

C.W.P. No. 25363 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 25363 of 2017

DATE OF DECISION:07.11.2017

Ashish Chopra

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 8.9.2017 (Annexure P-17), vide which, the petitioner has been dismissed from service. A further prayer has also been made for issuing directions to the respondents to allow the petitioner to continue on the post of Vocational Teacher as if no such order has been passed.

Briefly, the facts of the case as made out in the present petition are that the mother of the petitioner, namely, Smt. Seeta Budhwar was working as Math Mistress in Government Senior Secondary School, Valur, District Ferozepur. She died on 12.9.2003 while in service. The petitioner

being the eldest son applied for compassionate appointment on 18.10.2003 as per policy of the State Government and supplied all the documents as required by respondent No.3 and completed all the formalities. However, the claim of the petitioner was not considered for a period of five years from the date of submission of the application. During that period, the petitioner acquired higher qualification of Electrical Engineering and thereafter again represented the department and submitted fresh application on 2.1.2008 for appointment on compassionate ground. After verification of the earlier documents, the father of the petitioner was also asked to furnish his self declaration/undertaking giving family particulars and financial status along with details of moveable and immoveable properties, which were submitted on 12.12.2011. Ultimately, the case of the petitioner was considered and he was appointed on the post of Vocational Teacher on regular basis vide order dated 20.3.2012. Thereafter when the case of the petitioner with regard to anomaly in the pay grade came to knowledge of respondent No.3, a letter was written to the Headmaster to grant pay scale to the petitioner as has been given to other Vocational Teachers. It also came to the notice of the respondent-authorities that the appointment of petitioner to the post of Vocational Teacher was not in accordance with the Rules dated 8.7.1995 and he has wrongly been given scale of Rs. 10300-34800+4200 instead of Rs. 5900-20200+2400.

On 5.2.2016, the petitioner was issued chargesheet mentioning therein to initiate proceedings against him under Section 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as 'the Rules, 1970'), to which, the petitioner submitted a detailed reply and submitted that his mother died on 12.9.2003 and he applied for

compassionate appointment on 18.10.2003 as per scheme of the year 2002 applicable for appointment on compassionate basis. Thereafter a detailed inquiry was conducted at the level of Tehsildar and District Education Officer, Ferozepur to know the details of the family and financial status, wherein, it was found that father of the petitioner was in service at the time of death of the deceased and even at the time of appointment, he was getting pension of ₹23,037 per month. Ultimately by giving an opportunity of hearing, the impugned order of dismissal from service was passed on 8.9.2017, wherein, it was mentioned that a detailed inquiry was conducted and the petitioner was afforded an opportunity of hearing on 6.9.2017. The order of dismissal was passed stating therein that a false affidavit was filed and wrong information was supplied. It was also mentioned in the impugned order that the petitioner was not having qualification of Vocational Teacher and was not eligible to be appointed as such by considering his qualification. The impugned order of dismissal is subject matter of challenge in the present petition.

Learned senior counsel for the petitioner contends that there was no concealment or misrepresentation on the part of the petitioner and no effective opportunity of personal hearing was given to him. All facts and relevant information were supplied to the respondents and after verification of the documents, the appointment letter was issued to the petitioner. Learned senior counsel further contends that at the time of appointment of the petitioner his father was not in Government Job and was only getting pension.

Heard the arguments advanced by learned senior counsel for the petitioner and have also gone through the impugned order of dismissal

and other documents available on the file.

The facts relating to death of mother of the petitioner on 12.9.2003, submission of application for compassionate appointment to the respondents on 18.10.2003 and appointment of the petitioner on the post of Vocational Teacher are not disputed. It is also not disputed that chargesheet was issued to the petitioner, to which, he filed reply and ultimately the impugned order of dismissal was passed.

While submitting the initial application on 18.10.2003 by the petitioner, simply it was mentioned that his mother was working as Maths Mistress and she died on 12.9.2003 and he be appointed on compassionate ground as per policy of the State Government. Thereafter another application was submitted on 31.7.2004 reiterating the same facts and by giving the information as required earlier. It was also mentioned that he was the eldest son in the family and was the actual legal heir of his mother. An affidavit was filed by father of the petitioner on 30.7.2004, wherein, it was mentioned that present source of livelihood is subsisting only on the pension received. It was also mentioned in the undertaking dated 12.12.2011 that some of the amount of gratuity and GPF was spent on the study of the children and some was returned to the relatives against loan but against the column of moveable property, nothing was mentioned regarding his income. The matter remained pending till 29.3.2011 when an application was submitted by the petitioner stating therein that he be provided job failing which he had to knock the doors of the Court. In response to number of applications submitted by the petitioner and his continuous efforts since the year 2003, ultimately, the antecedents of the petitioner and his parents were verified by the respondent-State through the Revenue Officials of

Ferozepur. As per report dated 16.5.2011 submitted by the Tehsildar on the basis of inquiry conducted by the Patwari, deceased Smt. Seeta Budhwar was serving as Math Mistress and was having two sons and husband was drawing pension after his retirement from service. Therafter the case of the petitioner for appointment on the post of Vocational Teacher was considered and the father of the petitioner was asked to furnish his self declaration/undertaking giving family particulars and financial status along with details of moveable and immoveable properties. The said self declaration/undertaking was to be submitted along with an affidavit giving all details. Accordingly, an undertaking was given by father of the petitioner on 12.12.2011 stating therein that after death of his wife, total amount which was received towards GP Fund and DCRG was to the tune of ₹5,50,000/-. It was also stated in the affidavit that out of total amount, an amount of ₹1,50,000/- was returned to the relatives, which was taken as loan, ₹1,00,000/- was spent on the repair of the house and remaining amount was spent on the study of the children. It was also mentioned that he is receiving ₹23037/- per month as pension.

From the aforementioned detail, it appears that the father of the petitioner has very tactfully given an undertaking showing as if the amount spent on the treatment of his wife was taken from the relatives and was returned. The amount which was received after death of his wife has been shown but nothing has been shown towards his income or amount he received after his retirement just to show his case to be very genuine. The amount of pension and other benefits received after death of his wife have been shown to have been spent in such a manner as if during that period he was not in service. A perusal of documents submitted by the petitioner

immediately after the death of his mother shows that no where it was mentioned that his father was also in service. It has also not come on record that the petitioner was not residing with his parents or the parents were not residing together. Nowhere it has come on record as to why the petitioner was not vigilant to pursue his case from the year 2003 to 2011. It appears that the things have been managed with the respondents and the matter was kept pending till the retirement of his father just to get the job. The chargesheet was responded by the petitioner and thereafter on the basis of inquiry conducted the impugned order was passed. The matter came to the notice of the authorities concerned at the time of removing the anomaly in the pay grade. It has specifically been mentioned in the impugned order that at the time of death of mother, the father of the petitioner was also working in the office of District Treasury and the petitioner was not having qualification for the post on which he was to be appointed. As per policy/instruction of State Government dated 21.11.2002 when mother and father both are in Government job. **After death of one of them the job is to be provided to any of the dependent family member with the approval of the State Government but no approval was sought.** The matter was kept pending till 2011. For the first time it was disclosed by the father of the petitioner in the proforma that only source of income is the family pension, whereas, he himself was in Government job in the office of Treasury. The claim of the petitioner could have been rejected in the year 2004 itself as per instructions dated 21.11.2002 as applicable but it was kept pending. Moreover, as per Rules 1995, the qualification required for Vocational Teacher is matric and the certificate Course in Motor Mechanic from ITI National Council of Vocational Training (NCVT) National

Apprenticeship Course (NAC) or 10+2 vocational pass in auto engineering technical trade from State Board of Education. The candidates who were having three years teaching/practical experience in the concerned trade were to be given preference. During the year 2004, the petitioner was not having qualification for said post and even at the time of appointment he was having degree of B. Tech (Electrical) as he secured that degree in the year 2007. The findings recorded during regular inquiry are reproduced as under:-

“In the allegation No.1 in respect of chargesheet issued to Sh. Aashish Chopra, Vocational Teacher, Government High Jhokharihari, (Ferozepur), in the affidavit tendered by you on dated 30.7.2004 you have mentioned that only income source of making their both end meet is family pension, whereas, at that time your father was doing Government job and has retired on dated 29.2.2011. Allegation is proved and according to list of allegation Sr. No. 2 Sh. Ashish Chopra had secured his educational qualification as B.Tech (Electrical Engineering) in the year 2007, which was not eligible for the post of vocational Teacher in accordance with the Rules dated 8.7.1995. You have secured this job by tendering false affidavit by conniving with the employees/officers of District Education Officer, Ferozepur, have committed gross violation of Conduct Rules, this allegation is proved. Due to receipt of incomplete and unclear information at delayed stage from District Education Officer (S.E.), Ferozepur, despite demanding from him on repeated occasions regarding providing information of dealing

employee/officer dealing with this case, it appears that there is connivance of District Education Officer, Ferozepur in this case. Disciplinary action is to be initiated against faulty employee/officers concerned with this case.”

By considering the findings of the inquiry report and by giving opportunity of hearing of the petitioner, the impugned order of dismissal was passed.

Similar controversy was there before Hon'ble the Apex Court in the case of **State of Haryana and another Vs. Ankur Gupta** 2004(1) SCT 165, wherein it was held that dependent of deceased Government employee is not entitled to employment on compassionate ground in case one of his parent is alive and is in Government employment. In that case the appointment of the respondent was made on compassionate ground contrary to policy of compassionate appointment after the death of father, whereas, mother was in Government job. Ultimately, the appointment of the respondent was cancelled by Hon'ble the Apex Court.

In judgment of Division Bench of this Court in the case **Bhupinder Singh Vs. State of Haryana and others** 2005 (2) S.C.T. 713, the compassionate appointment was cancelled on the ground that the appointment was contrary to the rules and without approval of the competent authority. In that case, the mother was employed as JBT teacher. The candidate contended that he did not misrepresent or commit any fraud. The appointment was made by ignoring the advice given by Chief Secretary that the petitioner was not entitled for the same as per instructions. It was held that appointment was granted in contravention of the rules in connivance with the dealing officer with malafide intention and

with ulterior motive. The action of the respondents authority was held to be arbitrary and unreasonable. It was also held that the petitioner cannot be granted any relief under the equitable and extraordinary jurisdiction under Articles 226/227 of the Constitution when dishonest conduct of the party is there.

In another judgment of this Court in the case of **Beant Singh Vs. State of Punjab and others** 2010 (1) SLR 329, the petitioner was not possessing minimum educational qualification but was appointed. It was held that it was a case of fraud on public to appoint person with inferior qualifications unless qualifications were relaxed and petitioner in that case was not held entitled for compassionate appointment.

In another judgement of Delhi High Court in the case of **Shri Ved Parkash Vs. Chairman/administrator, New Delhi Municipal Council** 2007 (2) AD (Delhi) 595, it was held that misrepresentation itself amounts to fraud. In that case false affidavit was filed by the petitioner therein stating that there was no independent source of income and his mother was declared to be house wife but later on it was found that it was case of fraud to secure employment on compassionate ground. Accordingly, no relief was granted to the petitioner and the petition was dismissed.

Similarly in another judgment of Madhya Pradesh High Court in the case of **Rajveer Shakya Vs. State of MP and others** 2016 (2) LLJ 562, it was held that on character verification, it was found that facts stated by petitioner in verification form were false and incorrect as he had suppressed a fact that criminal case was registered against him. The petition filed before MP High Court was dismissed on the ground of fraud.

In another judgment of Allahabad High court in the case of

Chandra Dutt Gautam Vs. State of U.P. And others 2014 (21) S.C.T.

118, compassionate appointment of the petitioner in that case was cancelled on the ground that the petitioner's elder brother already obtained appointment under Dying in Harness Rules, 1974. The petitioner was inducted in disciplinary uniform force where character with utmost honesty was required. The appointment of the petitioner was cancelled by holding that the appointment was obtained through fraud by submitting false affidavit and the petitioner did not deserve any relief under the facts and circumstances of the case and the petition was accordingly dismissed.

Similar issue was there before Rajasthan High Court in the cases of **Narender Singh Vs. State of Rajasthan** 1998 (4) S.C.T. 221, **Sunil Singh Charan Vs. Chairman & Managing Director, Ajmer Vidhyut Vitran Ltd., Ajmer and others** 2004 (7) SLR 75, **Surya Prakash Upadhyay Vs. Vice Chancellor, M.L.S. University and another** 2004 (2) S.C.T. 563, Uttarakhand High Court in the case of **Deepak Kumar Vs. State of Uttaranchal and others** 2005 (7) SLR 776 and Patna High Court in the case of **Ram Babu Kumar Vs. State of Bihar and others** 2005 (2) BLJR 1219

In the present case also, there is misrepresentation and concealment of facts. The petitioner was not eligible for appointment to the post of Vocational Teacher as he was not possessing the requisite qualification when application was made. The matter was kept pending for a long period and on attaining the higher qualification, fresh application was submitted. Not only false affidavit has been filed by concealing the fact regarding salary of father of the petitioner but nowhere it was mentioned that the father of the petitioner was also in Government job. The

undertaking was furnished in such a manner from which it could not be inferred that any other family member was earning. It can easily be made out that the appointment has been procured in a fraudulent manner by misrepresenting the material facts and by concealment of the factual position. The petitioner does not deserve to be retained on the post of Vocational Teacher and it can be said that the impugned order of dismissal has rightly been passed.

Accordingly, there is no merit in the arguments advanced by learned senior counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

November 07, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes