

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5417 OF 2015

Sonyabapu Patilba Dahiphale,
Age-75 years, Occu-Nil,
R/o Chinchpur Ijade, Kuttarwadi,
Taluka Pathardi, Dist.Ahmednagar

PETITIONER

VERSUS

1. The Government of Maharashtra,
Through Secretary for Irrigation
Department, Mantralaya, Mumbai,
2. Command Area Development Authority,
Sinchan Bhawan, Nagar-Aurangabad Road,
Ahmednagar
Through its Superintending Engineer/
Administrator,
3. The Executive Engineer,
Ahmednagar Medium Project Division,
Nagar-Aurangabad Road, Ahmednagar,
4. Sub Divisional Engineer,
Cina Canal Project,
Sub Division No.2,
Nagar-Aurangabad Road,
Ahmednagar.

RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.P.N.Kutti, AGP for the respondent/State.
Mr.G.N.Patil, Advocate for respondent Nos. 2 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. The petitioner is aggrieved by the judgment dated 05/11/2014 delivered by the Labour Court, Ahmednagar by which his Application (IDA) No.12/2011 has been rejected. Consequentially, his claim for recovery of money due from an employer u/s 33(C)(2) of the I.D.Act, 1947 has been rejected.

3. I have considered the strenuous submissions of Mr.Barde, learned Advocate for the petitioner and the learned Advocates appearing on behalf of respondent Nos. 1 to 4.

4. The petitioner had joined respondent Nos.3 and 4 on 21/06/1986 as an Unskilled Labourer. He was granted the benefits under the Kalelkar Award by being brought on Converted Regular Temporary Establishment (C.R.T.E.) after completion of 5 years w.e.f. 21/06/1991. Going by the date of birth recorded in the service book, he was to retire on 30/04/1997. He was continued in employment even thereafter on the basis of certain documents upto 24/06/2005. After it was noticed that he had continued in employment beyond his date of retirement for about 8 years and 2 months on the basis of fabricated documents, he was terminated from service.

5. The petitioner approached the Maharashtra Administrative Tribunal by filing original Application No.601/2006. The same was disposed of with liberty to approach the appropriate Court.

6. The petitioner prayed for retiral and pensionary benefits by filing Complaint (ULP) No.23/2007 before the Industrial Court. By judgment dated 10/09/2009, the Industrial Court arrived at a specific conclusion that the petitioner has produced a false record and had continued in employment with the respondent/Department over a period of about 8 years and 2 months. Consequentially, the Industrial Court dismissed the complaint by the judgment dated 10/09/2009 and deprived the petitioner of retiral benefits. It is stated that even gratuity was forfeited keeping in view that the conduct of the petitioner did amount to moral turpitude.

7. The petitioner approached this Court vide WP No.1411/2010 challenging the judgment of the Industrial Court. By its judgment dated 06/01/2011, this Court dismissed the petition by observing in paragraph No.3 as under :-

“3. The petitioner’s contention is that he was entitled to receive the pensionary benefits and gratuity. The petitioner was appointed on 21st June, 1986 as a daily wager. He was brought

on C.R.T. w.e.f. 21st June, 1991. He was, however, terminated from the service on 24th June, 2005 as a result of departmental enquiry on the charge that he had concealed date of birth and thereafter worked for eight (8) years more over and above the date of superannuation. The petitioner admitted that he concealed the real date of birth. There is no difficulty in holding that though he was supposed to be superannuated on 30th April, 1997, yet, he continued to work for period of about eight (8) years more. Admittedly, he was paid the salary for the period of said eight (8) years. There is no recovery of the amount, claimed by the respondents from the petitioner, in respect of the payment made to him for the period of about eight (8) years which was the employment in excess the date of superannuation.”

8. As a result of the order of this Court, the petitioner is deprived of retiral benefits, pensionary benefits as well as gratuity. This Court had sustained the conclusions of the Industrial Court that the petitioner had continued in employment by concealing his real date of birth and on the basis of fabricated documents, he worked for a period of 8 years and 2 months in excess of the normal service which would have ended on 30/04/1997.

9. The petitioner then preferred Ref.(IDA) No.12/2011 and claimed difference of wages under the Kalelkar Award from 21/06/1991 to

30/04/1997, provident fund accumulations from 01/05/1997 to 24/06/2005 and leave encashment for the period 21/06/1991 to 24/06/2005.

10. The Labour Court, by the impugned judgment, has dismissed the application by concluding that the difference in wages from 21/06/1991 to 30/04/1997 has already been paid and the issue of leave encashment from 21/06/1991 till 24/06/2005 has been dealt with by the Industrial Court and the prayer has been rejected. The issue of provident fund is also held to be dealt with by the Industrial Court and rejected.

11. In the light of the facts as recorded above and considering the judgment of the Hon'ble Supreme Court in the matter of Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475 and in the matter of State of Punjab Vs.Rafiq Masih (White Washer), 2015 DGLS (Soft.) 320., the employer was entitled to recover such excess payments in the event it is established that the payments were made solely on the basis of the fraud or misrepresentation played by the beneficiary.

12. In the instant case, it is established that the petitioner has

played a fraud on the respondents and had continued in employment from 01/05/1997 till 24/06/2005. In my view, this was a fit case for directing recovery of all amounts of salaries/wages paid to the petitioner for 8 years. However, I am not issuing the said directions considering the following aspects :-

- [a] The petitioner is about 76 years old today and is a widower.
- [b] He has been deprived of his entire retiral and pensionary benefits.
- [c] This Court, in its order dated 06/01/2011 (reproduced earlier), had recorded that the respondents have not sought recovery of the wages for the period of 8 years.

13. In so far as the contention of the petitioner that provident fund contributions which have been deducted from his wages for the period of 01/05/1997 till 24/06/2005 be paid to him, I am not inclined to issue the said directions keeping in view that this Court has already come to a conclusion by order dated 06/01/2011 in WP No.1411/2010 that the petitioner deserves to be deprived of all benefits post retirement.

14. So also, the Hon'ble Supreme Court in the matter of Dalip Singh Vs. State of U.P. (2010) 2 SCC 114 and in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398 has concluded that when it is revealed that a litigant has played a fraud on the

Court or has attempted to misrepresent before the Court, deserves to be deprived of any relief even if he may be having a good case. Paragraph Nos.34 to 38 of the Kishore Samrite judgment read as under :-

“34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice-delivery system.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal

process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. *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”. (Refer : Tilokchand H.B. Motichand v. Munshi, A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, [Chandra Shashi v. Anil Kumar Verma](#), [aAbhyudya Sanstha v. Union of India](#), State of Madhya Pradesh v. Narmada Bachao Andolan, Kalyaneshwari v. Union of India)*

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a*

law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd.)"

15. I find it quite astonishing that the petitioner had the courage of approaching the Maharashtra Administrative Tribunal and thereafter the Industrial Court despite it being established that he had fraudulently continued in employment beyond retirement age by 8 years and 2 months which he had admitted and had claimed retiral and pensionary benefits. An attempt was made to convince the Court

that he is innocent and had rightly continued in service on the basis of forged documents.

16. Considering this aspect, if any provident fund accumulations are with the Provident Fund Department for the said period of illegal service from 01/05/1997 to 24/06/2005, the same shall stand forfeited and shall be deposited with the Treasury of the concerned Department. Owing to the fraudulent conduct of the petitioner, he would be dis-entitled to claim any further benefits for having illegally worked in between 01/05/1997 to 24/06/2005 and more so keeping in view that recovery of the said wages is not being directed by this Court for the reasons stated in the foregoing paragraphs.

17. This petition, being devoid of merit, is dismissed.

18. Rule is discharged.

19. No costs.

(RAVINDRA V. GHUGE, J.)