007. Against the aforesaid order of dismissal, the petitioner preferred an appeal before Inspector General of Police, Haryana Armed Police, Madhuban, which was dismissed on 2.5.2008. Thereafter, the petitioner filed revision petition, which was also dismissed on 13.5.2009.

In the present petition, the petitioner has challenged the order dated 13.5.2009, vide which, the revision filed by the petitioner was dismissed.

Learned counsel for the petitioner contends that the petitioner participated in wrestling and submitted the participation certificate issued by the Manipur Wrestling Association in 57 Kg. GRECO ROMAN STYLE and on the basis of that certificate he was recruited/selected. The order of dismissal has been passed only on the ground that the certificate of participation was verified from Manipur Wrestling Association and the same

was found to be bogus as the petitioner never participated or represented the Manipur Wrestling Association in free style wrestling. Learned counsel further contends that it cannot be said in any manner that the petitioner did not participate in the event which took place from 28.5.1998 to 31.5.1998 as the said certificate was got verified and it was found to be genuine. A specific affidavit was also filed during pendency of this petition, wherein, it has been mentioned that the petitioner has participated in the event and the certificate was not bogus. Learned counsel also submits that the petitioner appeared in 57 KG GRECO Roman STYLE from the State of Manipur but on the next day he could not appear in the bout. The certificate given to the petitioner was only for participation, which is the only requirement of the advertisement. The name of the petitioner was also mentioned in the list of participants and as such it cannot be said that bogus certificate was produced.

Learned counsel for the respondent-State submits that it was found in the detailed inquiry that the sports certificate submitted by the petitioner was not only lower in Grade as desired by the Department but it was fake and fabricated one also. Even as per the statement of Assistant Secretary, Wrestling Federation of India, the petitioner did not participate from the State of Manipur. In the list of players, the petitioner was shown to be marked as absent, which shows that the petitioner had never participated. A criminal case i.e. FIR No. 364 dated 2.7.2008 was also registered against the petitioner under Sections 420,467,468 IPC at Police Station Jind for submitting false sports certificate and as such the present petition is liable to be dismissed on this ground. Learned counsel further contends that the petitioner has neither challenged the order of dismissal nor the order passed in the appeal but has only challenged the order passed in the revision petition. Learned State counsel has also produced

the original record of the selection as well as the original participation certificate and has also pointed out the cutting as well as the over-writing to show that the said certificate was not genuine.

Heard the arguments advanced by learned counsel for the parties and have gone through the documents available on the file and have also perused the record of the selection produced by learned counsel for the respondent-State.

Notice of motion was issued in the case on 2.12.2009. On 23.8.20013, the following order was passed:-

“Mr. Mohunta, learned counsel for the petitioner has produced a document which proclaims itself to be a short affidavit of Vinod Tomar, Assistant Secretary, Wrestling Federation of India in which in para-3, it has been declared as follows:

“That the deponent certifies that Dalbir Singh has participated in Greco Roman Style 57 Kgs. from Manipur in the Sub-Junior (Cadet) National Wrestling Championship held at Nathdwara (Rajasthan) from 28th to 31st May 1998 and that the certificate issued in this regard by Manipur Wrestling Association dated 30/05/2008 and Wrestling Federation of India dated 28.06.2006 (Annexure P-14(Colly)) with the Writ Petition are true, correct and genuine.”

It appears to have been signed at New Delhi on 12.09.2012. It bears the stamp of the Wrestling Federation of India. It is not an affidavit and therefore no credence can be placed on it. However, the same is taken on record for what its worth. It is also not known how the petitioner has come into possession of this document. I assume it has been procured from Mr. Vinod Tomar, Assistant Secretary, Wrestling Federation of India to set

up a defence against the dismissal order. The same is taken on record as Mark "A".

In para 3 above, Mr. Vinod Tomar has taken a stand contrary to one he took in the domestic enquiry where he appeared as a witness against the petitioner to testify that the petitioner has never participated in Greco Roman Style 57Kgs Sub-Junior (Cadet) National Wrestling Championship held at Nathdwara (Rajasthan) representing Manipur. He had also stated in the enquiry that the sports certificate dated 28.6.2006 may be deemed as cancelled not based on true facts. Though he has stated in the enquiry proceedings that the certificate bears his signatures. He deposed that there was a mix-up and in fact the petitioner had not participated in the Championship claimed. It is on the basis of certificate dated 28.6.2006 that the petitioner had secured an appointment as a constable from which post he has been dismissed for claiming appointment under a fake certificate. The Wrestling Federation of India has been impleaded as respondent No.4. The federation has been served through process of this Court but no one appears on behalf of it.

Let bailable warrants be issued to Mr. Vinod Tomar, Assistant Secretary, Wrestling Federation of India, Indira Gandhi Sports Complex, New Delhi to appear before this Court on the next date of hearing.

Mr. Nehra, learned State counsel suggests that the Ministry of Sports, Government of India should be impleaded as party-respondent and that Mr. Khosla, learned Assistant Solicitor General, Chandigarh, may be requested by this Court to

appear for the Ministry which is the Nodal Agency where all the Sports Federations are registered and he could get the matter examined with respect to the authenticity of the sports certificate.

There is merit in the prayer which is accepted. Ministry of Sports through its Secretary, Government of India is impleaded as party respondent No.5. Let addition be made in the memo of parties.

Mr. Khosla, learned Assistant Solicitor General, Chandigarh, who is present in Court accepts notice on behalf of the newly impleaded respondent No.5 and prays for four weeks' time to get the matter examined and to report with respect to the certificate Annexure P-14 (Colly) issued by the Wrestling Federation of India and of the conduct and role of Mr. Vinod Tomar in the issuance of the disputed sports certificate and consequent statement declaring the same as cancelled.

Learned counsel for the petitioner undertakes to supply two copies of the paper-book to Mr. Khosla during the course of the day.

List on 27.11.2013.

A copy of this order be given dasti to Mr. Khosla under the signatures of the Bench Secretary of this Court for further necessary action.”

In compliance of the aforesaid order, Mr. Vinod Tomar, Assistant Secretary, Wrestling Federation of India had appeared in the Court and took time to file his affidavit. The stand taken by Mr. Vinod Tomar in the affidavit is totally contradictory from the stand taken in the

written statement. Even on perusal of original participation certificate, it is apparent that the certificate is not genuine as not only the fluid has been applied but the particulars in the said certificate have been mentioned subsequently. A perusal of the certificate from the naked eyes would show that the certificate of some other person has been used but it cannot be said that whether the cutting by using the fluid has been made by the petitioner or by the authority, who has signed the same. Even in the order passed by this Court on 23.8.2013, an observation has been made that the short affidavit of Mr. Vinod Tomar appears to have been signed at New Delhi on 12.9.2012, which bears the stamp of the Wrestling Federation of India. It was also observed that the said document cannot be considered as an affidavit and, therefore, no credence can be placed on that. The stand taken by Mr. Vinod Tomar in the domestic inquiry is that the petitioner never participated in Greco Roman Style 57 kgs Sub-Junior (Cadet) National Wrestling Championship held at Nathdwara (Rajasthan) representing Manipur. He had also stated in the enquiry that the sports certificate dated 28.6.2006 may be deemed as cancelled as it is not based on true facts. Though he has stated in the enquiry proceedings that the certificate bears his signatures. On the basis of that certificate, the petitioner got his appointment as Constable and on finding it bogus, the order of dismissal from service was passed.

The statement of Mr. Vinod Tomar, Assistant Secretary annexed as Annexure R-2 with the written statement filed by respondents No.1 to 3 is reproduced as under:-

“It is stated that I have been posted as Assistant Secretary, Wrestling Federation of India, Indira Gandhi Sports Complex since October, 2002. A letter dated 28.6.2006 in which it has been certified by this office that Sh. Dalbir Singh, S/o Sh. Man

Singh participated from 28-30.5.1998 in 57 K.G. Greco Roman Style at Nathdwara. This certificate has been issued by this office on which there are my signature. But today on 4.10.2006 on re-checking of its record it has been found that this candidate had got his name entered for participating in the aforesaid weight category for Manipur but in the meanwhile he has not participated in the 57 KG Greco Roman Style. He has been found absent there. It is possible that anybody close to him with the use of his own influence, may have got his name entered there for the purpose of participation. It's one copy which is of participation on behalf of Manipur on the abovesaid date is being supplied to you. In addition, in this regard I am supplying to you a photocopy of the mark sheet. **Before this the certificate dated 28.6.2006 which has been issued by his office may be deemed as cancelled.** In addition I have seen in your file the photocopy the certificate which has been issued by the Wrestling Federation of India to Sh. Dalbir Singh S/o Sh. Man Singh. This certificate too has been obtained from this department by committing any fraud because the fact of participation by Dalbir singh which has been shown in this certificate is completely incorrect because he has not participated on behalf of Manipur in the 57 KG Greco Roman Style which took place at Nathdwara. The statement has been got written and has been read, it is correct.”

In the affidavit dated 8.1.2014 filed by Mr. Vinod Tomar, Assistant Secretary it has been mentioned in para 8 that the officials from Haryana Police visited the office of Wrestling Federation and his statement was recorded. He has stated that as per record Mr. Dalbir Singh

(petitioner) had not appeared/participated from the State of M.P. The petitioner has appeared for draw and was given the weight for representing from State of Manipur. The name of the petitioner was entered in the list of participants but he did not appear for bout and was not present on that date. The stand taken by Mr. Vinod Tomar in his affidavit is contradictory from the stand taken in the written statement and also from his statement recorded during the inquiry. Although learned counsel for the petitioner has submitted a copy of the judgment of the trial Court to show that the petitioner has been acquitted of the charges by the trial Court but it cannot be said that the petitioner was not having fake certificate as in criminal case the charge is to be proved beyond reasonable doubt, whereas, in the civil/departmental proceedings, admittedly, different method is adopted and as such the judgment of the trial Court is not going to help the petitioner in any manner. Learned counsel for the petitioner has not been able to convince the Court as to how the order of dismissal or subsequent orders are bad in law as not only sufficient opportunity has been afforded to the petitioner but proper procedure has also been followed. Learned counsel for the petitioner has also not been able to show any document to prove that the participant certificate is genuine as the same has not been supported by any other document on the file including affidavit of Mr. Vinod Tomar, Assistant Secretary who has issued the same. The appointment got on the basis of fake/bogus certificate cannot sustain and as such there is no merit in the contentions raised by learned counsel for the petitioner.

In the Departmental Inquiry conducted against the petitioner, it was found that the petitioner got appointment on the basis of sports certificate, which was lower in grade as required by Government of Haryana instructions issued vide notification No. 8/147/2000-6-H.GI. Even during course of inquiry, it was verified that the sports certificate submitted

by the petitioner was not only lower in grade but was fake and fabricated one also. The certificate produced by the petitioner at the time of recruitment was not as per record of Wrestling Federation of India, Indira Gandhi Sports Complex, New Delhi as has been conveyed vide letter dated 4.7.2006. It was also duly verified that the petitioner did not participate in GRECO ROMAN STYLE Wrestling competition representing Manipur as he was shown to be marked as absent. This fact clearly shows that the petitioner never participated on behalf of Manipur team.

However, keeping in view the conduct of Mr. Vinod Tomar, Assistant Secretary, he does not deserve any lenient view. Not only he has tried to mislead the Court by putting wrong facts in the affidavit but has also taken a contradictory stand. Even while appearing in person, he has tried to justify his act and conduct.

Accordingly, the present petition is dismissed with cost of ₹ 25,000/- to be deposited with Haryana State Legal Services Authority within a period of one month from the date of receipt of certified copy of the order.

A copy of this order be sent to Mr. Chetan Mittal, Assistant Solicitor General of India for sending the same to the concerned Department along with his affidavit dated 8.1.2014, which has been filed before this Court as well as the statement recorded during the inquiry (Annexure R-2). Registry is also directed to supply the photo copy of the affidavit dated 8.1.2014 of Mr. Vinod Tomar as well as his statement recorded during the inquiry (Annexure R-2) with the written statement filed on behalf of respondents No.1 to 3 to Mr. Chetan Mittal, Assistant Solicitor General of India.

July 16, 2015
pooja

(DAYA CHAUDHARY)
JUDGE

