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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 03.04.2019

Pronounced on: 22.04.2019

+ W.P.(C) 5356/2012

JAGJIVAN RAM @ JAGE RAM Petitioner
Through Mr. Asish Nischal with Mr. Arun
Nischal, Advs.

versus

AIRPORT AUTHORITY OF INDIA Respondent
Through Mr. Dig Vijay Rai with Mr. Kustubh
Singh Advs. for R1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby setting aside order dated 24.07.2012 whereby the request of the petitioner for permitting to join duties has been rejected. Further seeks direction thereby directing the respondent to review its order dated 18.04.2001 whereby the services of the petitioner was terminated in the light of acquittal of the petitioner by the criminal court in case of FIR bearing No.5/2001, under sections 420/471 of the IPC.

2. The brief facts of the case are that on 26.02.1998, the respondent-authority issued a letter regularizing the services of the petitioner w.e.f. 06.12.1996 as Safaiwala in the pay scale of ₹ 2400-50-3150-3330 with basic

pay of ₹ 2400 per month. On 05.03.2001, FIR bearing number 5/2001 was registered as mentioned above. On 19.03.2001, the respondent-authority issued a show cause notice to the petitioner, on the ground that the petitioner deliberately suppressed the information from the respondent-authority that his real name is '*Jagjivan Ram*' and not '*Jage Ram*' and through the said show cause notice, the reply was directed to be filed within 15 days from the date of receipt of the notice. On 11.04.2001, the petitioner submitted his request to the respondent-authority to give some more time to reply to the show cause notice, however, the respondent-authority, without granting the petitioner more time to reply, issued order dated 18.04.2001 terminating the services of the petitioner.

3. Being aggrieved, in the month of May, 2001, the petitioner preferred an appeal to the appellate authority against the termination order dated 18.04.2001. There was no reply to the said appeal. On 13.04.2012, the learned Metropolitan Magistrate, Dwarka Courts, New Delhi acquitted the petitioner of the offences under sections 420 and 471 of the IPC and holding that the petitioner i.e. Jagjivan Ram and Jage Ram are the same person. On 30.05.2012, the petitioner pursuant to the judgment mentioned above, represented to the respondent-authority for his reinstatement in service. On

24.07.2012, the respondent-authority rejected the representation of the petitioner on the ground that the District Court, Dwarka, New Delhi, vide its judgment dated 13.04.2012 has not issued any directions to respondent-authority.

4. Learned counsel appearing on behalf of the petitioner submits that the respondent-authority has erred in not appreciating the fact that FIR was registered against the petitioner, on the same set of facts and charges on which the respondent- authority terminated the petitioner from service. If the departmental inquiry and criminal trial are based upon the same set of facts and charges and in the department inquiry, a penalty is imposed and thereafter, the Criminal Court acquits that person on the same set of facts and charges, the penalty, in the departmental inquiry, needs to be reviewed. Accordingly, the petitioner had developed a reasonable expectation since he has been acquitted by the Criminal Court in the concerned case and on the basis of which, he was terminated by the respondent-authority, the departmental penalty needs to be reviewed.

5. He further submitted that no Criminal Court will direct the department to reinstate the person back in service. In fact, the Criminal Court adjudicates upon the conviction or acquittal of a person.

6. Learned counsel for the petitioner further submits that the services of the petitioner has been terminated while exercising the powers conferred upon the respondent under Regulation 23 of IAAI Regulation, 1980. As per the said regulation, 30 days notice period is required or pay in lieu of notice. However, vide show cause notice dated 19.03.2001, only 15 days time was given to file reply which is contrary to the Regulation 23 of IAAI Regulation, 1980. Moreover, the petitioner made request on 11.04.2001 to give some more time to file reply but the same was rejected and issued termination order dated 18.04.2001. Thus, the order of termination is contrary to the Regulations mentioned above. Moreover, the appeal of the petitioner is pending, however, not decided by the appellate authority.

7. On the other hand, learned counsel appearing on behalf of the respondent submits that the petitioner i.e. Jage Ram, vide letter dated 26.02.1998 was regularized as Sweeper w.e.f. 06.12.1996. In the month of January 2001, a complaint was received by the Vigilance Directorate against Jage Ram that said Jage Ram had obtained employment with the respondent on the basis of forged certificate in the name of Jage Ram whereas his real name is Jagjivan Ram, son of Sh. Chunni Lal. Accordingly, on the recommendations of the Vigilance Department, the respondent initiated

investigations and issued a show cause notice dated 19.03.2001. After investigations, it was established that Jage Ram had deliberately suppressed and furnished incorrect information to get his service regularized. FIR was got lodged by the respondent against the petitioner on 05.03.2001 and summons were issued to the petitioner under section 91 of the CPC. After considering the facts and circumstances of the case, the respondent terminated the services of Jage Ram on 18.04.2001.

8. Learned counsel appearing on behalf of the respondent submits that the appointment was made to Jage Ram vide letter dated 26.02.1998 wherein it is clearly mentioned that the regularization is based on the information furnished by way of an affidavit or other documents. However, in the event of any information being found to be incorrect or deliberately suppressed at any point of time, his regularization will be treated as void and the service will be terminated. Moreover, during the process of regularization of service, Jage Ram submitted an affidavit dated 12.02.1997, mentioning his name as Jage Ram son of Chunni Lal. In this affidavit, the petitioner has not declared that he is also known as Jagjivan Ram. It is further submitted that only after the case of impersonation came to the notice and after the show cause notice was issued, Jage Ram submitted an affidavit dated 09.04.2001

declaring that “*my name in the official record is Jagjivan Ram, son of Sh. Chunni Lal and my nick name is Jage Ram, son of Sh. Chunni Lal and that Jagjivan Ram, son of Sh. Chunni Lal and Jage Ram, son of Sh. Chunni Lal, is one and same person.*” However, during the course of investigation, the genuineness of School Leaving Certificate submitted by Jage Ram was verified from Head Master, Government High School, Patauda, Jhajjar, Haryana. It was confirmed by the Principal of the said school vide letter dated 08.08.2000 that the School Leaving Certificate was never issued from the school. Thus, it is apparent that the petitioner had deliberately concealed/suppressed the facts and submitted incorrect information and forged documents to get his job regularized with the respondent.

9. It is further submitted that the petitioner was issued a show cause notice vide memorandum dated 19.03.2001 by the vigilance department, the Corporation Headquarter, directing him to submit his reply within 15 days from the date of receipt of the said show cause notice, as to why his services should not be terminated. Further directed that his reply should reach within the stipulated period, failing which it will be presumed that the petitioner has nothing to say in his defence and decision will be taken on the merit of the case. However, the petitioner did not submit his reply within the stipulated

time. Consequently, the Disciplinary Authority issued an order dated 18.04.2001 after one month of the issuing of the show cause notice, terminating the services of the petitioner with effect from the date of issuing of the order.

10. Counsel for the respondent submitted that the petitioner was granted 15 days time which was sufficient to submit his reply. Further submits that since there is no provision in the order dated 18.04.2001 to appeal against the termination of the services of the petitioner, therefore, no order is passed in his appeal.

11. He further submitted that the learned MM did not exonerate the petitioner of the charges leveled against him as it has been observed in the judgment dated 13.04.2012 that *“prosecution did not bring original School Leaving Certificate and affidavit of Jage Ram @ Jagjivan Ram in Court nor seek permission to lead secondary evidence regarding in addition to this it is also not proved that Jagjivan Ram used forged documents to get the job even if accused Jagjivan Ram @ Jage Ram was found culprit in Departmental Inquiry then this Court is not bound to accept the Departmental Inquiry report moreover prosecution witness has deposed that Jagjivan Ram and Jage Ram are same person and I do not find any merit in*

the present case in absence of documents in question, therefore the accused is acquitted of the offence under Section 420/471 IPC”.

12. He further submitted that in paras 32 and 36 of the judgment, learned MM has recorded as under:

“32. Ex PW4/B was exhibited by PW4 SI Parveen Kumar stating that the during course of investigation he had obtained certificate form Sh. Lal Singh Principal Govt. Secondary School, Jhajjar, which is Ex PW4/B in which principal stated that school leaving certificate file no. 29, serial no. 8 dated 27.09.1955 was issued to one Mr. Lalit Kumar and not to Mr. Jage Ram but the Principal died before he could be called in court to prove Ex PW4/B nor any official form school was called to prove the same. IO stated the Principal executed this document in front of him so he can exhibit it. It was objected by Ld. Defence counsel. As per the Judgment of Hon’ble Justice R.C.Lohati titled as Sudir Engineering Company vs Nitco Roadways Ltd. on 23 March, 1995, Equivalent citations: 1995 IAD Delhi 189, 1995 (34) DRJ 86, 1995 RLR286 “More exhibition of document does not mean it has been proved.” a document may be proved by its executant or by attesting witness but in the absence of both of these persons two section 47 and section 67 are relevant.

36. After going through the whole evidence on record and after dealing with contentions of ld. Defence counsel I am of the opinion that prosecution did not bring original school leaving certificate and affidavit of Jage Ram @ Jagjivan Ram in court nor seek permission to lead secondary evidence regarding in addition to this it is also not proved that Jagjivan Ram used forged document to get that job even if accused Jagjivan Ram @ Jage Ram was found culprit in Departmental Enquiry then this court is not bound to accept that departmental inquiry

report moreover, prosecution witness has deposed that Jagjivan Ram and Jage Ram are same person and I do not find any merit in the case of prosecution in absence of documents in question, therefore the accused is acquitted of the offence under section 420/471 IPC.”

13. It is further argued that the termination order dated 18.04.2001 has been challenged in the year 2012 belatedly. Therefore, the present petition is filed after inordinate delay and latches.

14. On the issue of delay, counsel for the respondent has relied upon the case decided by the Hon’ble Supreme Court in ***State of Orissa & Anr. vs. Mamata Mohanty: (2011) 3 SCC 436*** whereby the Hon’ble Supreme Court has observed that the Limitation Act, 1963 does not apply in writ jurisdiction, however, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and latches.

15. He further submitted that the petitioner is seeking review of the termination order based upon the acquittal in a criminal court. He submits that in case of ***T.N.C.S. Corporation Limited & Ors. vs. K. Meerabai: (2006) 2 SCC 255*** whereby held that interference is not permissible unless the orders passed by quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal or grossly unjust. It is observed that if the

criminal proceedings ended in acquittal on merits and that became final, then a lenient view must be taken since the charges in both the cases are identically the same. Thus, the present petition deserves to be dismissed.

16. I have heard learned counsel for the parties and perused the material available on record.

17. The petitioner was regularised w.e.f. 06.12.1996 as Safaiwala in basic pay scale of ₹ 2400-50-3150-3000 with the basic pay of ₹ 2400 per month. On 05.03.2001, FIR bearing no.5/01 was registered and on 19.03.2001, the respondent authority issued a show cause notice to the petitioner on the ground that the petitioner deliberately suppressed the information from the respondent authority with his real name as Jagjivan Ram and not Jage Ram. The petitioner was directed to file reply within 15 days from the date of receipt of the notice. Though on 11.04.2001, the petitioner had requested to give some more time to reply to the show cause notice, however, the petitioner failed to file reply and finally vide order dated 18.04.2001, the respondent terminated the services of the petitioner. The said order was passed after a month of the show cause notice.

18. On receipt of the complaint by Vigilance Directorate, the respondent initiated investigation whereby it was established that the petitioner had

deliberately suppressed and furnished incorrect information to get his services regularised. During investigation, a reference was made to Headmaster, Govt. High School, Patauda to confirm the genuineness of the School Leaving Certificate submitted by the petitioner. It has been confirmed by the school authorities that the certificate in question had never been issued in the name of the petitioner.

19. It is not in dispute that the petitioner got service in the name of Jage Ram son of Shri Chunni Lal. However, during investigation, it is admitted that his real name was Jagjivan Ram son of Shri Chunni Lal and was enrolled under the same name and parentage with the aforesaid school as well as in the village electoral roll. It was also admitted that the School Leaving Certificate submitted by the petitioner at the time of his regularization was a forged document giving false particulars of date of birth and name with an intention to get his service regularized as Sweeper in the name of Jage Ram and to get the benefit of extended service period after the actual date of retirement.

20. It is pertinent to mention that in the appointment letter dated 26.02.1998, it was clearly mentioned that the regularization is based on the information furnished by way of an affidavit or other documents. However,

in the event of any information being found to be incorrect or deliberately suppressed, at any point of time, his regularization will be treated as void and services will be terminated. However, during the process of regularisation of service, the petitioner submitted an affidavit dated 12.02.1997 mentioning his name as Jage Ram son of Shri Chunni Lal. In the said affidavit, the petitioner did not declare that he is also known as Jagjivan Ram. But thereafter the petitioner submitted an affidavit on 09.04.2001 declaring that his name in the official record is Jagjivan Ram and his nick name is Jage Ram and that Jagjivan Ram and Jage Ram is one and the same person.

21. If the name of petitioner in official record was Jagjivan Ram then why he got regularized in the respondent department in the name of Jage Ram which shows that there was some suppression on the part of the petitioner.

22. It is not in dispute that on registration of FIR and issuing summons from the criminal court, the petitioner was removed from service. Thereafter, the trial court vide judgment dated 13.04.2012 acquitted the petitioner from the criminal charges.

23. But the fact remains that in the judgment, the trial court has noted in

para 32 that Ex.PW4/B was exhibited by PW4 SI Parveen Kumar stating that during the course of investigation, he had obtained certificate from Shri Lal Singh, Principal, Govt. Secondary School, Jhajjar in which the Principal stated that School Leaving Certificate file no.29, Serial no.8 dated 27.09.1955 was issued to one Lalit Kumar and not to Jage Ram. However, the said document could not be proved before the trial court due to demise of the Principal and no other officials from the school was called to prove the same.

24. In addition to above, till date the petitioner has failed to establish that his School Leaving Certificate was genuine and in the name of Jage Ram under which he is working with the respondent.

25. In para 36 of the judgment, learned trial court mentioned that prosecution did not bring original School Leaving Certificate and affidavit of the petitioner in court nor seek permission to lead secondary evidence. Accordingly, the trial court acquitted the petitioner of the offences under sections 420/471 IPC.

26. It is settled law that in a criminal case, case against the accused has to be proved beyond reasonable doubt whereas in the departmental proceedings, preponderance of probabilities is required. In the present case,

the petitioner admitted that his real name is Jagjivan Ram and nick name is Jage Ram whereas he produced School Leaving Certificate of Jage Ram and working as Jage Ram which creates doubt upon the petitioner.

27. In case of Meerabai (Supra), the Hon'ble Supreme Court held that interference is not permissible unless the orders passed by quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal or grossly unjust. It is further observed that if the criminal proceedings ended in acquittal on merit and that became final, then a lenient view must be taken since the charges in both the cases are identically the same.

28. In the case in hand, the acquittal of the petitioner is not on merit but on the ground that the prosecution failed to prove the Ex.PW4/B due to the demise of the Principal of the school or no official come from the school to prove the said document.

29. In view of above discussion and settled position of law, I am of the view that there is no merit in the present petition and the same is, accordingly, dismissed with no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

APRIL 22, 2019/ab