

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 20961 of 2014

Date of Decision : July 23, 2015

Ram Kumar Petitioner

Vs.

Oriental Bank of Commerce and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. P. S. Dhaliwal, Advocate
for the petitioner.

Mr. Jagat Arora, Advocate
for Mr. R. N. Lohan, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 07.10.2014 (Annexure P-2), through which he has been ordered to be compulsorily retired.

The brief facts of the case, as borne out from the record of the case and which have emerged from the arguments raised at the bar are that on 06.02.2014, the petitioner was served a charge-sheet for having made a

false declaration with regard to his qualifications at the time when he had applied for the post of Peon in the year 1992. As per information submitted by the petitioner in his application form, his educational qualification was 8th Class pass, whereas it was found that the petitioner was actually 10th Class pass. It was further submitted in the charge-sheet that since as per the prescribed qualification, an applicant should not have passed the 10th Class examination, the petitioner had given wrong information for mala fide reasons. On the basis of the above charges, the petitioner was subjected to a departmental inquiry, which found him guilty, on the basis of which, through order dated 07.10.2014 (Annexure P-2), the petitioner was inflicted with the following punishment :-

“...Compulsory retirement with superannuation benefits i.e. Pension and Gratuity as would be due otherwise under the rules or regulations prevailing on the date of order of punishment and without disqualification from future employment.”

The above punishment, as meted out to the petitioner, has been challenged by him through the present writ petition. It is the case of the petitioner that the action of the respondents is arbitrary as also discriminatory as in the case of Pramod Bhalerao, who was also proceeded against by the respondent Oriental Bank of Commerce (hereinafter referred to as – the Bank) on similar counts, was inflicted a lesser punishment to the

following effect :-

“Reduction to one stage low in the scale of pay for a period of five years. However, you shall not be entitled to any pay, allowance, increment or the service benefit from the date of dismissal till the date you report for duty as per letter.”

The petitioner further relies upon a recent judgment of the Apex Court, which, according to him, covers his case in his favour i.e. **Life Insurance Corporation of India and others vs. Triveni Sharan Mishra** reported as **2014 (10) SCC 346**.

Per contra, learned counsel for the respondent Bank submits that the petitioner has an alternate remedy of filing a departmental appeal against the impugned order, as also to go before the Labour Court under the Industrial Disputes Act, 1947. On merits, though the case of Pramod Bhalerao is admitted, it is submitted that there are other cases, where same punishment, as meted out to the petitioner, has been awarded.

I have gone through the judgment of the Apex Court in the case of **Triveni Sharan Mishra (supra)** and find that the same fully covers the case of the petitioner. The respondent in that case namely Triveni Sharan Mishra had, like the petitioner, applied for the post of Peon. As per the prescribed qualifications therein, a candidate was required to have passed

Standard IX and candidates, who were XII Standard pass and had secured 50% or more marks, graduates or post graduates were not to be considered. Triveni Sharan Mishra, in his application, mentioned his qualification as 11th pass. At the end of the application, a declaration was made by him that he did not possess any other qualification except the one mentioned in his application. Thereafter, on the basis of application, he was selected and appointed as Peon. However, after a couple of years, it was found that he was Graduate and was pursuing his Masters in Economics. For having supplied wrong information in his application form, he was subjected to disciplinary proceedings and having been found to be guilty, was ordered to be removed from service. After his departmental appeal had been dismissed, he had approached the High Court, which had allowed his case after holding that the qualification, which prescribed that a candidate should not possess a higher qualification than IX Standard for the post of Peon, was violative of Article 14 of the Constitution of India. It was further found that similarly situated employees had been inflicted a lesser punishment and thus, finding the punishment awarded to Triveni Sharan Mishra as discriminatory, his writ petition was allowed. Aggrieved by such decision of the High Court, the appellant therein approached the Apex Court. After considering the facts of that case, which virtually are the same, as the case in hand, the Apex Court dismissed the appeal by holding as under :-

“8. *It is not disputed before us that*
the respondent was already graduate on the

date he submitted his application for the post of Peon, and the declaration made by him in Annexure P-3 at the time of seeking employment that he possessed no other qualification was incorrect. The question before us is as to whether the qualification as mentioned above is violative of Article 14 of the Constitution of India or not, and as to whether awarding punishment of removal to the writ petitioner, is discriminatory in the light of the one awarded to similarly situated one Daluram Patidar i.e. only punishment of stoppage of increments for two years with cumulative effect.

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11. *In our opinion, in the present case the High Court has rightly relied on the law laid down by this Court in **Mohd. Riazul Usman Gani and Ors. Vs. District & Sessions Judge, Nagpur and Ors. (2000) 2 SCC 606** wherein it has deprecated the criteria of maximum qualification for the post of peons. Relevant parts of para 16 and*

para 18 of the said judgment are quoted herein below :

“16. *In the present case we find that the candidates with higher education than Standard VII were completely shut out for being considered for the posts of Peons. The Recruitment Rules also provide for promotion. Rule 3(ii) we may quote:*

“(ii) *The District Judge may promote-*

(a) *a Peon, a Watchman, a Gardener, or a Sweeper to the post of Bailiff:*

(b) *a Peon, a Watchman, a Gardener, a Sweeper or a Bailiff to the post of a Regional (Language) Section Writer, an English Section Writer or a Clerk; and*

(c) *a Peon, a Watchman, a*

*Gardener, a Sweeper, a Bailiff,
a Regional (Language) Section
Writer, and English Section
Writer or a Clerk to the post of
Stenographer”.*

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*18. If the appointment of a
candidate to the post of Peon is
restricted to his having
qualified up to Standard VII he
will have no chance of
promotion to the post of
Regional Language Section
Writer or Clerk”.*

*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 vs. 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, 506-B 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.”

The facts of the case in **Triveni Sharan Mishra** (*supra*) are virtually the same as the facts of the case in hand. Rather the case of the petitioner is on a better footing. In the case of **Triveni Sharan Mishra** (*supra*), he was punished after four years of his appointment, whereas in the case in hand, the petitioner had already served the respondent Bank for 22 years – firstly as Peon and then as a Clerk before the respondent Bank decided to departmentally proceed against the petitioner. That being so, I have no hesitation in granting the same relief to the petitioner as was granted by the Apex Court to Triveni Sharan Mishra.

The criteria of laying down of maximum qualification for the post of peons, as in the case in hand, has been deprecated by the Apex Court in **Mohd. Riazul Usman Gani and Ors. vs. District & Sessions Judge, Nagpur and Ors.** reported as **(2000) 2 SCC 606** by holding as under :

“16. In the present case we find that the candidates with higher education than Standard VII were completely shut out for being considered for the posts of Peons. The Recruitment Rules also provide for

promotion. Rule 3(ii) we may quote:

“(ii) The District Judge may promote-

(a) a Peon, a Watchman, a Gardener, or a Sweeper to the post of Bailiff:

(b) a Peon, a Watchman, a Gardener, a Sweeper or a Bailiff to the post of a Regional (Language) Section Writer, an English Section Writer or a Clerk; and

(c) a Peon, a Watchman, a Gardener, a Sweeper, a Bailiff, a Regional (Language) Section Writer, and English Section Writer or a Clerk to the post of Stenographer”.

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18. If the appointment of a candidate to the post of Peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer or Clerk”.

Further, it is the admitted position that Pramod Bhalerao, who

was held guilty of the same charge, has been inflicted with a lesser punishment. Step-fatherly treatment could not have been meted out to the petitioner and in that case, Article 14 would come to the rescue of the petitioner.

The objection raised on behalf of the respondent Bank, that the petitioner be relegated to his alternate remedy, needs to be considered only to be rejected. The judgment of the Apex Court in **Triveni Sharan Mishra** (*supra*) squarely covers the case of the petitioner. That being so, it would not be appropriate to relegate the petitioner to an alternate remedy.

In view of the above, the impugned order dated 07.10.2014 (Annexure P-2) is quashed and the matter is remitted back to the punishing Authority to consider the imposition of penalty upon the petitioner, as awarded in the case of Pramod Bhalerao, after reinstating him in service.

(DEEPAK SIBAL)
JUDGE

July 23, 2015
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