

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

DATE OF DECISION: APRIL 01, 2015

Sarbjeet Kaur

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. D. V. Sharma, Sr.Advocate with
Ms. Shivani Sharma, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASI, J. (ORAL)

In the present writ petition, the petitioner has impugned the order dated 22.10.2009 (Annexure P-21) vide which her services were terminated and thereafter by giving another opportunity to her, the termination order has been reiterated vide order dated 22.08.2010 (Annexure P-22) passed by the District Education Officer (Elementary Education), Hoshiarpur-respondent No.3.

The facts, in brief, are that the petitioner, in pursuance to an advertisement dated 06.09.2007 issued by the respondents for appointment as Teaching Fellows, applied for the said post. Petitioner asserts that she belongs to backward class category and accordingly applied under the said category. She also asserts that she was having an teaching experience of seven years at the time of submission of application form for the said post.

However, the backward class certificate as submitted by the petitioner was not considered valid as it was more than one year old and had, therefore, exhausted its validity. Still, the petitioner was selected under the general category having obtained 66.44% marks, which were more than the last selected candidate of this category. An appointment letter was issued by the District Education Officer (Elementary Education), Hoshiarpur-respondent No.3 on 25.10.2008 (Annexure P-15).

Petitioner was permitted to join in Government Elementary School, Jhanwan, Block Tanda-2, District Hoshiarpur against a vacant post of E.T.T. Teacher. This was as per the conditions of offer letter issued by the District Education Officer (Elementary Education), Hoshiarpur dated 27.09.2008 and agreement No.125. In condition No.9 of letter dated 27.09.2008, it was mentioned that in case, at any stage, any document is found to be false, the selection/appointment would be cancelled and for that purpose an undertaking was also given by the petitioner.

The experience certificate, as submitted by the petitioner, showed that she had worked at the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala from 03.11.1999 to 06.10.2007 (for about seven years). The said experience certificate, however, on verification, was found to be false as the petitioner had actually worked in the said school from 03.11.1999 to 04.07.2001 only. She was selected on the basis of marks assigned to her for experience taking the abovesaid experience certificate to be authentic and on deduction of the marks given to her for experience for the period 2001 to 2007, her merit went down and she would not fall in the selection zone.

Therefore, a show cause notice dated 01.01.2009 (Annexure P-16) was issued to the petitioner, calling upon her to submit her reply within a period

of seven days as to why her services should not be terminated.

Petitioner submitted reply to the show cause notice (Annexure P-17), confessing therein that she had submitted a wrong experience certificate. She clarified that she had taught in the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala from 04.11.1999 to 06.10.2001 and thereafter worked in B.V.N. Sainik High School, Batala from 06.04.2002 to 30.08.2005. On 01.10.2005, she joined M.G.N.Public School, Urban Estate, Jalandhar and continued there till August 2006 and thereafter from August 2006 to April 2007 i.e. for nine months she had taught in Cambridge International School, Dasuya. Due to inadvertence, she had mentioned the total experience of all the schools taken together in one School i.e. the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala, on account of which this situation has arisen whereas the experience in different schools should have been separately shown.

It is alleged that as the District Education Officer was not taking into consideration the reply filed to the show cause notice as also her experience certificates presented by the petitioner, she represented to the Deputy Commissioner, Hoshiarpur, asserting therein that she had worked in four different Schools as has been highlighted above. The Deputy Commissioner, Hoshiarpur, got an enquiry conducted into the the validity of experience certificates of the petitioner and came to a conclusion that the petitioner indeed had worked in the said schools. He, however, after considering the same, came to the conclusion that since two of the schools, namely, M.G.N.Public School, Urban Estate, Jalandhar and Cambridge International School, Dasuya, where the petitioner had taught were not affiliated at the relevant time with the Board/Institution and were in fact affiliated only after

30.09.2007, the experience gained by the petitioner in these schools could not be taken into consideration. Since she had a teaching experience of five years and four months from the other two schools, she would get 64.49% marks instead of 66.44% marks, which were less than the last selected candidate in the general category, who had obtained 65.38% marks. Thus, she was not eligible for selection in the general category. So far as claim of the petitioner under the backward class category was concerned, the same also could not be considered as the said certificate submitted by her was older than one year at the relevant time of submission of the application form and, therefore, her candidature could not be considered under the said category. The petitioner, however, asserts that she had submitted a fresh backward class certificate dated 10.04.2008 at the time of counselling prior to issuance of the appointment letter, which has not been considered by the respondents.

The District Education Officer proceeded to pass the order of termination dated 22.10.2009 (Annexure P-21), holding therein that the experience certificate submitted by the petitioner during her appointment as a Teaching Fellow claiming herself to have served in the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala, for the period from 07.10.2001 to 04.07.2007, has been found to be bogus and accordingly a show cause notice was published in the newspaper by the Director, Education. She was given an opportunity of personal hearing to come present between the dates 11.08.2009 to 13.08.2009 and to prove the experience certificate provided by her to be genuine. The petitioner did appear but was unable to prove the genuineness of the certificate submitted

by her. It was, thus, held that the petitioner had secured appointment on the post of Teaching Fellow by submitting a forged/false experience certificate and had played a fraud on the Department for securing the job. Keeping in view the terms and conditions of appointment and agreement entered between the parties, the services of the petitioner were terminated with immediate effect.

Not only the services of the petitioner but other similarly situated employees were also terminated because of submission of experience certificates, which were not found to be genuine and some of such Teaching Fellows have approached this Court by filing Civil Writ Petitions. In one of the Civil Writ Petitions i.e. Civil Writ Petition No.11111 of 2009 (Parminder Kaur Vs. State of Punjab and others), directions were issued that the petitioners (in all the writ petitions) may represent to the authorities alongwith material in support of their pleas to prove that the experience certificates relied upon by them are genuine, which would entitle them to appointment on the posts of Teaching Fellow. Such representations were to be considered and decided within a period of three months.

The petitioners of Civil Writ Petition No.11111 of 2009 accordingly moved their representations to the authority concerned and some of them had even succeeded and were reinstated in service vide orders dated 10.09.2010 (Annexures P-25 and P-26). In pursuance to this, the petitioner herein also submitted a representation to the respondents, keeping in view the interim directions issued by this court in various writ petitions, where such like employees were afforded another opportunity by way of public notice to appear in Panjab University, Chandigarh on

4/5/12/25.11.2009 (four days) for giving their clarification in order to prove

the genuineness of their experience certificate. Petitioner also appeared in person on 04.11.2009 before the Committee and produced the photostat copy of the experience certificate for the period 03.11.1999 to 04.07.2007 of the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala. In addition to this, no other record/documents were produced by her.

The Committee thereafter submitted its report, which had recorded that the petitioner had admitted a cutting having been made in the experience certificate as from 2001 it has been changed to 2007 and this, she stated, was done because she was upset. The Committee further enquired into the experience certificate issued by the School Managements/Principals and for that they had written to the concerned District Education Officer to produce the original record/documents/proof before the Committee in the office of the Director, Public Instructions (Elementary Education), Chandigarh.

In response to the same, the original record was produced by one Sh.Narinder Singh, Clerk, on 07.12.2009 for the period from 04.11.1999 to 04.07.2001 and he gave his statement in writing that the petitioner did not work for the remaining period in the Guru Nanak Khalsa Senior Secondary School, Narowal, Batala. The petitioner, however, gave her clarification that she could not procure certificates by visiting different schools where she had worked and, therefore, had made one consolidated certificate containing entire experience i.e. from 03.11.1999 to 04.07.2007 by interpolating the date from 2001 to 2007. In view of this situation, the Committee came to a conclusion that the experience which the petitioner had gained in different schools cannot be counted as of one school and, therefore, the certificate produced by her was bogus, on the basis of which

she had obtained marks and was accordingly selected and issued appointment letter.

While relying upon the report of the Committee, holding the experience certificate produced by the petitioner to be bogus, the District Education Officer (Elementary Education), Hoshiarpur-respondent No.3 passed a detailed order dated 22.08.2010 (Annexure P-22), reiterating the termination order dated 22.10.2009 (Annexure P-21) of the petitioner. She has now, after a delay of more than 4 years 7 months, approached this Court, challenging the initial termination order dated 22.10.2009 and the subsequent order dated 22.08.2010, Annexures P-21 and P-22 respectively.

Learned senior counsel for the petitioner has asserted that the petitioner has been discriminated against as she is similarly situated to the persons who have been reinstated in service. He has referred to the Division Bench judgement dated 04.05.2011 passed by this court in L.P.A. No.239 of 2011 (State of Punjab and others Vs. Davinder Kaur), Annexure P-29, to contend that the Court had accepted the contention of the counsel for the employees who had been asked to submit number of documents to prove that the experience certificates as submitted by them are not bogus, which were not being taken into consideration and only strict technicalities were being followed and applied by the Committee for determining the genuineness and authenticity of the experience certificate such as requiring the copy of C.P.F./E.P.F and pay deduction record of salary paid by the school and received by the teacher and proof of bank account and many other things. The Division Bench had observed that the Committee should avoid extreme technicalities to determine the authenticity of the certificates issued to the employees and rather a common sense view, which a

reasonable person would conceive, should be adopted. He asserts that in the present case the petitioner had submitted four different experience certificates, which are not being taken into consideration and only one experience certificate, which she had initially submitted along with the application, is being considered whereas the observations of the Division Bench in Davinder Kaur's case (supra) are otherwise. It has been stated in the said judgement that if the experience certificates produced by the writ petitioners are found to be authentic and genuine, then the same should be acted upon and selection/appointment shall be given to the writ petitioners. He, on this basis, contends that the observations of the appointing authority that the other experience certificates cannot be taken into consideration and the experience cannot be counted by excluding the period for which the certificate is found to be bogus, cannot be sustained.

This contention of learned senior counsel cannot be accepted. In the above case, the learned Single Judge had issued a direction to the Committee constituted by him that if the experience certificates of the petitioners are found to be bogus, their claim for appointment shall still be considered after excluding the marks for experience and in case the petitioners stood in merit list of general category, they shall be given appointment/permitted to join duties. The Division Bench of this court in the initial writ petition where this direction was issued i.e. Civil Writ Petition No.11111 of 2009 decided on 18.03.2010, set-aside the said direction in L.P.A. No.927 of 2010 (State of Punjab and others Vs. Parminder Kaur) by observing that the Committee constituted by the learned Single Judge may determine the authenticity of the certificates produced by

the petitioners therein and if the same are found to be authentic, then appointment has to be given to them. However, if the certificates are found to be bogus by the Committee, they will become disentitled to claim any benefit with regard to their selection and appointment and the matter should be taken to a logical conclusion, which included action against the certificate issuing authority under the penal law of the Country. It was also observed that it is well settled that law comes to the rescue of those who approaches the Court with clean hands, especially invoking equitable jurisdiction under Article 226 of the Constitution. Fraud vitiates and disentitles any person from obtaining any relief. Any person if found to have approached this Court with soiled hands is rendered dis-entitled to have his case heard on merits and, therefore, the direction issued by the learned single Judge cannot be sustained in the eyes of law. Reliance was also placed upon judgement of Supreme court reported in S.P.Changalvaraya Naidu (Dead) by L.Rs Vs. Jagannath (Dead) by L.Rs and others, AIR 1994 Supreme Court 853.

The Division Bench in Davinder Kaur's case (supra) has finally held as under:-

“6. We have noticed the aforesaid arguments in order to highlight that extreme technicality should be avoided by the appellant to determine the authenticity of the experience certificate produced by the writ petitioner-respondent. A common sense view which a reasonable person would conceive should be adopted. However, it would not mean that if the certificate is not owned by the authority issuing the same then that it would qualify to be authentic. It would also not be

regarded as authentic if the certificate is issued has been owned but there is no proof that the writ-petitioner-respondent actually worked and required experience. In any case the procedure adopted by the appellant cannot be adversely commented upon at this stage.

7. With the aforesaid observations the appeals are partially allowed to the extent that the learned Single Judge has directed the excluding of experience certificate and issuing appointment letter despite the production of a bogus certificate by a candidate. However, if the certificate produced by the writ petitioner are found to be authentic and genuine then the same should be acted upon and selection/appointment shall be given to the writ petitioner-respondent.

Appeals stand disposed of accordingly.”

A perusal of the above would show that the Division Bench has categorically held that if the certificate is not owned by the authority issuing the same, then that cannot be qualified to be authentic. It had gone to the extent of saying that even if the certificate is owned by the issuing authority but if there is no proof about the employee having actually worked and obtained the required experience, it cannot be termed as authentic.

In the case in hand, it has been admitted by the petitioner that she had interpolated the experience certificate by changing the year of the experience from 2001 to 2007 and had not submitted any other experience certificate alongwith the application form except for the one, which has been considered by the Committee. In the absence of any other experience

certificate appended alongwith the application, the same cannot be taken into consideration. The above referred Division Bench judgement in Davinder Kaur's case (supra) would only apply where the experience certificates are already on record and supplementary documents are being submitted/sought to be submitted to prove the genuineness/authenticity thereof. However, in the present case the petitioner is setting up an altogether new claim on the basis of the experience certificates which were neither referred to in the application form nor the said certificates were appended therewith.

As has been held by the Hon'ble Supreme Court in S.P.Changalvaraya Naidu's case (supra) on which reliance has been placed by the Division Bench in Parminder Kaur's case (supra) referred to above, fraud vitiates and disentitles any person from obtaining any relief and a person who approaches the Court with unclean hands, especially under equitable jurisdiction, renders himself disentitled to have his case heard on merits. Petitioner in the present case has sought appointment on the post of a teacher, who is to guide the future of the Country and she herself has proceeded to prefer unethical, immoral and illegal ways and means to obtain appointment by tampering with the experience certificate she had submitted, which factum cannot be overlooked, especially when she has admitted that she had changed the year in the experience certificate from 2001 to 2007.

Learned senior counsel has placed reliance upon a judgement of the Supreme court in Civil Appeal No.2447 of 2006 (Navdeep Vs. State of Punjab and others), decided on 03.05.2006 (Annexure P-28), where although the petitioner had admitted that she has tampered with the marks in

B.Sc. Part III as she had actually secured 86 marks in Economics, which she

had increased to 124 and in Computer application she had secured 140 marks and not 102 as were shown in the mark sheet produced by her. The total marks, however, remained the same. The Hon'ble Supreme Court had, in the peculiar facts and circumstances of the said case, keeping in view that she has already rendered 10 years of service without any blemish and appeared to have otherwise good academic record as also the fact that she possessed the minimum educational qualification for appointment, proceeded to observe that the Government would do well to consider whether a fresh appointment can be given to her ignoring the tampering of marks. It was further mentioned that these observations were made in the peculiar circumstances and it was entirely left to the discretion of the Government and there was no mandate issued by the Court. This judgement, therefore, cannot be of any help to the petitioner as it was in the peculiar facts and circumstances of that case, which cannot be relied on or treated as a precedent.

In the present case, the petitioner had joined service in the month of November 2008. She was issued a show cause notice on 01.01.2009, hardly after one month and her services were terminated on 22.10.2009. Thus, she had not even completed one year of service as a Teaching Fellow. That apart, the principles of natural justice have been duly followed as prior to termination of her services vide order dated 22.10.2009, a show cause notice was issued to the petitioner to clarify her stand. In reply thereof, she had admitted that she had only submitted one experience certificate and that too by changing the year in the experience certificate.

Even before the Committee, she had admitted her fault, as is apparent from

the order dated 22.08.2010 (Annexure P-22), where also detailed reasons have been given for reiterating the termination order dated 22.10.2009, which have been mentioned in extenso in the facts above and, therefore, need not be referred to here again. All these facts show that the petitioner does not deserve any leniency.

Another argument has been raised by learned senior counsel for the petitioner that the petitioner, on the basis of the certificates, which have been found to be authentic and genuine by the Deputy Commissioner, Hoshiarpur in his report (Annexure P-19), is entitled to be considered for selection in the backward class category. However, this submission also cannot be accepted in the light of the fact that the petitioner submitted the backward class certificate, which was older than one year at the time of submission of the application form, which fact is not disputed by her. It is also admitted position that as per the instructions of the Government of Punjab, the validity of a backward class certificate is one year from the date of issue for the purpose of employment and after the expiry of period of one year, a fresh certificate has to be obtained. That apart, the petitioner had never asserted her right under the backward class category even after her termination before the competent authority i.e. the District Education Officer (Elementary Education), Hoshiarpur. Only a bald assertion has been made in the writ petition that she had submitted a backward class certificate dated 10.04.2008 at the time of counselling but the said certificate has not been appended alongwith the writ petition. Therefore, this would be a disputed question of fact, which cannot be gone into in the writ petition, which in itself is a good ground for not entertaining this plea of the

petitioner.

That apart, the last selected and appointed backward class candidate as Teaching Fellow has not been impleaded as a party respondent. It is also not the case of the petitioner that any post belonging to backward class category, which was advertised, had remained unfilled at the time of selection/appointment. Assuming the petitioner's claim is to be considered under the backward class category, the last selected/appointed candidate under the said category would have to make way for the petitioner and no direction can be issued in the present situation without giving opportunity of hearing to said person.

Otherwise also, the petitioner had accepted the terms and conditions of the appointment as a general category candidate and joined the post of Teaching Fellow under the said category. As per Condition No.9 of the said terms and conditions, in case, at any stage, any document is found to be false, then the selection/appointment of the candidate could be cancelled. Petitioner, on the basis of the said condition, had also given an undertaking to this effect. The experience certificate, as submitted by the petitioner, having been found to be bogus/tampered with/not authentic, the termination of her services being in accordance with the terms of contract/agreement, cannot be said to be unjustified, illegal or without any basis.

Another ground which dis-entitles the petitioner to the equitable relief is that the petitioner had been sleeping over her rights as the last order, which is impugned in the present writ petition is dated 22.08.2010 (Annexure P-22). More than four years and seven months have passed since the reiteration of the termination order dated 22.10.2009 (Annexure P-21). A

person who does not approach the Court within a reasonable time for redressal of a grievance, especially when it adversely effects the civil rights of another person, cannot be permitted to do so at a belated stage. The same is the situation in the present case and delay itself in this case dis-entitles the petitioner for the equitable relief claimed by her.

In view of the above discussion, finding no merit in the present writ petition, the same stands dismissed with costs, which are assessed at Rs.2,000/- to be deposited with the Secretary, State Legal Service Authority, Punjab, within a period of one month from today.

April 01, 2015
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE