

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

LPA No.64 of 2021 (O&M)

Reserved on : 10.01.2022

Pronounced on : 04.02.2022

Managing Committee, Goswami Ganesh Dutt Sanatan Dharam College,
Palwal & another

... Appellants

Versus

Sabir Hussain & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr.Sudhanshu Makkar, Advocate, for the appellants.

Mr.Namit Kumar, Advocate, for respondent No.1.

Ms.Palika Monga, DAG, Haryana, for respondent No.2.

G.S. Sandhawalia, J.

The present Letters Patent Appeal, filed by the Managing Committee of the appellant-College, is directed against the impugned order passed by the Learned Single Judge in CWP-18000-2020 on 12.01.2021 whereby the writ petition was allowed, setting aside the termination order dated 04.12.2009 (Annexure P-10) and the appellate order dated 12.10.2020 (Annexure P-18).

2. Vide the said order, Learned Single Judge came to the conclusion that without conducting a regular enquiry, the services of respondent No.1 could not have been terminated even in case of a probationer since the order contained reasons that it was on account of serious misconduct on the part of the employee. It was, accordingly, held

that it was not done in accordance with the rules and a charge-sheet must be issued and the employee was required to file his reply thereto. Resultantly, liberty was given to pass a fresh order in accordance with law while placing reliance upon the judgments in **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences 1999 (1) SCT 861, Union of India & others Vs. Mahaveer C.Singhvi 2010 (3) SCT 578 and Ashok Kumar Chopra Vs. Union of India & others 2019 (2) SCT 262.**

3. Counsel for the writ petitioner/respondent No.1 herein, Mr.Namit Kumar has vehemently defended the said order and submitted that the Learned Single Judge was well within his jurisdiction to pass the impugned order. No prejudice was caused to the Managing Committee which had been given a opportunity to enquire into the matter and an opportunity had also been given to the concerned employee. An order of termination could have been passed only after following the said procedure since the termination order was passed on a finding that it was a case of misconduct.

4. Counsel for the appellants-Managing Committee, Mr.Sudhanshu Makkar, on the other hand, has taken us through the provisions of the Haryana Affiliated College (Security of Service) Act, 1979 and the Haryana Affiliated College (Security of Service) Rules, 2006, to submit that the statutory procedure was adhered to. It is thus submitted that the conduct of the employee itself was not satisfactory since the appointment was taken on the basis of false and forged documents and therefore dispensation of service was provided under Rule

8(2)(b)(i) after referring the matter to the concerned Committee, which also consisted of the nominee of the Government. It was submitted that if the said certificates were not taken into consideration, the writ petitioner would fail to make the merit and it was not the case of the writ petitioner that the benefit of certificates had not been granted to him. It was also submitted that a FIR had also been lodged on the same set of allegations and therefore, sufficient opportunity having been granted, the action was justified.

5. A perusal of the paperbook would go on to show that in pursuance to the advertisement dated 29.06.2017, the writ petitioner/respondent No.1 applied for the post of Assistant Professor in the subject of Chemistry vide his application dated 12.07.2017. In the said application, it was specifically mentioned that he did not take part in any curricular activities and did not fill in any details of the said activities and neither any certificate of NCC participation was attached. In Clause 12 (2) where the NCC certificate was to be of 'B' or 'C' category, it was mentioned as 'Nil'. Similarly, in Clause 13, the claim for any benefit of sports was 'Nil' and neither any certificate was stated to have been attached. However, when interview was conducted on 25.10.2017, a perusal of the break-up which has now been placed on record as Annexure R-3/3 would go on to show that the writ petitioner was given the benefit of NCC certificate of Category B and was given the benefit of 1 mark for the said certificate. Similarly, for the sports certificate, he was given the benefit of 4 marks. Resultantly, his merit went to 33 marks.

Copies of the said certificates have been placed on record by the

Managing Committee as Annexures R-3/2 and R-3/1, respectively, which are duly initialled by the writ petitioner. An affidavit was also given by the writ petitioner dated 14.12.2017 (Annexure R-1) that the extra curricular activities and other certificates produced before the Selection Committee are true and correct to the best of his knowledge and that his appointment was liable to be cancelled if any discrepancy was found later on and the college authorities had the right to check his antecedents from the concerned departments.

6. On the basis of the said documents, the writ petitioner was given appointment on 14.12.2017 (Annexure P-2) and he was to be on probation for a period of 2 years. He figured at Sr.No.2 in the merit-list and it is the categorical case of the respondents in the written statement that he had secured a second merit position on the basis of the said extra curricular activities. FIR dated 16.01.2019 (Annexure R-3/6) was lodged against the writ petitioner along with a person of the Managing Committee and the Principal for forging and alteration of record and fabrication of certificates by one S.C.Sharma who was an earlier employee of the appellant-College. Specific allegation was made that the writ petitioner in his application form has filled the details as 'Nil' regarding the NCC and Sports certificates but the accused persons in collusion with each other had prepared forged and fabricated certificates of NCC and Sports and altered the record with an intent to cause damage and injury to the other candidates. The details were given as per the RTI information given that the writ petitioner was not a cadet of the Unit during the B-Certificate Examination period for the concerned year.

Similarly, the certificate provided by the Sports Authority of India of the 4th National Level Rural Tournament which was held at Chennai was issued to daughter of Abhey K.Kaushal and therefore, allegations of fraud and forgery were made against the accused. The said facts stand confirmed in as much as vide letter dated 06.02.2019, the Group Commandant and Commanding Officer, Kota wrote to the Principal of the College that the writ petitioner was not a cadet of the Unit for the training year 1999-2000. Neither the certificate had carried the signature of the Commanding Officer on the photograph and the signatures were also on the wrong side at the bottom and counter-signatures were not there both of DG, NCC and of the Commanding Officer. It was also brought to the notice of the College that the said person had visited the unit with a fictitious name as a representative of the college and on account of that he was detailed by the institution to know about the verification report. Reply had been given to him after taking photocopy of his driving licence.

7. Similarly, the Sports Authority of India had also supplied information under the Right to Information Act on 05.09.2019 that the certificate had not been issued to the writ petitioner as the discipline of Badminton was not included in the Rural Sports Tournaments and secondly, the same was held at Chennai (Tamil Nadu) in the year 2010-11. Thereafter, on 23.08.2019 also, the NCC Commanding Officer from Kota wrote to the College regarding the non-issuance of the certificate by the Unit and the certificate not being genuine as per the record.

8. Resultantly, show cause notice dated 31.08.2019 (Annexure

P-6) was issued regarding the B-Certificate of NCC relied upon at the time of interview by the Governing body. Similarly, show cause notice dated 06.09.2019 (Annexure P-8) qua the merit certificate of the Sports Authority of India relied upon was also issued. The reply of the writ petitioner was to the extent that he had not relied upon the said certificates in the application form and he had been appointed by following proper procedure and as per the rules and regulations. The show cause notices were issued without following the proper procedure and there was no misrepresentation on his behalf. The claim of no opportunity provided was made and request was made that the show cause notices be withdrawn. Copies of the replies dated 06.09.2019 and 09.09.2019 have been appended as Annexures P-7 & P-9, respectively. It is pertinent to mention that nowhere in the replies the writ petitioner has taken the plea that he had not taken the benefit of the said certificates and the same had not been produced by him and that he was a beneficiary of the same to get a 2nd ranking in merit.

9. The Management, after considering the replies being not satisfactory, gave a personal hearing to the writ petitioner on 11.09.2019. Thereafter, on 25.09.2019, request was made to the Maharishi Dayanand University, Rohtak to appoint its nominee under Rule 8(b) of the 2006 Rules to deal with the case of the writ petitioner. The University, vide letter dated 04.12.2019 (Annexure R-4/4) appointed one Professor Pushpa Dahiya, Department of Botany, as the nominee and informed the College that it could fix the date of meeting of the Committee in consultation with the said nominee. The concerned Committee which

consisted of the President or his nominee appointed by the Governing Body, Professor Pushpa Dahiya, Principal of the Government College, Hodal and Principal of the Aggarwal College, Ballabgarh along with the Acting Principal of the appellant-College, called upon the writ petitioner who denied the certificates and claimed that he neither submitted nor claimed the benefit of the said certificates. The Committee went through the record and the attendance-sheet-cum-merit signed by the writ petitioner and the reverification of the letters from the concerned departments. The video footage of the interview was also seen, which showed that the said certificates were produced by the writ petitioner and his initials were also found on the photocopies. Reliance was also placed upon the affidavit and accordingly, a report was presented to the President of the Governing Body for taking appropriate action. The proceedings dated 18.11.2019, read as under:

“The Principal informed the committee that Dr. Sabir Hussain was issued show cause notices dated 31.08.2019 & 06.09.2019 under which he replied that he was appointed according to the particulars/documents mentioned in his Application Form dated 12.07.2017. This Application Form does not contain the entries of extra curricular activities certificates i.e. NCC, Sports, NSS etc. under Sr.No. 12(A), (B), 13. He was also issued letters dated 11.09.2019 & 12.09.2019 vide which he was informed that his replies have not been found satisfactory giving the specific grounds. His salary was withheld on 31.08.2019 till further orders. Thereafter on 13.11.2019, his salary was released on the order of Director General Higher Education office letter dated 8.11.2019.

Dr.Sabir Hussain appeared before the Committee and

he was queried about the extra curricular activities certificates. He categorically denied about these certificates. He said that he neither submitted nor claimed about these certificates.

The Committee has gone through Attendance Sheet cum merit sheet duly signed by Dr.Sabir Hussain. It is mentioned in re-verification letters of NCC & Sports received from concerned departments that these certificates are not genuine. The Committee has also gone through the video of interview dated 25.10.2019 which show that NCC certificate was being produced by Dr.Sabir Hussain to the Selection Committee. Moreover, his initials were also found on the photocopies of other certificates. Further, he has also submitted an Affidavit vide which he has declared under part 4 that “That I have produced all my educational qualification certificates, extra curricular activities/other certificate, experience certificate etc. before the Selection Committee which are true and correct to the best of my knowledge. If any discrepancy/concealment is found later on, I shall be held responsible for the same and my appointment is liable to be cancelled with cost. The College authorities can check my antecedents from the concerned departments.”

10. On the basis of the said report, the Managing Committee gave personal hearing again to the writ petitioner on 21.09.2019 which thereafter resolved to dispense with his services on account of the fact that the appointment was made on the basis of forged certificates. The resolution dated 04.12.2019 read as under:

“The Acting Principal/Ex-officio Secretary told the house that as per Governing Body Resolution dated 21.09.2019, the Committee was constituted under article 8(2)(b) of the Haryana Affiliated College (Security of Service) Rule 2006. The Committee enquired into the case of Dr.Sabir Hussain, who is now working on probation as Asstt. Professor in

Chemistry, and submitted its Enquiry Report dated 18.11.2019, which has been placed and read before this house. According to this enquiry report, two extra curricular activities certificates (NCC & Sports) have been found bogus after its re-verification. These two certificates were presented by Dr.Sabir Hussain before the Selection Committee at the time of interview on 25.10.2017. Dr.Sabir Hussain was given personal hearing on 21.09.2019 by the Governing Body and on 18.11.2019 by the Committee to explain his position. His explanation was not found satisfactory. Dr.Sabir Hussain got 5(Five) marks on the basis of NCC(1) and Sports(4) Certificates in the merit of appointment and was appointed due to second position in the panel. Keeping in view the above, this House is fully agreed unanimously with the Enquiry Report dated 18.11.2019 and resolves to dispense with the services of Dr.Sabir Hussain, Assistant Professor in Chemistry who is working on probation, with immediate effect. The President is authorized to issue termination letter to him with intimation to all concerned departments. The President is also authorized to take legal action against Dr.Sabir Hussain for getting appointment on the basis of bogus certificates.”

11. On the basis of resolution No.4 dated 04.12.2019, reproduced above, the services of the writ petitioner were dispensed with on 04.12.2019 (Annexure P-10). The writ petitioner filed an appeal which was dismissed on 02.09.2020 (Annexure P-12) by the Director General, Higher Education, Haryana, Panchkula by noticing that the writ petitioner had refused to join video-conferencing and therefore, opportunity had been given to him and accordingly, the penalty of termination of services was approved.

12. CWP-14326-2020 was filed by the employee before this

Court which was allowed on 14.09.2020 (Annexure P-13) on the ground that an opportunity of hearing be given to look into the assertions since the plea taken was that he had not annexed with the application the certificates of NCC and Sports. Resultantly, the appeal was decided afresh on 12.10.2020 (Annexure P-18). The Appellate Authority noticed that the writ petitioner had appeared for personal hearing before the Governing Body, which is also an admitted fact in his appeal in para No.5. It was noticed that he had been given adequate opportunities and his services were terminated after following proper procedure under Rule 8(2)(b). It was recorded that the writ petitioner had himself stated in his affidavit that if any discrepancy/concealment was found later on, he shall be held responsible for the same and his appointment was liable to be cancelled. It was noticed that the Committee had examined the video footage of the interview and that the documents were available and the certificates of NCC & Sports had been submitted. Therefore, once the procedure had been followed before terminating the services of the employee, the proposed penalty of termination of service was approved and the appeal was dismissed.

13. Rule 8 of the 2006 Rules provides that a person shall remain on probation for a period of 2 years if appointed by way of direct recruitment. On completion of the probation period, the work and conduct has to be seen by the appointing authority and if it is found satisfactory, confirmation is to be given from the date of completion of the probation period. If a permanent post is not available, declaration is to be made that he has completed his probation satisfactorily. Sub-rule

(2)(b)(i) provides that if the conduct of the person is not satisfactory, the services could be dispensed with in the case of direct recruitment or reversion to his former post if appointed otherwise and to deal with him in such other manner as provided in the terms and conditions of his previous appointment. The second proviso provides that if action is to be taken under Sub-clause (i), the case of the official is to be referred to the Committee of the following members, as reproduced below. If the Managing Committee does not agree with the report of the Committee constituted and if the Committee is not able to come to the decision with a majority, then the matter was to be referred to the Director, whose decision was to be final. Relevant rules read as under:

“8. (1) The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.

(2) On the completion of the period of probation of a person the appointing authority may-

(a) if his work and conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactorily; or

(b) if the work or conduct of a person in its opinion has not been satisfactory-

(i) dispense with his services, if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit;

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the

first period of probation;

Provided that the total period of probation, including extension, if any, shall not exceed three years :

Provided further that if it is proposed to take action under sub-clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members:-

- (1) President or his nominee;
- (2) Dean of Colleges of the University or his nominees;
- (3) Nominee of Government in the Managing Committee;
- (4) Principal of the College concerned;
- (5) Principal of another college not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with the recommendation of this committee.

(iii) if the Managing Committee does not agree with the report of the committee constituted under rule 8(2) (b) (ii) or the committee is unable to come to a decision by the majority then the matter will be referred to by the Principal to the Director whose decision shall be final. However, an employee against whom an order of termination of services has been passed without complying with the provision of these rules, may, within a period of thirty days of the date of communication of orders make an application to the Director whose decision shall be final in the matter.”

14. A perusal of the above would go on to show that the procedure regarding the dispensing with the services under Rule 8(2)(b) (i) was on account of the conduct of the person and was valid to the extent that the Committee consisting of the nominated persons was duly

constituted. The Committee gave an opportunity of hearing to the writ petitioner which would be clear from para No.9 above where the reasoning of the Committee has been reproduced. Thereafter, the matter was put before the Managing Committee. The Committee also noticed that the 5 additional marks were granted on the basis of the certificates in question and he was appointed on account of having secured second position in the panel. It was thus concluded that once the basis of appointment was after taking benefit of the bogus certificates, the President was given the option to take legal action against the writ petitioner. Thereafter, the services of the writ petitioner were dispensed with on 04.12.2019.

15. The sequence of events would go on to show that the procedure provided under the Rules was followed to the extent that the concerned officials, independent nominee of the Government and Principal of another college were also associated with the Committee. They had arrived at the conclusion that the benefit of the certificates had been taken and resultantly, the services of the writ petitioner had been terminated. The writ petitioner was given an opportunity to appear both before the Committee and the Governing Body and therefore, cannot submit that he was not given any opportunity. These aspects have been lost sight of by the Learned Single Judge while passing the impugned order by holding that there was no such regular enquiry.

16. The Learned Single Judge did not even examine the concerned rules which were governing the writ petitioner and the management and has only placed reliance upon the three judgments. A

perusal of the said judgments would go on to show that in Ashok Kumar (supra), the Division Bench dismissed the writ petition whereby the Central Administrative Tribunal had set aside the termination order and directed the employee to be taken back in service with all consequential benefits but without back wages. The reasoning given by the Division Bench was that the inquiry was must and if the order was stigmatic and there was misconduct, it was imperative for the department to hold a regular inquiry, so as to give an opportunity to the employee to defend his case even though he may be on probation, which is not the fact in the present case.

17. Similarly, in Dipti Prakash Banerjee (supra), the Apex Court was dealing with an order whereby the work and conduct of the employee was held to be not satisfactory on several counts. The termination order had not been interfered by the High Court at the writ level and at the appellate stage. The Apex Court came to the conclusion that there was no enquiry and the order of termination was stigmatic and accordingly, permitted the appellant to be reinstated with back wages and continuity of service by giving liberty to proceed in accordance with law and the case herein is thus distinguishable to that extent.

18. Similarly, in Mahaveer C.Singhvi (supra) the discharge was effected as per the clauses of employment of the employee. The Apex Court accepted the fact that the removal was done by a one sided inquiry and it was only a camouflage and a punitive order based on mala fide considerations. Resultantly, the Apex Court dismissed the writ petition especially with Rs.25,000/- as costs.

19. The position herein is totally different, as noticed above and therefore, reliance placed by the Learned Single Judge upon the said three judgments would not be applicable in the facts and circumstances. Rather the appellants have relied upon the judgment of the Division Bench in **Amarjeet Singh Vs. Presiding Officer, Labour Court, Patiala & others 2012 (2) RSJ 545** in which the appeal was dismissed upholding the order of the Learned Single Judge by coming to the conclusion that the services were terminated within the period of probation. It was held that the probationer did not have any substantive right to hold the post as the principles of natural justice were not necessary to be followed while dispensing with the services of the employee during his probation period if the work and conduct was not satisfactory and it could not be held to be a stigmatic order.

20. In the present case, as noticed above, the statutory provisions provided that an independent Committee was required to go into the issue and the conduct of the writ petitioner admittedly has been found unsatisfactory on account of the fact that reliance had been placed upon forged certificates and in such circumstances, dispensation from service has been done after giving a opportunity to the concerned employee. No apparent lacuna could be said to have taken place.

21. The Appellate Authority also rightly examined the context, not once but twice and it is a matter of record that the writ petitioner is the beneficiary of the two forged certificates. He therefore, cannot wriggle out of the fact that he had not relied upon the same. If the benefit of 5 marks is declined, he would not have made the merit and he has

taken the said appointment on the basis of the said certificates which have not been found to be genuine. In such circumstances, dispensation from service of the writ petitioner has rightly been done after following the procedure prescribed under the statutory rules.

22. The Apex Court in **Devendra Kumar Vs. State of Uttaranchal & others 2013 (9) SCC 363** held that person cannot claim any right out of his own wrong doings while upholding the orders of the High Court. In the said case, there was concealment regarding the factum that the candidate had a criminal record or not and there was suppression of material facts. It was accordingly held that where the employment had been obtained by playing fraud the benefit cannot be sustained in the eyes of law and fraud and collusion vitiate the most solemn proceedings. The relevant portion of the judgment reads as under:

“21. In [R. Radhakrishnan v. Director General of Police & Ors.](#), AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.”

23. The said view has been followed in **Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya (2021) 10 SCC 136** and the termination orders were restored while setting aside the orders of the High Court. In **M/s Bharat Coking Coal Ltd. Vs. Workmen being represented by Janta Mazdoor Sangh (2021) 10 SCC 717** it was held that where an employment was taken by fraud, the employee cannot be protected and the order of the Learned Single Judge holding that workmen were beneficiaries of a fraudulent process was restored.

24. Keeping in view the dictum of the above, this Court is of the opinion that respondent No.1 cannot seek protection on the pretext that he had not produced the said certificates though admittedly he has benefitted by the additional 5 marks to make the cut on merit, which factum counsel for respondent No.1 cannot deny. In such circumstances, dispensation of service on account of the conduct of the employee was well justified by the appellant-College and no fault can be found in the said action where prescribed procedure had been directly adhered to.

25. The Learned Single Judge was thus in error while allowing the writ petition and setting aside the order of termination and the order

passed by the Appellate Authority. Resultantly, the present appeal is allowed and the judgment passed by the Learned Single Judge dated 12.01.2021 is set aside. The writ petition accordingly stands dismissed. It is made clear that this Court has not commented upon the validity of the concerned certificates, but approved the procedure which has been followed. The observations made herein shall not prejudice the Criminal Court in any manner, which will be free to decide the proceedings on the basis of the materials produced before it.

(G.S. SANDHAWALIA)
JUDGE

February 4, 2022
Sailesh

(VIKAS SURI)
JUDGE

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