

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

CWP No.9560 of 2017 (O&M)
Date of Decision: 07.07.2017

Harish Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Shashi Bhushan Nagpal, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

C.M. No.8764 of 2017

This application has been moved for placing on record
Annexure P-10.

C.M is allowed and Annexure P-10 is taken on record.

CWP No.9560 of 2017

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* quashing impugned order dated 14.03.2017 (Annexure P-24), whereby, the services of the petitioner have been terminated. It is also the grievance of the petitioner that he belongs to *ortho-handicapped category* and has wrongly been considered in *visual-handicapped category*. This mistake was got corrected in the merit list and the merit was reconsidered.

Briefly, the facts of the case are that the petitioner applied online for the post of Senior Lab Attendant in pursuance of advertisement

dated 06/23.09.2009. Thereafter, the scrutiny of documents was done on 05.05.2010 by the nominated agency named Centre of Development Advance Computer, Mohali and Scrutiny Committee of the Departmental Selection Committee. However, in the bio-data filled up by the officials, it was shown as *visual-handicapped category* and was appointed in the category of *visual-handicapped* vide order dated 08.06.2011. Subsequently, it was found that he was not *visually-handicapped* candidate as no certificate of said category was attached. The petitioner was selected in the category of *visual-handicapped*, whereas, as per medical certificate, he was *ortho-handicapped*. After issuing show cause notice and giving opportunity of hearing, the services of the petitioner were terminated vide order dated 14.03.2017, which has been challenged by way of filing the present writ petition.

Learned counsel for the petitioner submits that it was not a case of wrong selection as no information was withheld by the petitioner. Learned counsel also submits that the impugned order has been passed without following the principles of natural justice and the petitioner should not have been terminated from service without holding regular inquiry and as such, the impugned order is contrary to Rule 2.35 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. Learned counsel further submits that the petitioner was not even informed about the charges framed against him and without conducting any inquiry and without proving the charges, the impugned order has been passed.

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

The services of the petitioner were regularized on the post of Senior Lab Attendant. He was appointed against *visual handicapped* category on contract basis vide letter dated 08.06.2011. At the time of counselling and scrutiny of documents, the category of the petitioner was mentioned as *visually handicapped*. However, on verification of documents, the certificate of petitioner's category was not found to be attached, whereas, as per medical certificate, he was found to belong to *ortho-handicapped* category. A show-cause notice was issued to the petitioner on 06.05.2016 stating therein that as per selection list, he was appointed in *visually handicapped category*, whereas, as per medical certificate, his category is *ortho-handicapped* and last candidate selected in that category was having merit of 66.0667%, whereas, the petitioner was having merit of 56.12%. It was also mentioned that had the petitioner applied against the *ortho-handicapped* category, he would not have selected. He was asked to explain his stand within a period of 15 days for taking further action.

In response to show cause notice, the petitioner has submitted his reply. Thereafter, he was given an opportunity of personal hearing vide letter dated 29.09.2016. In the reply, it was submitted by the petitioner that his documents were with his father and the same were misplaced. The petitioner requested to supply certain information so that better reply could be submitted. Again vide letter dated 21.01.2017, a notice was issued to the petitioner to clarify his position as there was a proposal for his dismissal from service with immediate effect. The petitioner was given time of 21 days but in spite of affording the opportunity, no reply was filed. Ultimately, vide order dated 14.03.2017, the services of the petitioner were

terminated on the ground that he has not submitted his reply within the stipulated period and as per office record, he belongs to *ortho-handicapped category* and his merit is 56.12%, whereas, the last candidate selected in the category was having merit of 66.0667%. It was also mentioned therein that had he applied against *ortho-handicapped category*, he would not have been selected having lesser merit in comparison to last selected candidate of *ortho-handicapped category*. The petitioner was given adequate opportunity of hearing but still he could not produce any document of his category.

The contention raised by learned counsel for the petitioner cannot be accepted as the petitioner was granted adequate opportunity. Not only the show cause notice was issued to him but opportunity of hearing was also given to him. In spite of giving various opportunities, the petitioner could not produce the certificate of his category. The merit of the petitioner was much lower to the merit of last candidate selected in that category. The petitioner was having merit of 56.12%, whereas, the last selected candidate was having merit of 66.0667%. The petitioner himself has admitted in his reply to show cause notice that even at the time of counselling, he was not having any certificate and the same was not shown to the respondent authorities even on subsequent occasions. The stand was taken by the petitioner that the certificate was misplaced as all documents were with his father. It was also mentioned that when the application was filed 'on-line', his father was no more and no documents were brought to the notice of the Court at any point of time. Before terminating the services of the petitioner, a notice was issued on 06.05.2016 and he was given sufficient time. Thereafter also, he sought time and it was granted to him. Ultimately, when no satisfactory reply was filed in spite of giving adequate

opportunities, the services of the petitioner were terminated on the ground that he was having lesser merit than the last selected candidate. Not only the wrong category was mentioned but that category could not even be proved as no document was placed before the authorities. Vide letter dated 19.05.2014, the petitioner was regularized on completion of three years of service, which was found to be satisfactory, wherein, the category of the petitioner was mentioned as *visually-handicapped*. Subsequently, vide order dated 29.07.2014, the District Education Officer (SE), Amritsar wrote a letter to the Director of Public Instructions (SE), stating therein that the services of the petitioner were regularized in the category of handicapped with effect from 06.04.2014. The application was given by the petitioner mentioning that he is *ortho-handicapped*, whereas, in his appointment letter, it was recorded as *visually-handicapped*. On the basis of that application, the amendment was made in the order of regularization. The petitioner was selected in the category of *visually-handicapped*, whereas, as per medical certificate, his category was *ortho-handicapped*. Not only the misrepresentation was there but the petitioner had concealed and misrepresented before the authorities and the category was changed with an ulterior motive. A fraud has been played with the respondent authorities and accordingly, after giving adequate opportunities, the services of the petitioner were terminated.

In such like cases, no departmental inquiry is required to be conducted as the petitioner has intentionally changed his category and could not produce any document in support of his category.

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

facts and when fraud has been played with the department/respondents, 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 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 ***Chiranji 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 view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

07.07.2017
gurpreet

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No