

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.1196 of 2014

P.Sudalaimuthu

.. Appellant

Vs.

1. Union Bank of India
rep. by its Senior Manager
Field General Manager's Office
No.139, Broadway
Chennai 600 108.

2. The Chief Manager /
Disciplinary Authority
Union Bank of India
Department of Personnel
Nodal Regional Office
Chennai 600 108.

.. Respondents

Appeal under Clause 15 of the Letters Patent filed against the order dated 04.6.2014 made in W.P.No.10097 of 2011.

For Appellant : Mr.V.B.R.Menon
For Respondents : Mr.Anand Gopalan

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JUDGMENT

(Delivered by Huluvadi G.Ramesh,J)

The writ appeal is directed against the order dated 04.6.2014 made in W.P.No.10097 of 2011.

2. The applicant herein secured employment as Part Time House Keeper by stating his educational qualification as fifth pass, while the prescribed qualification was second standard pass or eighth standard fail. After his joining, applications were called for, for the post of Peon/Hamal, for which the applicant also applied stating his educational qualification as eighth standard pass. The respondent Bank, having found that the applicant had deliberately concealed his educational qualification at the time of securing employment, issued charge memo, which culminated into enquiry and finally, the applicant was imposed with the punishment of removal from service. Hence, the applicant filed writ petition and the same was dismissed. Therefore, the applicant filed writ appeal and the same was dismissed, which necessitated the applicant to come up with this review application.

3. According to the appellant, the punishment of dismissal from service imposed on him is highly disproportionate to the wrong committed by him, namely concealing that he had passed eighth standard even at the time of his applying to the post of Part Time House Keeper.

4. After hearing the argument advanced on behalf of both sides, we are of the opinion that the ratio laid down in the decisions of the **Supreme Court in Kerala Solvent Extractions Ltd. v. A.Unnikrishnan [(2006) 13**

SCC 619] and **Santosh Kumar Meena v. Government of NCT of Delhi [Order dated 29.7.2013 in CA No.6116 of 2013]** are distinct on facts and that the decision of the Andhra Pradesh High Court in **Ch.Papanna v. The Personnel Manager, State Bank of India, Hyderabad [(1996) 5 SLR 772 (DB)]** is applicable to the instant case.

5. Coming to the facts on hand, the qualification prescribed for the post of Part Time House Keeper in the advertisement was second standard pass or eighth standard fail. Admittedly, the appellant had passed eighth standard at the time of submitting the application. But, the appellant had submitted his application as having passed fifth standard and not stated about having passed eighth standard. Therefore, the argument of the learned counsel for the respondent Bank is that for suppressing the fact of having passed eighth standard at the time of submission of application itself, while the qualification prescribed was fail in eighth standard, the appellant deserves the punishment of dismissal from service.

6. In this regard, it is to be noted that except prescribing qualification as second standard pass or eighth standard fail for the post of Part Time House Keeper, nothing was stated in the advertisement as to the bar for consideration of appointment in case of over qualification.

7. Further, the suppression of the fact of having passed eighth standard by the appellant, at the time of submission of his application or appointment, will not in any manner prejudice the work being/to be carried out by the appellant as Part Time House Keeper, nor it would call for any action by the respondent much less disciplinary enquiry.

8. The intent behind the prescription of qualification of eighth standard fail, by the respondent, is not clear. In the absence of the intent of the Bank in prescribing the qualification as eighth fail, we do not understand as to how mere acquisition of higher qualification of eighth standard would affect the Management. Had it been the case that eighth pass required and the appellant having failed in eighth and secured employment by producing fake certificate, it would have been a different aspect.

9. Thus, in our opinion, the order of the learned single Judge as well as the order of the disciplinary authority needs interference for the reason that intent of the bank in prescribing the qualification as eighth standard fail is not clear, particularly when the respondent Bank has imposed lesser punishment to a similarly placed person and imposing a harsh and disproportionate punishment to the appellant.

10. In the fact situation, we are of the view that the punishment

imposed appears to be more arbitrary in nature and therefore, the order of the disciplinary authority as well as the learned single Judge are set aside and the respondent is directed to reinstate the appellant with continuity of service and without backwages for the period from the date of dismissal till re-instatement, within two months from the date of receipt of a copy of this order. The appellant shall be entitled to all the consequential benefits other than the backwages from the date of dismissal till his reinstatement.

In the result, the writ appeal is allowed. However, there shall be no order as to costs.

Index : Yes/No
Internet: Yes/No

(H.G.R.J.) (T.K.R.J.)
11.12.2017

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HULUVADI G.RAMESH,J,
and
RMT. TEEKAA RAMAN,J
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