

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1479 of 2017

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1. Allahabad Bank Through its Zonal Manager, Muzaffarpur Zone, Om Shanti Complex, Zila School, Main Road, Muzaffarpur.
 2. Zonal Manager, Allahabad Bank, Muzaffarpur Zone, Om Shanti Complex, Zila School, Mian Road, Muzaffarpur
 3. Branch Manager, Allahabad Bank, Akhta Branch, Sitamarhi.

... .. Petitioner/s

Versus

1. The Presiding Officer, Central Government Industrial Tribunal, Officers Flat No. 10, 12/84, New Punai Chak, Patna.
2. Yogendra Meshtar, Son of Ram Deo Meshtar, Resident of Village-P.O. Rebasi, P.S. Rega, District-Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajan Ghoshrahe, Advocate
For the Respondent/s : Mr.Praveen Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 08-05-2019

Heard the parties.

In this case, the petitioners are challenging the Award dated 27.06.2016 whereby and whereunder the Industrial Tribunal, Patna set aside the order of removal passed against Yogendra Meshtar, workman (respondent no.2).

The fact of this case is that the Allahabad Bank requisitioned the vacancy for the part time sweeper (1/3 salary) to the District Employment Exchange, Sitamarhi, accordingly, the District Employment Exchange forwarded the names of the



respondent no.2 along with others to the petitioners-Bank for induction as a part time sweeper, the interview was conducted, in turn respondent no.2 was selected and appointed as part time sweeper having qualification of 7th pass from Rajkiya Madhya Vidyalaya, Rewasi, in support of the same, he attached the educational certificate.

Before his confirmation, series of complaints were received by the Bank against the respondent no.2 about the suppression of his education qualification, on enquiry, it transpired that respondent no.2 was holding the certificate of matriculation as he passed matriculation examination in the year 1995 from Mahantha Shree Ayodhya Ramanuj Ucha Vidyalaya, Rewasi, Sitamarhi, accordingly, charge sheet was framed and issued to respondent no.2, contents of charge sheet are as follows:-

1. You had submitted application for appointment as part time sweeper on 14.11.2005 in which you had mentioned the qualification as class 7th passed. You had also enclosed a certificate of Rajkiya Madhya Vidyalaya, Rewasi in support of educational qualification.

2. You have passed class 10 from Mahant Sri Ayodhya Ramanuj Uchh Vidyalaya, Rewasi in the year 1995 but you had deliberately suppressed the fact at the time of appointment in the year 2005 and given false declaration on the



application in order to procure employment with the Bank.

You aforesaid act of willful suppression of facts by submitting qualification certificate of 7th pass, on the basis of which you were appointed in the service of the Bank amounts to deliberate suppression of material information by you and thereby you act of fraudulently procuring Bank's service constitute an act of gross misconduct in terms of clause 5 (m) of the Memorandum of Settlement dated 10.04.2002 on Disciplinary Action Procedure for Workmen.

At the end of enquiry proceeding, the inquiry officer submitted its inquiry report on 06.04.2013, the inquiry officer found both the charges proved. The second show cause notice was served upon the respondent no.2 to file a reply within 15 days from the receipt of the letter as to why the proposed penalty of removal from service with superannuation benefits be not imposed on him giving an opportunity to submit his oral as well as written submission against the aforesaid proposed penalty, taking into consideration the submission, accordingly, the Disciplinary Authority awarded the punishment of "removal from service with superannuation benefits i.e. pension and/or provident fund and gratuity and would be due otherwise under the Rules and



Regulations prevailing at the relevant time and without disqualification from future employment”.

Being aggrieved from the order dated 02.06.2014, respondent no.2 filed an appeal, before the Appellate Authority, the Appellate Authority did not find a single mitigating factor to interfere with the decision of the Disciplinary Authority, upheld the order dated 02.06.2014 vide order dated 20.10.2014.

The respondent no.2 raised an industrial dispute under the Industrial Disputes Act and the Union of India vide Notification No. L-12011/37/2014-IR (B-II), New Delhi dated 11.08.2014 referred the industrial dispute with respect to respondent no.2 before the Industrial Tribunal-II, Dhanbad, the Union of India transferred the case to the State Industrial Tribunal, Patna for adjudication of the dispute. The terms of reference are as follows :

“Whether the action of the management of Allhabad bank to propose the punishment of Removal from service to Sri Yogendra Mehtar was proportionate? If not, what relief the workman was entitled to?”.

This question was limited to the punishment of removal inflicted upon the respondent no.2, but it appears that the workman has challenged the fairness of domestic inquiry, which was



conducted and followed to his termination, the Industrial Tribunal, Patna recorded a finding vide order dated 05.06.2015 that the inquiry conducted by the Management was fair and proper and directed the workman to produce the documents and evidence on their respective merit.

The Management as well as the Workman each, examined one witness in support of their respective case. The Tribunal found the charges having been proved, but interfered on the quantum of punishment placing reliance on the judgment reported in ***2014-IV-LLJ-257 (SC) (Life Insurance Corporation of India & Ors. Vs. Triveni Sharan Mishra)*** and converted the punishment from removal of service to stoppage of four increments with cumulative effect vide order dated 27.06.2016.

The challenge has been made by counsel for the petitioners that question is not that the respondent no.2 was holding 10th pass certificate and higher qualification will not be disqualification for consideration of appointment to a post wherein the qualification prescribed is lower side, but in the present case, question is that while taking an employment, the respondent no.2-workman has suppressed his educational qualification as on the day of getting appointment, he was matriculate, knowing well his qualification, he has shown his qualification as 7th pass and thereby



he has entered into the service fraudulently, in such situation, punishment order does not require interference. The suppression of material fact for getting the employment is serious misconduct and the terms of reference is only to the extent to examine the degree of punishment awarded to the respondent no.2 is correct according to the gravity of the charge. It has further been submitted that suppression of fact is very serious matter and, in such a situation, the Industrial Tribunal should not have interfered with the order of termination and substituting by lesser punishment when the punishment is not perverse or absurd, whereas, counsel for the workman has submitted that he had made an application before the District Employment Exchange at two stages, when he passed 7th class examination, again after competition of matriculation. When a requisition was sent, the Employment Exchange has recommended the name of the respondent no.2 showing his qualification as 7th pass. When he was filling up the form, the authorities of the Bank have suggested to show his qualification as 7th pass and, accordingly, he had given the class 7 pass on account of suggestion given by the authorities of the Bank and further submitted that the order of removal is much higher punishment relatable to charges levelled against him, there is no allegation of misappropriation or of fraud, but only it has to be seen that the



degree of punishment of removal is proportionate, in the light of concealment of qualification relatable to act of misconduct that he has obtained the employment showing his qualification as 7th pass instead of qualification of 10th class as there is no bar for higher qualification, when the qualification is on lower side to the post advertised.

Having considered the rival contentions of the parties, the following issues having emerged for decision in the present case :-

(I) Whether the respondent no.2 has suppressed the material fact from the Management in order to procure an employment in the Bank?

(II) Whether the higher qualification will be a disqualification for a post where the lower qualification has been made as an essential qualification for recruitment to the said post?

(III) Whether in the event of proving of charge of suppression of fact will be proper to inflict the punishment of removal or the Tribunal has rightly converted the punishment from removal to the stoppage of four increments with cumulative effect and that serves the purpose relatable to the charge proved?

Since all the issues framed here-in-above are interconnected, as such, all the issues are decided together.



Before deciding the issues, it will be appropriate to consider the parameters of interference by the High Court in exercise of judicial review in the matter of Award passed by the Industrial Tribunal. This Court has authority to inquire as to whether finding arrived by the Tribunal was based on evidence and an error apparent on the face of record. This Court would be fully justified in interfering with an award of the Industrial Tribunal on account of patent illegality. The jurisdiction under Article 226 of the Constitution of India is wide enough, but it should be exercised with great care and circumspection. The High Court would not substitute itself into an appellate court, over the award passed by tribunals constituted under special legislation to resolve disputes which is qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by tribunals. It would be appropriate to place reliance upon the judgment rendered in ***General Manager, Oil and Natural Gas Commission, Silchar Vs. Oil and Natural Gas Commission Contractual, Workers Union reported in (2008) 12 SCC 275***. It would be relevant to quote paragraph 15 of the said judgment :

“15. We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an



error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd. case [(2003) 6 SCC 416 : 2003 SCC (L&S) 890] are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh case [(2006) 7 SCC 722 : 2006 SCC (L&S) 1758] this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr Sanyal's reliance on Sadhu Ram case [(1983) 4 SCC 156 : 1983 SCC (L&S) 507 : AIR 1984 SC 1467] is more appropriate to the circumstances herein. It has been observed as under: (SCC p. 158, para 3)

"3. ... The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to



jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management.”

In this background, it should be considered as to whether it will be proper to interfere with the Award of the Tribunal as, in the present case, the question has been raised that the respondent no.2 entered into the service concealing his educational qualification as, on the date of his entry, he was holding the certificate of matriculation, but he has given a declaration of being 7th pass. The Tribunal has interfered with the order of punishment substituting by another punishment of stoppage of four increments with cumulative effect.

It is well known principle of law that the fixation of qualification lies within the domain of the executive or the management, the management is entitled to prescribe the qualifications as a condition of eligibility. It is no function of



Court under the judicial review to expand the ambit of the prescribed qualification. It would not be permissible to draw an inference that the higher qualification could necessarily presuppose the qualification of another i.e. lower qualification. Whether a particular qualification should or should not be the proper qualification is, in the wisdom of the management, it cannot be substituted and sub-planted by the Court under the judicial review expanding meaning to the qualification which has been prescribed by the management. The State employer knows the nature of job, the aptitudes requisite for the efficient discharge of the duties, the functionality of a qualification and the content of the course of the studies, which leads up to the acquisition of a qualification. Under the judicial review, the Court must tread warily and with circumspection. It will be appropriate to place reliance on the judgment rendered in ***Zahoor Ahmad Rather and Ors. Vs. Sheikh Imtiyaz Ahmad and Ors. (Civil Appeal Nos.11853-11854 of 2018)***. It would be relevant to quote paragraphs 22 and 23 of the said judgment :

“22. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. in the subsequent decision in Anita (supra) . The decision in Jyoti K.K. turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an



inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.

23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily”.



The same principle has also been reiterated in the following cases :-

(i) (2010) 5 SCC 497 (Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana.

(ii) AIR 1967 SC 477 (Travancore Sugars and Chemicals Ltd. Vs. Commissioner of Income Tax)

(iii) (1991) 1 SCC 566 (Municipal Board, Saharanpur Vs. Imerial Tobacco of India and Ors.)

(iv) (2002) 6 SCC 552 (Lakshmi Precision Screws Ltd. Vs. Ram Bhagat)

(v) (2010) 5 SCC 510 (Mohd. Shahnawaz Akhtar and Anr. Vs. First Additional District Judge, Varanasi and Anr.)

(vi) (2004) 10 SCC 460 (Mukand Ltd. Vs. Mukand Staff & Officers' Association)

(vii) (2006) 12 SCC 349 (Dharamraj and Ors. Vs. Chhitan and Ors.)

(viii) (2008) 14 SCC 171 (Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd.)

In the case of *Life Insurance Corporation of India & Ors. Vs. Triveni Sharan Mishra [(2014) 10 SCC 346]*, the workman entered into the service by concealment of his educational qualification, some of the employees on identical misconduct were awarded the punishment of stoppage of two increments, but in the case of **Triveni Sharan Mishra**, he was terminated from service on the charge of misconduct of



suppression of his qualification. The Court has considered the matter from different angles, it has been held that it was not a case of suppression of past antecedent of criminal background, but it was a case of concealment of qualification as failure to mention the past criminal antecedent will come under the suppression of fact, but failure to disclosure the qualification is a concealment of fact and both cannot be placed at the same plane as both have different angles of effect as in the case of educational qualification when it is done completely under pressure to obtain a job when there is scarcity of the job in the market and under the pressure not declaring the correct qualification cannot be brought at par with the suppression of the past criminal antecedent. In that case also, the Court has opined the stoppage of two increments would meet the ends of justice. It would be relevant to quote paragraph 13 of the said judgment :

“13. However, on behalf of the appellants it is contended that suppression of material information and making false statement to secure the employment, is a serious offence to attract the dismissal of service. In this connection, the learned Senior Counsel for the appellants referred to Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] . But in our opinion, the aforesaid case referred to on behalf of the appellants cannot



be applied to the present case for the reason that in the said case the employee had concealed the facts relating to his character and antecedents. In the said case, the employee who was selected for the post of a teacher suppressed the information that a criminal case relating to the offences punishable under Sections 323, 341, 294, 506-B read with Section 34 of the Penal Code, 1860 was registered against him. As such the facts in the present case cannot be equated with the case referred.

In view of the said proposition, in the present case also, respondent no.2 has taken a plea, which has been accepted by the Tribunal, that he has entered his name in the Employment Exchange at two stages, one at the stage when he has acquired the qualification of 7th pass and another at the stage when he has acquired qualification of matriculation, the name of respondent no.2 was forwarded to the Bank along with others and on selection, as per the respondent no.2, on the advice of the Bank staff, he has mentioned his qualification as per the qualification mentioned in the advertisement. This action is to be understood in the background of grim situation, when young person is moving from one door to another door for an employment, when every one says, it is easy to find God but very difficult to get a job.



In such view of the matter, this Court does not find any justification to interfere with the order of Award, accordingly, this petition is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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