

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 72 of 2022 (O&M)
Date of decision: 02.02.2022

Dinesh Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sunil Kumar Bhardwaj, Advocate,
for the appellant.

Mr. Deepak Balyan, Additional A.G., Haryana.

(The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE. (ORAL)

This is an intra-court appeal, under Clause X of the Letters Patent, against a judgment and order dated 23.12.2021, rendered by the learned Single Judge in CWP No.25238 of 2021, vide which the writ petition preferred by the appellant has since been dismissed.

The appellant-petitioner filed the writ petition alleging that impugned order dated 26.11.2021/06.12.2021 (Annexure P-2), whereby his services had been dispensed with on account of incorrect/suppression of facts in the application form submitted by him, had been passed in violation

of the principles of natural justice, as no notice was served upon him

Learned counsel for the appellant submits that pursuant to notification dated 13.2.2018 (Annexure P-3), the appellant was required to mention in the application form, as to whether any person amongst the applicant's father, mother, spouse, brothers, sisters, sons and daughters is a regular employee in any Department/Board/Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana or any other State Government or Government of India. He submits that in view of the aforesaid clause in the notification dated 13.2.2018, the appellant, in his application form, had stated 'No', for his father, who was in Government service, had already superannuated on 28.2.2017. In such a situation, the information furnished by the appellant was not incorrect and therefore, dispensation of his services and that too without giving him an opportunity of hearing is contrary to the law. He submits that the learned Single Judge has totally ignored the aforesaid aspects. Thus, this appeal.

Having heard learned counsel for the parties and perused the records, we are of the considered opinion that no fault can be found with the impugned order passed by the learned Single Judge.

Though, on the first blush, the arguments advanced by the learned counsel for the appellant appear to be attractive, but on a perusal of the impugned judgment, it was crystal clear that the learned Single Judge has taken into consideration the fact that subsequent to notification dated 13.2.2018 regarding general instructions issued under Article 309 of the Constitution of India by the General Administration Department (General Services), the respondent authorities had issued a fresh notification dated 11.6.2019 under the same provisions. And, in this notification, it is clearly

specified that information regarding any person in employment from petitioner's family, in praesenti as well as in the past, was required to be furnished by him, as the words used therein are: “***is, was or has been a regular employee in any Department/Board/Corporation/Company/ Statutory Body/Commission/Authority of Government of Haryana or any other State Government or the Government of India.***” The learned Single Judge has quoted this clause in paragraph 5 of the judgment and a perusal thereof, makes it clear that appellant was required to disclose the fact that his father had been in Government service.

Apparently, it is this notification, which was in existence at the time of issuance of the advertisement and was required to be complied with by all the candidates, including the appellant. Concededly, the appellant submitted his application form, as per the prescribed *pro forma* on 25.7.2019, in terms of the requirements of notification dated 11.6.2019, and yet indicated in the relevant column:-

“Socio-Economic Criteria:-

Any person from amongst the applicant's Father, Mother, Spouse, Brother, Sister, Sons & Daughters is, was or has been a regular employee in any departments/Boards/Corporations/Company/ Statutory Body/ Commission/ Authority of Government of Haryana or any other State Government or the Government of India: No.”

Thus, suppressed/concealed the fact regarding his father being a retired Government servant. It is evident from the application form submitted by the appellant himself that he had furnished a declaration that if

any information furnished by him is found to be incorrect or false or has been concealed by him, his candidature/appointment shall stand cancelled. Meaning thereby, from the very beginning, the appellant was aware of and accepted the condition by giving an undertaking that any concealment or suppression of facts/information would result in cancellation of his appointment without any further notice or opportunity of hearing.

The learned counsel for the appellant submits that the learned Single Judge has ignored the appellant's contention that the information given by the appellant was in accordance with notification dated 13.2.2018, and therefore, his appointment could not have been cancelled. This contention of the appellant is heard only to be rejected. On a perusal of notification dated 13.2.2018 in juxtaposition with notification dated 11.6.2019, it is evident that both have been issued in exercise of powers under Article 309 of the Constitution of India to amend the notification of the General Administrative Department dated 28.1.1970, regarding allocation of marks for the Socio-Economic criteria, under which the appellant was claiming benefit. It goes without saying that notification dated 11.6.2019, providing for the fresh and modified criteria for allocation of marks under the Socio Economic criteria by amending notification dated 28.1.1970 being subsequent, has superseded notification dated 13.2.2018 and is the one that is required to be followed and implemented.

It is an admitted fact that the notification was issued on 11.6.2019, the advertisement was issued in July, 2019, and the appellant filled up and submitted his application on 25.7.2019, in spite of which, he concealed and gave false information regarding the fact that his father had been in Government service till 2017 and, in fact, mentioned 'NO', in the

relevant column.

Thus, the judgment passed by the learned Single Judge does not suffer from any illegality or infirmity, basically for two reasons. Firstly, the appellant was required to mention the details of his father's appointment in his application form, as per notification dated 11.6.2019, which was applicable to him, and this fact of the requirement under notification dated 11.6.2019, is neither disputed nor controverted. Secondly, the fact that appellant had not mentioned the details about the employment of his father and has concealed and given false information, is also admitted, conceded and not disputed. Further, the appellant himself had given an undertaking and declaration in the application form that in case of any concealment or incorrect information being given by him, his appointment may be cancelled without any notice or opportunity.

This Court is of the considered opinion that all that the appellant would want to say in his defense and all that is relevant and material for arriving at a decision has already been said by the appellant and he has nothing more to say in support of his claim and in such circumstances, even if a show cause notice was issued to him, his reply would be same as his contention in the petition and in view of the admitted facts of the case and the established suppression of information and incorrect information given by the appellant/petitioner in his application, the result would also be the same, that is, cancellation of his appointment that had been obtained by fraud and misrepresentation. In such circumstances, the factual aspect of the matter regarding concealment/incorrect information being furnished by the appellant being admitted and undisputed, the question of issuance of any show cause notice does not arise at all, as the entire

exercise would be an empty or a useless formality.

The Supreme Court, in the cases of **Biecco Lawrie Limited and another V. State of West Bengal and another, (2009) 10 SCC 32**, and **Karnataka State Road Transport Corporation and another V. S.G. Kotturappa and another (2005) 3 SCC 409**, has held that the requirement of the principles of natural justice would not apply and shall stand excluded in a case where observance of the same would be an empty or a useless formality when the facts are admitted and undisputed, leading to only one conclusion under law. It has been held that such cases of useless formality are an exception to the observance of the principles of natural justice.

The present case is one of concealment of material facts with deliberate intent of obtaining appointment by the appellant. Even, as per clause 12 and 13 of the appointment letter, the appellant had been forewarned that in the event, at the time of verification any information furnished by him is found to be false or any fact has been concealed/suppressed, his appointment would be terminated forthwith, without assigning any reason and he has himself given an undertaking to that effect. The respondents have rightly cancelled his appointment, as he sought to obtain the same by furnishing incorrect and false information and by concealing relevant information. The maxim, '*jus ex injuria non oritur*', that is, a person cannot claim any right arising out of his own wrongdoing, fully applies to the facts of the present case. The Supreme Court has upheld the termination of service in similar facts in the cases of **Devendra Kumar V. State of Uttaranchal and others, (2013) 9 SCC 363** and **Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya, (2021) 10 SCC 136**.

In the wake of the above, we are dissuaded to interfere with the impugned judgment and order rendered by the learned Single Judge.

The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 02, 2022
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: