

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

CWP No.14783 of 2014 (O&M)

Date of Decision: 15 .11.2017

Pardeep Singh

....Petitioner

Versus

The State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.K. Arora, Advocate
for the petitioner.

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned order/report dated 18.11.2013 which has been conveyed to the petitioner vide endorsement dated 20.03.2014 (Annexure P-20) and order dated 23.8.2010 (Annexure P-15), whereby, the claim of the petitioner for his reinstatement in service has been declined and thereafter, order of termination has been passed on 22.10.2009 (Annexure P-11).

Briefly, the facts of the case, as made out in the present petition, are that an advertisement dated 05.09.2007 was published in the daily newspaper 'Ajit' for recruitment of 9998 ETT Teachers (Teaching Fellows) in the State of Punjab. Out of said posts, 600 posts were meant for District Tarn Taran. Petitioner being eligible, applied for the post under the category of Ex-Serviceman. Thereafter, as per criteria, the merit was prepared on the basis of marks obtained in the educational qualification and

experience. Additional marks were also earmarked for rural area and for the period after passing B.Ed. Examination. After considering the respective merit, the petitioner was selected in the category of ex-serviceman and thereafter, he was also appointed. However, vide order dated 22.10.2009, the appointment of the petitioner was cancelled on the ground that his experience certificate was found to be bogus. Said order dated 22.10.2009 was challenged by the petitioner by way of filing **CWP No.16587 of 2009** and while issuing notice of motion, the operation of impugned order was stayed. Ultimately, the said petition was disposed of vide order dated 10.11.2009 on the basis of statement made by learned State counsel that a Committee has been constituted and the petitioner would be at liberty to raise the issue before the said Committee. A direction was also issued for passing a speaking order after considering the material evidence to be produced by the petitioner in support of his claim. Petitioner appeared before the Committee and produced all documents relevant for the case but the claim of the petitioner was not decided in terms of the order passed by this Court. Thereafter, he along with some others filed **CWP No.9250 of 2010** seeking reinstatement in service by excluding their marks give for the alleged disputed experience. Said petition was also disposed of vide order dated 19.05.2010 with the observation that the petitioner may represent the authorities along with material in support of their plea, if any. Thereafter, order dated 23.08.2010 was passed in pursuance of directions issued on 10.11.2009 and the claim of the petitioner was rejected. Petitioner also made a representation stating therein that two other similarly situated employees, namely, Harmanjit Kaur and Kuljit Singh were also working with him in the same school and they were issued experience certificate by

the same Management. On the basis of said representation, a direction was issued by respondent No.2 to respondent No.3 to conduct re-verification of the experience certificate of the petitioner along with two other candidates from his district and submit the report. The District Education Officer (EE), Tarn Taran vide his office letter dated 27.05.2013 submitted his enquiry/verification report, wherein it was found that the experience certificate submitted by the petitioner was for the period from 01.11.2004 to 30.04.2005 and the same was genuine. Petitioner was awarded 0.5 marks for the experience and after deducting his marks of experience, the total marks came to 50.561 whereas the last candidate selected in that category was having 37.536 marks. Thereafter, order dated 18.11.2013 was passed without considering the claim of the petitioner of excluding his 0.5 marks for the alleged disputed experience certificate from his merit.

Aggrieved by the order of termination dated 22.10.2009 (Annexure P-11), rejection orders dated 23.08.2010 and 18.11.2013, the present petition has been filed for quashing of said orders by raising various grounds.

Learned counsel for the petitioner submits that the petitioner was entitled to be considered for appointment even in case, the marks for alleged experience certificate, which is in dispute, are not included. Same controversy was there before the LPA Bench in LPA No.239 of 2011 titled as ***State of Punjab vs Devinder Singh*** decided on **04.05.2011**. It was specifically mentioned in the representation filed by the petitioner that his claim was also considered by the Committee constituted for that purpose but still his claim was rejected, which is contrary to the decision of LPA Bench. Learned counsel also submits that the experience certificate issued

to the petitioner was not bogus and forged as certain documents were produced by him showing that he had worked in the same school but those documents were not considered.

Learned counsel for the petitioner has relied upon certain judgments, wherein, the dispute was regarding the experience certificate and by not adding the marks of that disputed experience certificate, their claim was accepted.

Learned counsel for the petitioner has relied upon judgments of this Court in cases **CWP No.2350 of 2014** titled as **Ranju Bala vs The State of Punjab and others** decided on **19.02.2016**, **CWP No.13512 of 2014** titled as **Sukhdev Singh vs State of Punjab and others** decided on **08.03.2017**, **CWP No.14203 of 2015** titled as **Harpreet Kaur Vs. State of Punjab and others** decided on **05.08.2016** and **CWP No.15358 of 2013** titled as **Rajwinder Kaur Vs. State of Punjab and others** decided on **30.05.2016** in support of his contentions.

Learned counsel for the respondents-State has strongly opposed the submissions made by learned counsel for the petitioner and submits that the petitioner has not approached this Court with clean hands as certain material facts have not only been concealed but misrepresented as well by submitting teaching experience certificate which was found to be bogus. The appointment was obtained by the petitioner which is in violation of condition No.9 of letter dated 30.05.2008. Thereafter, the appointment of the petitioner was cancelled after giving him opportunity of hearing and as such, the order cannot be said to have been passed without giving any opportunity of hearing. Learned State counsel also submits that the claim of the petitioner was thoroughly examined by the Committee by going through

all relevant record after which the Committee came to the conclusion that the experience certificate was bogus/fake. Petitioner obtained the job by producing bogus certificate and his conduct was not trusted by the members of the Committee. Ultimately the appointment of the petitioner was cancelled as he does not deserve to be continued in service.

Heard the arguments of learned counsel for the parties and have also perused all relevant documents on the file including the order of cancellation of appointment.

Facts relating to selection; appointment and thereafter, cancellation of appointment are not disputed. It is also not disputed that on the basis of report of the Committee, the services of the petitioner were cancelled after giving him opportunity of hearing.

The best argument advanced by learned counsel for the petitioner is that the petitioner was to be considered for appointment even in case, his marks for disputed experience certificate were not included in the total merit and he has relied upon judgment of LPA Bench in LPA No.239 of 2011. As per criteria of selection to the post, in dispute, 7 marks were meant towards experience, one mark for each complete year was to be awarded and no mark was provided for experience for a period less than six months. It was also mentioned in the advertisement that experience from Government School, Government Aided School, Government Recognized School and the school affiliated with the PSEB or CBSE, ICSE and the same was to be counted if acquired after date of passing of ETT/B.Ed. The experience certificate submitted by the petitioner was for the period from 01.11.2004 to 30.04.2005. However, the appointment of the petitioner was cancelled and he was removed from service vide order dated 22.10.2009 on

the ground that the experience certificate submitted by him at the time of recruitment was verified by the district level enquiry committee from the concerned school and it was found to be bogus. The petitioner was given personal hearing from 11.08.2009 to 13.08.2009 but he did not produce any evidence. It was found that the certificate produced by him was not genuine. It was found that the petitioner had used bogus certificate for his recruitment and obtained the job by cheating the department and ultimately, his appointment was cancelled. Although certain documents were placed on record like photographs but serious discrepancies were found by the Committee. It was found that EPF deduction was shown to be made in the pay distribution but it was not deposited in any of the accounts. In the time table, the petitioner was shown to be taking period of SST subject, whereas, he was posted as Punjabi teacher. The attendance register was not verified by the Head as neither there was any receipt ticket affixed on the pay distribution nor submitted any document. Finding all these facts on record, the experience certificate submitted by the petitioner was found to be bogus and not genuine. During enquiry about the experience certificate, the District Education Officer directed the certificate issuing Management/Principal of the school to come present in the Office of Director Public Instructions along with original record for the period the experience certificate was issued. The Principal of the school appeared and produced the original record stating that the petitioner had worked as Punjabi teacher in his school, whereas, he had been shown to be taking period of social studies in the time table produced by him. There was no other document available other than the attendance register and pay distribution register. In the pay distribution register, EPF deductions were

shown to be made but no proof regarding deposit of amount was produced.

Even no bank statement was produced regarding payment of salary from where it could be proved that the petitioner was working in the school.

Other discrepancies were also found during enquiry. Petitioner had produced an agreement, wherein, it was agreed that he would avail one leave in a month and if, he would avail more than one leave, his salary may be deducted. In the attendance register for the month of January, 2004, the petitioner remained absent for three days but his salary was deducted only for one day. Accordingly, in the month of February, 2005, the petitioner remained absent for one and half day but the salary was deducted for half day only. In the month of March 2005, the petitioner remained absent for four and a half days but his salary was deducted for three days. Similarly, in the month of April, 2005, the petitioner remained absent for nine days but his salary was deducted for ten days. It was also found that the signatures put by the petitioner on the attendance register were not matching with the signatures on each page. In the attendance register, there was no detail and as such, the explanation given by the petitioner relating to experience certificate, was not found to be satisfactory.

The judgments relied upon by learned counsel for the petitioner are not relevant to the facts and circumstances of the case.

On the facts and circumstances as mentioned above, it is apparent that the petitioner had obtained the job on the basis of fake/false/bogus experience certificate. Meaning thereby, the petitioner had committed fraud with the respondent department in obtaining job. By relying upon the experience certificate which was found to be false and fabricated, the petitioner does not deserve the post on which he was

appointed and therefore, his appointment was cancelled after giving adequate opportunity of hearing to him. The petitioner has not only played fraud with the respondent but with the public at large and this practice cannot be encouraged by retaining such a person in the job.

Same issue was there in the judgment of Hon'ble the Apex Court in case ***Union of India vs V.M. Bhaskaran 1996(SC) 686***.

Hon'ble the Apex Court in case ***Krishna Hare Gaur vs Vinod Kumar Tyagi and others 2015(11) SCC 355*** has cancelled the appointment as respondent No.1 had obtained appointment on the basis of bogus certificate but he contended that no opportunity of hearing was afforded to him. However, it was held that the record shows that respondent No.1 himself has filed a representation dated 29.09.2011 before the Additional District Magistrate, which was considered.

Similar view was taken by a Division Bench of this Court in case ***Jiwan Dass Sethi vs State of Punjab 1999(2) PLR 449*** that to invoke the equitable writ jurisdiction of the High Court, the petitioner must approach with clean hands and disclose full facts relating to the case. If he exhibits contumacious conduct by suppressing the material facts from the court with a view to mislead the court deliberately concealing the facts, his petition is liable to be dismissed with special costs and it disentitles him from any relief from the court.

A Division Bench of this Court in case ***Jai Bhagwan vs Haryana State Electricity Board (CWP No.15448 of 1993, decided on 21.09.1994)*** laid down the principle in the following words :-

“ It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the Court

to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the facts concerning him. The petitioner has to demonstrate his bonafides before seeking relief from the Court in exercise of its equitable jurisdiction.”

Similarly, in ***Chiranjil Lal and others vs Financial Commissioner, Haryana and others 1978(80) P.L.R 582***, the Full Bench observed that where there has been a 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 as well as ultimate relief claimed, the writ petition should not be entertained.

In ***Pawan Kumar vs State of Haryana and another 1994(5) S.L.R. 73***, another Division Bench held that a party who seeks relief from the High Court in the exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all *bonafides*, must make true, candid and full disclosure of all the relevant facts. Its conduct must be above board and there should not be any attempt by a party to mislead the Court.

Similarly, a Division Bench of this Court in case ***Shri Kant vs State of Punjab 1997(2) SCT 446*** has held that a public authority cannot be directed to act in violation of the provisions of the Constitution or any other statutory provision. The High Court also guards itself against the abuse of its process by unscrupulous persons. It insists that the petitioner must make declaration of full facts before it, must not try to suppress any fact and no attempt should be made to mislead it. The rule that the High Court should not hear a petition on merits when the petitioner is guilty of suppressing

facts or misleading the Court is based on sound public policy, namely, that the Court must guard itself from those who want to pollute the course of justice.

Similarly, in case **Mr. U.C. Rekhi vs The Income Tax Officer 1950(52) PLR 267**, it has been 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.

In the present case also, the petitioner has submitted the experience certificate, which was found to be fake/bogus during enquiry. The contention of the petitioner cannot be accepted that in case, the marks of the experience were deducted from the total merit even, then also, he would have been entitled to be considered for appointment. In case, a person gets job on the basis of some forged document then his conduct is relevant and here not only concealment is there but it is a case of misrepresentation and of filing bogus certificate in support of his claim for selection/appointment as well. Hence, the petitioner does not deserve any leniency and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

15.11.2017
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No