

CWP No.19238 of 2017

Gurpreet Kaur
2017.09.07 12:24
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high court

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

CWP No.19238 of 2017

Date of Decision: 28.08.2017

Ashwani Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Monika Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Prayer in the present petition is for quashing of impugned order dated 09.02.2016 (Annexure P-11), whereby, the services of the petitioner have been terminated. A further prayer has also been made for issuance of a direction to the respondents to consider the case of the petitioner for appointment on compassionate ground.

Briefly, the facts of the case, as made out in the present petition, are that the father of the petitioner was working as *Safai Sewak* with respondent No.3 i.e Rajindra Hospital, Patiala. He expired on 26.08.2005 during his service, whereafter, the petitioner applied for appointment on compassionate ground. After completing all the formalities, the petitioner was appointed on compassionate ground vide appointment letter dated 27.02.2006. Thereafter, in the month of May, 2006, the appointment of the petitioner was challenged by some un-known person by filing a complaint, wherein it was alleged that the mother of the petitioner has filed a false affidavit stating therein that she was unemployed, whereas,

she was working as *safai sewak* in Municipal Corporation, Patiala.

However, on the basis of said complaint, a show cause notice was issued to the petitioner on 11.05.2006. Reply to the show cause notice was filed by the petitioner, which was not found to be satisfactory, whereafter, an inquiry was conducted by the inquiry committee. The report was submitted wherein the allegations levelled against the petitioner were proved to be correct, relying upon which order of termination dated 28.02.2007 was passed. The petitioner filed a civil suit in District Court, Patiala challenging the order of termination dated 28.02.2007. The order of termination was set aside by the Civil Court by observing that no opportunity of hearing was given to the petitioner before passing the order of termination and was pleased to grant respondents an opportunity to proceed afresh against the present petitioner and thereafter to take action in accordance with law. The claim of the petitioner was reconsidered and thereafter, vide order dated 09.02.2016, it was observed that the petitioner obtained job on compassionate ground by producing wrong facts/documents, which amounted to misconduct and the order of dispensing the petitioner from service on 28.02.2007 was found appropriate in all respects.

Said order dated 09.02.2016, whereby, the services of the petitioner have been terminated, is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the mother of the petitioner was illiterate and it was wrongly mentioned in the affidavit that she was not employed. The mistake was inadvertent and it was never the intention to conceal anything from the respondent-department. Learned counsel also submits that the mother of the petitioner was getting meager

salary and the petitioner, being dependent upon income of his father, was rightly appointed on compassionate ground.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 09.02.2016 as well as other documents on the file.

Facts relating to death of father of the petitioner and appointment of the petitioner after the death of his father are not disputed.

The services of the petitioner were terminated on the ground that a wrong and false affidavit was filed by the petitioner stating therein that his mother was un-employed, whereas, she was working as *safai sewak* in Municipal Corporation, Patiala. Said fact came to the notice of the respondent-authorities from the complaint made by some stranger and inquiry was conducted, wherein, the allegations were found to be proved. On the basis of report submitted by the inquiry committee, the order of termination dated 28.02.2007 was passed. Said order was challenged by the petitioner in a civil suit and thereafter, the suit was decreed with a direction to the respondents to give an opportunity of hearing before taking action. Thereafter, the petitioner was given opportunity by issuing show cause notice dated 09.12.2015 and reply thereof was also filed by the petitioner. The respondent considered the reply and inquiry report and passed order dated 09.02.2016 by observing that the mother of the petitioner was serving in Municipal Corporation, Patiala, whereas, an affidavit was filed that she was unemployed. In the affidavit, it was mentioned that all family members are unemployed and an undertaking was also given that in case, any of the facts were found to be wrong, then his services be terminated. The facts and affidavit were found to be false and by holding that the petitioner has

obtained job by mentioning wrong facts/documents and by considering the inquiry report, after giving adequate opportunity of hearing, the impugned order of termination of service was passed.

Under similar circumstances, petitioner-Daljit Kaur was appointed on compassionate ground by mentioning that none of her family member was employed. Subsequently, it was found that wrong averment was made. The writ petition filed by petitioner-Daljit Kaur was dismissed by relying upon clause (4) of circular dated 20.01.1987 and para No.21(ii) and (iii) of Life Insurance Corporations Instruction of 1979 and 1993. Relevant portion of judgment of this Court in case ***Daljit Kaur vs Life Insurance Corporation of India 1995(6) SLR 115*** is reproduced as under :-

“A perusal of the above quoted provisions clearly show that the general rules governing recruitment of Class II and Class IV Staff can be relaxed for giving appointment on compassionate grounds only where a member of the family of the deceased is not gainfully employed.

Letter, dated 20.1.1987 cleared the doubt, if any, was there in para No.22(iii) of the Instructions. Use of expression “relaxation shall be admissible only where none of the members of the family is gainfully employed” is clearly indicative of the intentions of the authorities which issued the instructions, namely, that appointment on compassionate grounds should be given only where other member of the family of the deceased is not gainfully employed. These instructions have been framed with the object of providing source of sustenance/livelihood to the family of the deceased employee of the Corporation where no one else in the family is gainfully employed. In other words, if some one is gainfully employed, another member of the family of

the deceased cannot get benefit of these instructions. If the rule making authority had intended that one member of the family of the deceased should get appointment on compassionate grounds without any restriction, there was little occasion for it to have incorporated the conditions stated above. In our considered opinion, where one member of the family of the deceased employee of the Corporation is gainfully employed, another member of his family cannot seek employment on compassionate grounds.

5. Argument of the learned counsel for the petitioner that Maninder Singh, son of Shri Suninder Singh Khurana is living separately and, therefore, he cannot be treated as a dependent of late Shri Suninder Singh nor the family can be treated as dependent on him does not cut any ice. Plain and unambiguous language used in the instructions of 1979 and 1993 do not use the word “dependent”. Absence of this words goes to show that even if a member of a family is not discharging his moral obligation, though he is gainfully employed, the Corporation is not under obligation to give employment to another member of the family.

For the reasons aforesaid, we do not find any merit in the writ petition, which we hereby dismiss. No costs.

Petition dismissed.”

In another judgment of Allahabad High Court in case ***Smt. Sunita Singh Kushwaha vs State of U.P and 3 others 2016(10) ADJ 402***, petitioner-Sunita Singh was married daughter of deceased. She cooked up the story to obtain government employment. No documents indicating dependency of the petitioner and her children upon the deceased employee was filed. The petition filed by said Sunita Singh was dismissed on the ground that the writ petition was based on false and misleading averments

and suppression of important facts. In said case, the mother of the petitioner died on 31.10.2014 and thereafter, a divorce petition was filed by her husband on 28.11.2014. Nothing was brought on record about the status of the aforesaid alleged divorce petition. It was mentioned that the petitioner along with her son and daughter was living with the deceased employee and were fully dependent upon her mother. No document indicating dependency of the petitioner and her children on the deceased employee was filed. Even no document of address proof was filed with the writ petition. By finding the facts to be false, the writ petition was dismissed on the ground that the petitioner had cooked up the entire story so as to obtain illegally the Government employment on compassionate ground without actually being dependent upon the deceased government employee. The writ petition was based on false and misleading averments and suppression of important facts and was ultimately dismissed.

In another judgment of Calcutta High Court in case ***Vice Chancellor, Jadavpur University and another vs Jolly Dey Bose and others 2015(27) S.C.T. 161***, the petitioner was also appointed on the basis of false averments. In that case, the application was moved by married daughter of deceased employee for compassionate appointment but the same was not considered. Thereafter, she filed a writ petition, wherein, it was mentioned that she was residing in her father's house as one of his dependent. She had also stated therein that she was in dire need of compassionate appointment to tide over the sudden financial crises. A story was made up by the claimant petitioner in that case that she was a deserted wife and was financially dependent upon her deceased father. The writ petition filed by the petitioner, in that case, was allowed by the Single

Bench on the ground that the writ petitioner should not be deprived of an appointment on compassionate ground. A direction was issued by learned Single Judge to grant compassionate appointment to the writ petitioner after proper verification of her status within a period of three months. Said order passed by learned Single Bench was challenged before the Division Bench. The Division Bench by relying upon the judgment of Hon'ble the Apex Court as well as judgment of Division Bench in case ***Durgapur Project Limited vs Kumari Purnima Bhui 2013(2) CHN 576*** has held that when the policy excludes the married daughter, it is not for the Court to substitute the policy. It was found that a false story was concocted for securing compassionate appointment and the writ petition was dismissed.

The Division Bench of Patna High Court in case ***Niranjan Kumar vs State of Bihar and others 2009(121) FLR 705*** has held that an attempt was made to obtain favourable order from the writ Court by making false statement and by producing forged document. It was held that such person deserves to be prosecuted for his act and the appeal filed by the appellant was dismissed with cost.

The judgment of Calcutta High Court in case ***Uttam Kumar Biswas vs State of West Bengal 2003(1) SLR 586*** is also relevant for decision in the present case. The writ petition filed by the petitioner was dismissed on the ground that the petitioner has got appointment either by forging the documents or by misleading the appointing authority or by influencing the persons for a post in which he had even minimum academic qualification and that too when he was minor at the time of appointment.

It has been held in various judgments of Hon'ble the Apex Court as well as of this Court that in case of misrepresentation, concealment

of facts and when a fraud has been played with the respondent-department, even no opportunity of hearing is required to be given.

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. It was contended that no opportunity of hearing was given, however, it was held that in such like cases, no opportunity is required to be given.

The Division Bench of this Court in case ***Jiwan Dass Sethi vs State of Punjab 1999(2) PLR 449*** has held that the petitioner must approach with clean hands and disclose all facts relating to the case. In case, the conduct depicts anything misleading to the Court or deliberate concealment of facts, the petition is liable to be dismissed with special costs.

In the present case, the petitioner obtained the appointment on compassionate ground by mentioning wrong facts in the affidavit that all his family members are unemployed, whereas, his mother was working and has mislead the authorities. Even an undertaking was given by the petitioner himself that in case, the facts or any documents were found to be wrong/incorrect, then his appointment be cancelled. The facts were found to be false that all family members of the petitioner were unemployed, whereas, his mother was working and thereafter, the impugned order of termination of service was passed after giving adequate opportunity of hearing.

In view of the above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any

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merit, is hereby dismissed.

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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No