

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.17172 of 2014**  
**Decided on : 25.04.2016**

Rajiv Sharma

... Petitioner

Versus

State of Punjab & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr.Amit Dhawan, Advocate, for the petitioner.

Mr.Avinit Avasthi, A.A.G., Punjab.

**G.S. Sandhawalia, J. (Oral)**

Present is an unfortunate case where a tampered document has been placed on record in order to get the order of dismissal dated 15.04.2014 (Annexure P21) set aside.

The petitioner had been appointed as a Vocational Master on 23.05.2011, on the strength of a handicap certificate dated 19.09.2008 (Annexure P2). The said certificate showed that the petitioner had 2 disabilities, one pertaining to his eye-sight (visual disability) and second was the weakening of left upper limb. On a complaint dated 14.01.2013 received by the department, the matter was referred to a committee of Doctors for verification of the handicap which the petitioner was allegedly suffering from. A show cause notice dated 13.01.2013 was also issued to the petitioner as to why his services be not terminated. Opinion was received from the committee that the petitioner had refused to get his re-

examination conducted and therefore, it was recorded that his re-examination be conducted from higher authorities like the Government Medical College, PGIMER, Chandigarh. Accordingly, the petitioner's services were terminated by respondent No.2, with immediate effect, on account of committing fraud with the Government, after the Enquiry Officer had given his report dated 11.12.2013. The Department of Ophthalmology, PGIMER also, on 16.06.2014 (Annexure P24) came to the conclusion that the visual disability was 20% in the right eye and as per the notification dated 21.06.2001 (Annexure P23), the benefit was not to be given as 40% disability was required to be eligible for the benefit.

Counsel for the petitioner has relied upon the correspondence dated 16.06.2014 (Annexure P24), which was addressed to the father of the petitioner to show that the disability which the petitioner was suffering in the right eye had wrongly been taken to be 20% whereas as per the notification (Annexure P23), the disability should have been assessed as 40%, in Category-I. It is, accordingly, submitted that the petitioner had corresponded with the medical experts at PGIMER and they had assured him that they could give a new report, based on newer guidelines. Accordingly, it has been submitted that by a subsequent report dated 25.09.2014 (Annexure P29), issued by PGIMER, now, his disability has been assessed at between 20-40% instead 20% as given in the earlier report, by the same

Medical Board. A perusal of the same would go on to show that the Board had also recorded that the petitioner can appear before the Board for re-assessment. In such circumstances, counsel for the petitioner has vehemently attempted to punch holes in the termination orders and submit that it was without any basis.

Unfortunately, the petitioner, in order to further substantiate his case, filed CM-3239-2015. In the said application, he made the following averments:

“3. That in the meanwhile the petitioner moved an application dated 01.08.2014 under the RTI Act before Central Publication Information Officer, Govt. Medical College and Hospital, Sector 32, Chandigarh to get the calculation of his disability as per the report given by the PGI. A copy of the said application dated 01.08.2014 is being annexed herewith as Annexure P-27.

4. That in response to the aforesaid application, the petitioner received a letter dated 19.08.2014 from the competent authority of aforesaid Hospital, disclosing that the petitioner suffers from visual disability which is 40% as per guidelines and gazette notification, issued by Ministry of Social Justice & Empowerment. A copy of the said letter dated 19.08.2014 is being annexed herewith as Annexure P-28.”

On the basis of above-said averments, he placed on record information supplied on 19.08.2014 under the RTI Act by the Government Medical College & Hospital, Department of Ophthalmology, Sector 32, Chandigarh as Annexure P28. Same reads as under:

“GOVERNMENT MEDICAL COLLEGE & HOSPITAL,  
CHANDIGARH DEPARTMENT OF OPHTHALMOLOGY

To  
Sh. Rajiv Sharma  
# 292, Kothey Bhim Sain Dinanagar,  
Dinanagar, Distt. Gurdaspur (Punjab).  
No. GMCH-Ophthal-2014/934  
Dated: 19.08.14  
Subject: Information under Right to information Act, 2005.

Reference your application dated 07.08.2014 following the letter No.GMCH/RTI-CELL/14 (3363)/2014/28672, dated 07.08.2014 received from Office of the CPIO, GMCH on the subject cited above. Following is the requisite information:-

| Sr.No. | Particulars                                                                                                                                                                 | Remarks                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Visual Acuity 6/60 with -3.50 DSPH with -0.75 85 degrees in Right Eye, 6/12 with -4.25 dsph with 0.75 85 degrees in left Eye. Intraocular pressure was 18 mmHg in both Eyes | As per the record of the visual acuity provided, he falls between category 0 to 1 of visual disability, which amounts to 40% as per the guidelines & Gazette Notification (Committee under Chairmanship of DGHS, GOI) issued by Ministry of Social Justice & Empowerment, GOI, Regd No.DL33004/99 (Extraordinary) Part II, Sec. 1, June 13, 2001. The photocopy of the visual disability manual is enclosed herewith. |

Sd/-  
Acting Head,  
Deptt. Of Ophthalmology”

A perusal of the above document would go on to show that as per the opinion, the petitioner had 40% visual disability, as per the guidelines issued by the Ministry of Social Justice.

The State, however, in its reply, in order to controvert the said statement, placed on record the true contents of the said information supplied whereby the words 'less than 40%' were shown and which had been conveniently deleted in Annexure P28. Said portion reads as under:

| Sr.No. | Particulars                                                                                                                                                                 | Remarks                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Visual Acuity 6/60 with -3.50 Dsph with -0.75 85 degrees in Right Eye, 6/12 with -4.25 dsph with 0.75 85 degrees in left Eye. Intraocular pressure was 18 mmHg in both Eyes | As per the record of the visual acuity provided, he falls between category 0 to 1 of visual disability, which amounts to less than 40% as per the guidelines & Gazette Notification (Committee under Chairmanship of DGHS, GOI) issued by Ministry of Social Justice & Empowerment, GOI, Regd No.DL33004/99 (Extraordinary) Part II, Sec. 1, June 13, 2001. The photocopy of the visual disability manual is enclosed herewith. |

Acting Head,  
Deptt. of Ophthalmology

It was also further brought to the notice of this Court that an FIR dated 19.01.2015 (Annexure P31) had already been lodged for the forgery of the record.

On 17.03.2016, the petitioner had produced the original of Annexure P28, which was taken into custody and the Registrar (Judicial) of this Court was directed to seal the same and keep the same in safe custody. Accordingly, this Court asked the Principal, Government Medical College & Hospital, Sector 32, Chandigarh, to file a report and inform this court as to whether the information supplied on 19.08.2014 depicts the factum of less than 40% or not. In pursuance of the said directions, Dr.Henna Garg, Senior Resident, Department of Ophthalmology, Government Medical College & Hospital, Sector 32, Chandigarh is present in Court today. The Court has been informed that the original was handed over to the petitioner, which is now in the custody of this Court.

Photocopy of the said document has been placed on record as Annexure-A, which corresponds with Annexure R7, which had been furnished by the State and with the original, handed over on 17.03.2016. This further corroborates the fact that the document dated 19.08.2014 was tampered with and placed on record on the file of this Court in order to convince this Court that the petitioner has a disability of more than 40%.

Resultantly, it is apparent that the petitioner is not entitled to be heard on merits, regarding his disability, at all. A time has come when such falsehood has to be acted upon with hardship. Precious court time has been wasted on account of the dispute of the disability which was in doubt right from day one. In order to substantiate his case, further forgery has been made, for which, an FIR has been lodged.

The Apex Court in **M/s Prestige Lights Ltd. Vs. State Bank of India (2007) 8 SCC 449** held that the basis of the writ jurisdiction rests in the disclosure of facts-true and complete and a party with soiled hands is not entitled to be heard on merits. The conduct of the party in invoking the jurisdiction is, thus, to be seen and the Court can dismiss the writ without adjudicating upon the merits, in view to deter unscrupulous litigants from abusing the process of Court. The order of the High Court dismissing the writ in limine was upheld. Relevant observations read as under:

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power,

therefore, a Writ Court will indeed bear 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, the Court may dismiss the action without adjudicating the matter. 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.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under [Article 226](#) of the Constitution from the High Court as also equitable remedy from this Court under [Article 136](#) of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company."

Similar view was taken by the Apex Court in **Dr.**

**Devendra Kumar Vs. State of Uttranchal & others 2013 (9)**

**SCC 363** wherein it was held that persons who hold public posts

by concealing and by misrepresenting, should not be permitted to perpetuate the fraud by the Court by entertaining the petitions on their behalf. Relevant observations read as under:

“10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide: S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors., AIR 1994 SC 853. In Lazarus Estate Ltd. v. Besalay, 1956 All E.R. 349, the Court observed without equivocation that “no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.”

12. [In Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.](#), 1994 (2) R.R.R. 38 : AIR 1994 SC 2151; and [State of Maharashtra & Ors. v. Prabhu](#), (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. “Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.”

13. [In Smt. Shrisht Dhawan v. M/s. Shaw Bros.](#), 1992 (1) R.C.R. (Rent) 442 : AIR 1992 SC 1555, it has been held as under:– “Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.”

14. [In United India Insurance Company Ltd. v. Rajendra Singh & Ors.](#), AIR 2000 SC 1165, this Court observed that “Fraud and justice never dwell together” (fraus et jus nunquam cohabitant) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in [M.P. Mittal v. State of Haryana & Ors.](#), AIR 1984 SC 1888.

15. [In Ram Chandra Singh v. Savitri Devi & Ors.](#), 2005 (2) R.C.R. (Civil) 696 : AIR 2004 SC 4096, this Court held that “misrepresentation itself amounts to fraud”, and further held “fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.” The said judgment was re-considered and approved by this Court in Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav, (2004) 6 SCC 325).

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. [In Union of India & Ors. v. M. Bhaskaran](#), 1996 (1) S.C.T. 469 : AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in [District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi](#), (1990) 3 SCC 655, observed as under:– “If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law

as the employment secured by fraud renders it voidable at the option of the employer.”

Resultantly, the present writ petition is dismissed, with exemplary costs of Rs.1 lac. The petitioner shall deposit the said amount with the Registry of this Court, within a period of 2 months from today. In case the needful is not done, the Collector, Gurdaspur shall ensure that the amount is recovered by resorting to proceedings of attachment under the Punjab Land Revenue Act, 1887, failing which, by coercive methods. The original of Annexure P28 is put in sealed cover, to be kept with the Registrar (Judicial) of this Court, so that it can be called for by the Investigating Agency, since an FIR has already been lodged, regarding this aspect.

**APRIL 25, 2016**  
*sailesh*

**(G.S. SANDHAWALIA)**  
**JUDGE**