

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

CWP No.11624 of 2010 (O&M)

Date of Decision:31.07.2017

V.K. Sharma

... Petitioner

Vs.

National Insurance Company Limited and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. R.K. Chopra, Sr. Advocate with
Mr. Sanjeev Sharma, Advocate for the petitioner.

Mr. V. Ramswaroop, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has challenged the initiation of inquiry proceedings vide memo dated 22.12.2009 (Annexure P-7).

The petitioner joined services in the respondent-National Insurance Company as a Inspector in the year 1978. He has earned promotion to the cadre of Development Officer Grade-I, Assistant Administrative Officer, Administrative Officer, Deputy Manager (re-designated as Divisional Manager). During pendency of this petition, he has attained age of superannuation and retired from service on 31.3.2017.

Learned counsel for the petitioner challenged the initiation of inquiry proceeding on the score of delay of 22 years in respect of an event relating to promotion to the cadre of Assistant Administrative Officer as on 9.9.1988. One of the criteria for promotion to the post of Assistant Administrative Officer is that Development Officer who has passed degree and post graduation is entitled to 7 and 10 marks respectively. Petitioner is stated to have produced post graduation certificate obtained from the

Varanasi Sanskrit Vishawa vidhalaya, Varanasi in the year 1987 (M.A.). He further submitted that even award of marks for Post Graduation is incorrect to the extent that, he is not entitled for 10 marks in that event he is entitled for 7 marks for degree. Even if 7 marks is awarded for the degree, petitioner would be in the zone of consideration for the purpose of promotion to the post of Assistant Administrative Officer as on 9.9.1988. Therefore, question of initiation of inquiry in respect of producing post graduation certificate issued by the Varanasi Sanskrit Vishawa vidhalaya, Varanasi may not be correct. Thus, the petitioner has raised two grounds namely delay in initiation of inquiry and assuming that post graduation certificate (M.A.) issued by the Varanasi Sanskrit Vishawa vidhalaya, Varanasi is incorrect, even then, he is eligible for promotion to the post of Assistant Administrative Officer. Therefore, initiation of inquiry do not arise.

Per contra, learned counsel for the respondents vehemently contended that as on the date of issuance of M.A. certificate by Varanasi Sanskrit Vishawa vidhalaya, Varanasi petitioner was working in Phagwara and so also two other officials of the National Insurance Company. Petitioner and two others furnished M.A. Certificates issued by Varanasi Sanskrit Vishawa vidhalaya, Varanasi to respondent which have been obtained in the year 1987. All the three were working at Phagwara in the year 1987. At the relevant time for the purpose of acquisition of Master Degree from Varanasi Sanskrit Vishawa vidhalaya, Varanasi, they were required to take permission of the National Insurance Company. Further they have not furnished admission details in Varanasi Sanskrit Vishawa vidhalaya, Varanasi including date of examination etc. In this regard, other than the petitioner, one Shri R.K. Thapar was subjected to disciplinary

proceedings. It was concluded in imposing the punishment of withdrawing the promotion of Assistant Administrative Officer on 2.12.2011. Insofar as other employee is concerned, he has left the National Insurance Company as and when, he received notice of inquiry. Whereas in the present petition, petitioner has obtained an interim order. By virtue of interim order, he continued in service and attained the age of superannuation and retired from service on 31.03.2017. On question of delay, it was submitted by the learned counsel for the respondents that they received a complaint only in the year 2008 that petitioner and two others played a fraud on the National Insurance Company by producing post graduation certificate issued by the Varanasi Sanskrit Vishwa vidhalaya, Varanasi. If the fraud has taken place, question of delay would not come in the way of taking action. It was also pointed out that in the case of Shri R.K. Thapar, inquiry was initiated and concluded. Further it was contended that Supreme Court in its recent decision passed in Civil Appeal No.8929 of 2015; **Chairman and Managing Director FCI and others** v. **Jagdish Balaram Bahira and others**; 2017 SCC On Line SC 715 relating to false certificate produced by an employee has held that he is not entitled to continue in service. Even in that case there was a delay and Supreme Court had held delay would not be hurdle in respect of fraud played by an employee on employer in taking certain service benefits. It was also submitted that CWP is premature in questioning charge-memo.

Heard learned counsel for the parties.

Petitioner has challenged show cause notice/charge-sheet. Writ Court can interfere in respect of charge-sheet only if there is a violation of any statutory rule or competency or vagueness of the charges. None of the contention has been raised in the present petition so as to interfere with the

charge memo. When a charge-sheet was issued upon a employee, he had full opportunity to reply to charge-sheet to raise all points available to him. This is not the stage at which the Court ought to have entertained petition filed by the delinquent employee challenging and for quashing the charge-sheet and appropriate course for employee to adopt is to file his reply to the charge-sheet and invite decision of the disciplinary authority thereon. Prior to this stage, any writ petition for quashing the charge-sheet is premature. Supreme Court held in the case of Union of India v. Ashoke Kacker; 1995 supp (1) SCC 180 held any challenge to charge-sheet would be premature. Learned counsel for the petitioner submitted that there is a delay of 22 years in taking action in respect of an event relating to promotion to the post of Assistant Administrative Officer wherein petitioner has produced post graduation certificate (M.A.) issued by the Varanasi Sanskrit Vishwa vidhalaya, Varanasi for which petitioner has been awarded 10 marks which is one of the criteria. Petitioner has mislead the respondent in producing post graduation certificate obtained by him from Varanasi Sanskrit Vishwa vidhalaya, Varanasi. Reason being is that certificate was issued in the year 1987 and at the relevant point of time petitioner was working at Phagwara. Petitioner has not approached the respondents seeking permission to acquire the post graduation certificate in the year 1987. Further he has not disclosed date of examination and further events relating to acquisition of post graduation certificate. It is evident from the record that respondents have initiated disciplinary proceedings against the petitioner and two others on receipt of complaint in 2008. Insofar as Shri R.K. Thapar is concerned, it was concluded in imposing the penalty of reversion from the post of Assistant Administrative Officer on 2.12.2011. Another employee is

concerned, as soon as he received the notice, he has left the respondent-company. Further the respondent-company came to know only in the year 2008 that there is some fraud in producing post graduation certificate for the purpose of obtaining 10 marks for promotion to the post of Assistant Administrative Officer in the year 1988. Therefore, question of delay in initiation of inquiry do not arise. Moreover, as on the date of initiation of inquiry, petitioner was very much in service. Supreme Court in its recent decision passed in Civil Appeal No.8929 of 2015; **Chairman and Managing Director FCI and others v. Jagdish Balaram Bahira and others**; 2017 SCC On Line SC 715 has held in paras 29 and 30 as under:

“29. The Bench of three Judges also rejected the submission that since the appellant had rendered 27 years of service, the order of dismissal should be substituted with an order of compulsory retirement or removal to protect his pensionary benefits. The Court observed:

“19.... The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not

deserve any sympathy or indulgence of this Court. A person who, seeks equity must come with clean hands. He who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.”

30. In Bank of India v. Avinash D. Mandivikar the first respondent obtained an appointment in the service of the bank in October 1976 on a post reserved for the Scheduled Tribes. The Scrutiny Committee found that he did not belong to a Scheduled Tribe and, therefore, invalidated the caste certificate. Following the termination of his services the first respondent moved the High Court which accepted his plea that the initiation of proceedings against him by the Scrutiny Committee for verification of the caste certificate in 1987 was beyond a reasonable period. The High Court, while allowing the plea, reinstated him in service with back-wages. In an appeal by the employer, this Court held that once a claim of the employee to belong to a Scheduled Tribe had been rejected, the employment was “no appointment in eye of law” and that he had “absolutely no justification for his claim” in respect of the post he usurped. Distinguishing the directions issued in Milind (under Article 142), this Court held that:

“10. The protection under the Milind's case (supra) cannot be extended to respondent No.2-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This

Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent No.1-employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him."

Accordingly, the petitioner has not made out a case so as to interfere with the initiation of inquiry proceedings dated 22.12.2009 (Annexure P-7).

Accordingly, petition stands dismissed.

Respondents are at liberty to complete the inquiry at the earliest say within a period of six months from the date of receipt of a certified copy of this order since petitioner has already attained the age of superannuation and retired from service on 31.3.2017. Petitioner is also directed to file his reply at the earliest to charge-sheet and to co-operate in inquiry.

If any observation made in this order on merit would not be taken into consideration while deciding on merits of the case in the disciplinary proceedings.

31.07.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**