

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 7678 of 2015

Date of Decision : December 18, 2015

Santosh Petitioner

vs.

Financial Commissioner and
Secretary to Govt. of Haryana
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. S. S. Dinarpur, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana,

Mr. Arun Singal, Advocate
for respondent no. 5.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner, who is serving the State of Haryana as Auxiliary Nurse Mid-wife (ANM), seeks to challenge her transfer from CHC Juan, Sonapat to CHC Taraori, Karnal. One of the main grounds pleaded in the petition are that from April 1986 to March 2015 i.e. for a period of about 29 years, the petitioner has remained posted outside her Home District and was never posted in her Home District i.e.

Sonepat. The relevant extract from paragraph 4 of the petition is reproduced below :-

“4. That as already stated above, from April 1986 to March 2015 i.e. for a period of about 29 years of her service career, petitioner remained posted outside her district and she was never posted in her home district Sonapat during the aforesaid whole period of her service career (sic).”

At the time of arguments also, the aforementioned fact was the main ground, which was pressed.

A perusal of the written statement filed by the State of Haryana shows that since 06.07.2011 till 17.03.2015, the petitioner has been serving at CHC Juan, Sonapat (on deputation). This fact was admitted by learned counsel appearing for the petitioner.

From the aforementioned fact, it is clear that the petitioner has not come to this Court with clean hands and as per settled law by the Apex Court, as also by this Court, she has disentitled herself for relief.

This view of mine finds support from a Division Bench judgment of this Court in the case of **Pawan Kumar vs. State of Haryana and another** – **1994 (5) SLR 73**, wherein it has been held as under :-

“13. The principle which can be deduced from the above referred decision is

that the party who seeks relief from the High Court in exercise of reputable jurisdiction under Article 226 of the Constitution of India must come with all bona fides, must make true, candid and full disclosure of the relevant facts. Its conduct must be above board. There should be no attempt by a party to mislead the Court. The petitioner is under an obligation to collect all material facts with due care and attention and he will not be heard to say that facts were not within his knowledge although the same could have come to his knowledge had he taken due care and had made efforts to find them out. The High Court will be fully justified in declining exercise of extraordinary jurisdiction in favour of a party who is guilty of suppression veri and suggestio falsi or who makes an attempt to mislead the Court.

14. *In this case, the petitioner has made a deceitful attempt to mislead the Court and, therefore, we find little justification to give relief to him.”*

Similarly, in a Full Bench judgment of this Court in **Jai Singh Rathi and others vs. State of Haryana and others – 1970 AIR (Punjab)**

379, suppression of facts was condemned by holding as under :-

“20. It was pointed out by Mr. Nambyar that in their petition the petitioners have totally suppressed their part of the conduct both on February 4 and 5, 1969, in that they persistently disobeyed and defied the Chair and their conduct was not, in the least, orderly in the House, They also suppressed the fact that after the introduction of the budget the opposition walked out and took no part in the proceedings of the House in regard to the acceptance of budget estimates, money grants and the passage of the appropriation bill He referred to this observation of Viscount Reading C. J., in [Rex v. Kensington Income Tax Commissioners](#), (1917) 1 KB 486, at page 495. Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not Candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the

Court, but one. which should only be used in cases which bring conviction to the mind of the Court that it has been deceived."On this consideration also the petitioners are not entitled to the exercise of the discretion of this Court in their favour so far as [Article 226](#) of the Constitution is concerned.

21. In consequence, this petition of the petitioners is dismissed with costs, counsel's fee being Rs. 500/-."

To the same effect is another Full Bench judgment of this Court in the case of **Chiranji Lal and others vs. Financial Commissioner Haryana and others – 1978 AIR (Punjab) 326,**

"9. It is, thus, plain that even at the stage the writ petition was filed, the petitioner therein were more than well aware that the identical issues of law and fact regarding which they claimed relief in this Court had already been already been conclusively decided against them in a civil Court to which they had themselves resorted. Nevertheless, they deliberately and conclusively suppressed this fact entirely from the writ Court. There can hardly be any doubt that if all these facts

were candidly disclosed at that stage as the writ petitioners were bound to do, then the Court would have stayed its hands altogether or in any case would have been very reluctant and chary to grant any interim relief. This is not all. In the writ petition it was further averred that no other remedy was available to the petitioners. This has to be viewed in the context of the fact that meanwhile the writ petitioners had then filed an appeal against the order of the learned Subordinate Judge which to their knowledge was pending decision and in which also they were seeking the identical relief. There can be, thus, no manner of doubt that the averments in this context were deliberately and calculatedly designed to keep the writ Court in the dark with regard to these material facts and to procure an interim or ultimate relief by keeping these facts out of the way. It is perhaps equally significant that during this interval the writ petitioners continued to proseture remedy by way of appeal before

the Additional District Judge, Kamal and ultimately he dismissed the same on merits after considering all the arguments raised on behalf of the appellants (writ petitioners) on August 17, 1976. Nevertheless, this fact was also not remotely sought to be brought to the notice of this Court at any stage on behalf of the writ petitioners.

10. In the aforesaid context, we cannot but hold that there has been mala fide and calculated suppression of material facts which, if disclosed would have disentitled the petitioners to the extraordinary remedy under the writ jurisdiction or in any case would have materially affected the merits on both the interim and ultimate relief claimed. We categorically reject the plea of the writ petitioners that the failure to mention all these material facts clearly within their knowledge was either inadvertent or was occasioned by any bona fide omission.

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13. Within this jurisdiction a

Division Bench in Mr. U.C. Rekhi v. The Income Tax officer, (1950)52 P.L.R. 267, has held that if there is any suppression of the material facts on the basis of which the writ is sought to be claimed the Court would refuse to grant the same without going into the merits. This judgment was then followed by another Division Bench in Narain Das v. The State of Punjab, (1952)54 P.L.R. 366, Tek Chand, J., in Shrimati Bhupinderpal Kaur v. The Financial Commissioner (Revenue) Punjab, (1968)70 P.L.R. 169, took even a stricter view in holding that there was no distinction between an averment in a petition which is a positive statement of fact and an affidavit which is sworn or an affirmed statement reduced to writing. He dismissed the writ petition on the short ground that a wrong averment in the writ petition was made to the effect that a notice of motion was served on the respondents; whilst in fact, it had not been so done.

14. *Agreeing with the long line of*

precedent and affirming a rule which appears to us hoary by usage, we hold that the writ petitioners, in the present case, have by their own conduct disentitled themselves to the relief which they sought to claim. We dismiss the writ petition with costs on this ground alone without advertng to merits.”

On this issue, the Apex Court, in **Kishore Samrite vs. State of**

U.P. and others – 2013 (2) SCC 398, has held as under :-

“33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the

process of the court. A litigant is bound to make “full and true disclosure of facts”... [Emphasis supplied]”

On a similar issue, the Apex Court in **Dalip Singh vs. State of Uttar Pradesh and others** – **2010 (2) SCC 114** has observed as follows :-

“6. *In Prestige Lights Ltd. V. State Bank of India* (2007) 8 SCC 449, it was held that in exercising power under *Article 226* of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under *article 226* of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under *Article 226* of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v Kensington Income Tax Commissioners* (1917) 1 K.B. 486 (CA), and observed :

“*h* exercising jurisdiction under *Article 226* of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise

guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

A perusal of the above quoted clearly depict that the law is settled that any person, who does not come to the Court with clean hands, does not deserve any relief. The petitioner too, having not come to this Court with clean hands, has disintitiled herself to be granted any relief. Consequently, the writ petition is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

December 18, 2015

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