

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

CWP No.6456 of 2016 (O&M)

Date of decision: 13.08.2018

Mahaveer

...Petitioner

Versus

Haryana Labour Welfare Board and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. D.S. Nalwa, Advocate,
for the respondents.

Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari to quash the order dated 15.03.2016 (Annexure P-4), whereby his services have been dismissed.

Vide appointment letter dated 29.03.2010 (Annexure P-1), Mahaveer-petitioner was appointed as Labour Inspector (Welfare). Initially, he was appointed on probation for a period of two years. Later on, he was issued a show cause notice dated 15.04.2015 (Annexure P-2) stating that his certificates of 10+2 were verified by the Central Board of Secondary Education and the Board, vide its letter dated 02.02.2015, intimated that contents of certificate/mark card were not matching with their record. The said certificates had not been issued by their office. It was further reported that the actual result in respect of Roll No./Year 2228162/2004 was 'Fail'.

Petitioner gave his reply dated 06.05.2015 (Annexure P-3) to the said

notice. Finally, vide order dated 15.03.2016 (Annexure P-4), petitioner has been dismissed from service.

Learned counsel for the petitioner has argued that after being appointed vide appointment letter dated 29.03.2010 (Annexure P-1), petitioner had completed his probation period on 30.03.2012 and the show cause notice was given to him on 15.04.2015. Hence, even though, there was no order of confirmation, the department was required to hold a regular departmental inquiry before dismissing him from service. He has referred to the judgment passed by Division Bench of this Court in **Sheela Devi vs. State of Haryana and others**, CWP No.5770 of 2008, decided on 07.04.2008 (Annexure P-5), wherein it has been held that termination of services of regular employee amounts to a major punishment and before such a punishment, regular departmental enquiry has to be done. To the same effect is the judgment passed by this Court in **Kamal Kumar vs. State of Haryana**, 1994 (1) SCT 732, where a charge-sheet was issued under Rule 7 of the Haryana Civil Service (Punishment & Appeal) Rules, 1987 and without holding any regular enquiry, the petitioner had been dismissed from service. The order of termination was held violative of the rules, as procedure under the relevant rules for imposing major punishment, had not been followed. Learned counsel has further referred to a judgment passed by Hon'ble the Supreme Court in **Rajpal vs. State of Maharashtra and another**, 2002 (2) SLR 338, where a candidate had applied for the post of Canal Patwari and his case was rejected as he had passed matriculation examination from University, which is neither established by law in India nor declared to be a deemed University. The Hon'ble Supreme Court held that Selection Board should examine the case of appellant since he

possessed higher qualification from an appropriate Board.

The stand taken by the respondents, in their written statement, is that as per application form (Annexure R-1) of the petitioner, he had passed 10+2 (Senior Secondary) in the year 2004 and had secured 53.6% marks. Thereafter, he was given appointment letter dated 29.03.2010 (Annexure P-1). The said appointment was subject to verification of his qualification etc. After verification of the documents of petitioner pertaining to class 10+2, CBSE, vide letter dated 01.05.2012 (Annexure R-2), informed that in fact, the certificate submitted by the petitioner for class 10+2 was fake and was not matching. Further, the serial number referred by the CBSE in certificate was not matching with the certificate submitted by the petitioner. Thereafter, respondents against sent a letter dated 26.03.2012 to the CBSE. Consequently, various reminders were sent on 23.08.2012, 26.06.2013 and 25.01.2015. Thereafter, the CBSE, vide letter dated 02.02.2015 (Annexure R-3), informed that in fact, the certificate submitted by the petitioner was fake/forged document. Thereafter, the show cause notice dated 15.04.2015 (Annexure P-2) was issued and after getting reply dated 06.05.2015 (Annexure P-3) from the petitioner, he has been dismissed vide order dated 15.03.2016 (Annexure P-4).

Learned counsel for the respondents has referred to the judgments passed by Hon'ble the Supreme Court in **District Primary School Council, WB vs. Maritunjoy Das and others**, 2011 (4) SCT 24 and **R. Vishwanatha Pillai vs. State of Kerala and others**, 2004 (2) SCC 105 and argued that if, appointment of a civil post has been sought by any person on the basis of false certificates, then such a person would not have any right on the said post within the meaning of Article 311 of the Constitution. The said

appointment is no appointment in the eyes of law and dismissal of such a person would not attract Article 311 of the Constitution.

After hearing learned counsel for the parties, this petition deserves to be dismissed. In the present case, the respondents have made strenuous efforts to get the verification of 10+2 certificates from CBSE Board. Initially, vide letter dated 01.05.2012 (Annexure R-2), the Board had informed that the certificate submitted by the petitioner was fake and was not matching. Serial number referred by the CBSE was not matching with the certificate submitted by the petitioner. After this letter, respondents sent further reminders dated 23.08.2012, 26.06.2013 and 25.01.2015. Finally, the CBSE, vide letter dated 02.02.2015 (Annexure R-3), informed that in fact, the certificate submitted by the petitioner was fake/forged document. In the reply dated 06.05.2015 (Annexure P-3) to show cause notice dated 15.04.2015 (Annexure P-2), petitioner has made reference to one letter dated 29.06.2004, whereby his marks were increased. However, CBSE, Vide letter dated 10.08.2015 (Annexure R-4), again informed that even the letters referred to by the petitioner, had not been issued by their office. After getting this information, show cause notice has been decided. Hence, respondents have done their enquiry and verification, even after getting reply dated 06.05.2015 (Annexure P-3) from the petitioner. Finally, while passing the dismissal order dated 15.03.2016 (Annexure P-4), it has been observed that letter dated 29.06.2004, which was submitted by the petitioner, was sent for verification and the CBSE, vide letter dated 10.08.2015 (Annexure R-4) has informed that even this letter had not been issued by the said office. Hence, all the pleas of the petitioner have been verified and finally, he has dismissed. Reference, at this stage, can be made

to the judgment passed by Hon'ble the Supreme Court in R. Vishwanatha Pallai's case (supra), wherein it has been held as under:-

“15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment, he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate, he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an

appointment is no appointment in law, in service and in such a situation, Article 311 of the Constitution of India is not attracted at all.”

In **District Primary School Council, WB's** case (supra), one candidates had inflated their marks in order to obtain admission in Primary teachers training institute. The appointment had been sought through illegal means. When this fact came to the knowledge of the institute, they were issued a show cause notice and were given personal hearing as well. Thereafter, they were dismissed from service. In that case, two candidates had inflated their marks to 621 against 430 and 614 against 425. The respondents filed their petitioner before the Calcutta High Court, which was dismissed. But, Division Bench allowed their appeals. However, Hon'ble the Supreme Court allowed the SLP filed by the District Primary School Council, West Bengal and observed as under:-

“7. We have considered the submissions of the counsel for the parties. On going through the records placed before us, what we find is that the contesting respondents herein inflated their marks in order to obtain admission in the primary teacher' training institute. Had the marks not been inflated in the aforesaid manner, the contesting respondents would not have got the admission in that particular institute as it is disclosed from the records. Therefore, the admission sought for was through an illegal means which is to be deprecated. The conduct of the contesting respondents being such, we cannot find fault with the course of action taken by the appellant herein. It is not that the contesting respondents were not given any opportunity of hearing. They were given a show cause notice and were also given an opportunity of hearing which opportunity they did not accept although they submitted a reply to the show cause notice. There is, therefore, no

violation of the principles of natural justice in the present case. If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is nonest and void *ab initio* and, therefore, we cannot find any fault with the action of the appellant in dismissing the service of the contesting respondents. In this context, we refer to the decision of this Court in ***Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and others***, 2003 (4) SCT 318 for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud.”

Judgments referred to by learned counsel for the petitioner in ***Sheela Devi, Kamal Kumarb & Rajpal vs. State of Maharashtra and another***, 2002 (2) SLR 338 (Annexures P-5, P-6 and P-7) will be of no help as in those cases, appointments had not been sought on the basis of fraud and fake documents.

On the other hand, in the present case, petitioner has got appointment by submitting fake/forged certificates. Hence, no ground to interfere in the impugned dismissal order is made out.

No merits.

Dismissed.

13.08.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No