

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-2991-LPA-2017 in/and

LPA No.1390 of 2017 (O&M)

Date of decision : 26.07.2022

Rishipal (Ex-Godown Keeper)

....Appellant

V/s

Haryana Warehousing Corporation and another

....Respondents

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

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo, Advocate for the appellant.

Mr. Lekh Raj Sharma, Advocate for the respondents.

VIKAS SURI, J.

CM-2991-LPA-2017

Application for condonation of delay of 02 days in filing the appeal has been filed.

For the averments made in the application duly supported by affidavit of the appellant, the same is allowed. Delay of 02 days in filing the appeal is condoned.

CM stands disposed of.

LPA-1390-2017

Present Letters Patent Appeal is directed against the judgment dated 01.05.2017 passed in CWP-12628-2013 titled as ***Rishipal vs. Haryana Warehousing Corporation and another***, whereby challenge to the order of dismissal from service dated 19.09.2008 (Annexure P-3), and affirmed by the appellate authority vide order dated 25.05.2012 (Annexure P-7), has been rejected.

The facts in brief, shorn of unnecessary details, are that the appellant-writ petitioner was initially appointed as Godown Keeper on ad hoc basis for two months vide order dated 10.06.1988. He was given appointment on an application made by him on a plain paper in which he claimed that he was matric pass. The said application was recommended by the MLA and on 08.06.1988 P.A. to the Chairman of the Corporation had given the remarks "Chairman has seen. He has desired that the applicant may be accommodated as a GK on adhoc basis please". His appointment was extended from time to time. The writ petitioner continued as Godown Keeper on ad hoc basis vide office order dated 28.04.1988 (Annexure P-2). At the time of his first appointment, the writ petitioner had submitted a photocopy of the matriculation examination certificate dated 16.06.1983 (Annexure R-2) showing to have cleared the said examination in second division with 452 marks out of total 900, conducted by Haryana School Education Board. It is conceded position that service of the writ petitioner was never regularized.

The State Vigilance Bureau vide its letter dated 13.07.2001 forwarded the complaint received against the writ petitioner alleging that he had secured employment on the basis of a bogus matriculation certificate. On receipt of the said complaint, the Managing Director of the Board on 17.07.2001, directed the Manager (Personal) to look into the case personally, verify the facts from the record carefully and report within 15 days. While looking into the complaint, the writ petitioner was asked to submit his original matriculation certificate vide letter dated 18.02.2005. The writ petitioner submitted a different certificate dated 05.07.1983 (Annexure P-1), claiming to have successfully passed High School Examination, 1983, conducted by the Central Board of Higher Education, New Delhi. As per the said certificate (Annexure P-1), he was shown to have cleared

the examination with 357 marks out of 600 and placed in Second Division. The record also shows that the date of the said certificate of first issuance is recorded as 05.07.1983, whereas the copy of the certificate (Annexure P-1) that had been submitted is recorded to be a second copy issued on 28.08.2001. Faced with two certificates and in order to know the correct factual position, one Bhoop Singh, Joint Manager, Vigilance (now retired), was deputed to look into the case and submit his report. Before the report could be submitted by the said Joint Manager, he retired from service. Thereafter, vide order dated 01.12.2006, Shri R.P. Bhasin, District and Sessions Judge (Retd.), was appointed as Enquiry Officer to investigate the matter. In the said report by the Enquiry Officer dated 28.12.2006 (Annexure R-4), it was categorically concluded that the employment secured by the writ petitioner (Rishi Pal, Godown Keeper), was ad hoc i.e. not regular. Besides it, the same was based on a forged matriculation certificate. The writ petitioner was accordingly issued a show cause notice dated 10.07.2007, whereby it was proposed to terminate his services, to which reply dated 31.07.2007 had also been filed. Considering the two matriculation certificates of the same year examination allegedly pertaining to two different Education Boards, as per the advice of Director Secondary Education, Haryana, clarification regarding recognition of Central Board of Higher Education was sought from Haryana School Education Board, Bhiwani (HSEB), which vide communication dated 03.12.2007 informed that the Central Board of Higher Education, Uttam Nagar, New Delhi was not recognized by it and no examination conducted by former Board was recognized as equivalent to any examination conducted by the latter Board. Similarly the Central Board of Secondary Board (CBSE) vide its letter dated 06.12.2007, informed that the Central Board of Higher Education is a fake Board.

Vide office order dated 21.08.2008 (Annexure R-6), the writ petitioner was placed under suspension with immediate effect and without prejudice to the final action to be taken against him. He was also afforded personal hearing on 05.09.2008. It was noticed that the writ petitioner had secured appointment on the basis of the certificate issued by Haryana School Education Board (Annexure R-2) and not the one from Central Board of Higher Education (Annexure P-1), as the petitioner could not have secured employment in the year 1988 on the basis of a certificate, copy of which is shown to have been prepared/issued on 28.08.2001. Resultantly, the writ petitioner was dismissed from service vide order dated 18.09.2008 (Annexure P-3), and the period of suspension was treated as dies non or non duty period. The criminal misconduct of the petitioner was also noticed that at the time of initial appointment in the year 1988, he had submitted a forged matriculation certificate from the Haryana State Education Board, Bhiwani and on a complaint received and being looked into in that regard, in an attempt to establish his claim to possessing essential education qualification required for the post in question at the relevant time, he submitted another certificate which was found to be of fake organization as per the communication dated 06.12.2007 from the Central Board of Secondary Education (CBSE). The writ petitioner preferred an appeal (Annexure P4) aggrieved against the order of dismissal. However, as the writ petitioner was not a regular employee of the Haryana Warehousing Corporation and as such the provisions of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 did not apply. Accordingly, he was intimated vide communication dated 15.11.2008 (Annexure R-7) that no appeal lies against the order of dismissal and the same had attained finality as such. The writ petitioner approached this Court by way of CWP-1453-2012 which was disposed of vide order dated 15.02.2012 (Annexure R-8),

whereby the limited prayer of the petitioner was that penalty was imposed on 19.09.2008 and the appeal had been presented on 26.09.2008, the same be decided on merits. Accordingly, a direction was issued to dispose of the appeal within a period of 8 weeks. In compliance to the aforesaid directions, the appeal was placed before the Executive Committee in its 89th meeting held on 20.04.2012 and the writ petitioner was also afforded personal hearing. The appeal was dismissed vide order dated 25.05.2012 (Annexure P-7) and the punishment inflicted of dismissal from service, was upheld. Thereafter, the writ petitioner raised challenge to the punishment order dated 19.09.2008 (Annexure P-3), as affirmed by the appellate authority vide order dated 25.05.2012 (Annexure P-7), by dismissing the appeal on merits, which has been rejected by the learned Single Judge. Thus, it has given rise to the present intra-Court appeal.

The factual matrix noticed above, is not in dispute before us.

Learned senior counsel has urged the same contentions as were raised before the learned Single Judge. The contention in pith and substance is that even though the writ petitioner was an ad hoc employee, the procedure to be adopted before dismissing him from service should have been the same as contemplated in regular employees under the Haryana State Warehousing Corporation (Officers and Staff) Regulations, 1994-2004. The prayer as such is to re-appreciate the material allegations and documents available on record and to return a finding that the writ petitioner did possess the educational qualification of matriculation on the basis of certificate from the Central Board of Higher Education (Annexure P-1).

Per contra, learned counsel for the respondents has contended that it is trite law that under the scope of judicial review, the writ Court would not sit in appeal over the orders passed by the disciplinary authority inflicting punishment

or that by the appellate authority. While referring to the report of the Enquiry Officer dated 28.12.2006 (Annexure R-4), he has referred to the statements of the writ petitioner recorded by the Enquiry Officer on 30.08.2005 and 22.12.2006 wherein incriminating material was put to the writ petitioner and no cogent answer could be given in that regard. It is also been contended that the appellant-writ petitioner has no dispute that his appointment was on ad hoc basis and no order of regularization of his service was ever passed.

Learned counsel for the respondents has also referred to the order dated 27.01.2009 (Annexure P-6), to demonstrate the conduct of the writ petitioner whereby he was held guilty of causing loss to the Corporation along with three others and an order to recover the costs of 1/4th of the excessive storage losses of 45.32 quintals, i.e. 11.33 quintals of paddy @ Rs.650/- per quintal (actual cost + storage charges) was passed against him. However, as the very basis of getting into employment on the strength of a fake certificate is in question, the said conduct only needs to be mentioned and let it be for appropriate proceedings in all fairness to the learned counsel.

We have heard learned counsel for the parties and perused the record.

We are of the considered opinion that there is much force in the submissions of the learned counsel for the respondents inasmuch the challenge to the impugned order is on the factual aspect and not that the procedure adopted by the employer was contrary to the established principles of law or was contrary to the applicable Rules & Regulations. A perusal of the paper-book reveals that at ever stage, the appellant-writ petitioner was granted ample opportunity to explain his position and counter the incriminating material against him. However, though the appellant-writ petitioner did come forward to avail the opportunity of personal

hearing ever time, but did not produce any evidence to the contrary and even failed to give any cogent answer to the material on record against him. It has been noticed that the appellant-writ petitioner has failed to explain as to how could he have relied upon the certificate issued by the Central Board of Higher Education, second copy of which was issued on 28.08.2001 (Annexure P-1), for an employment which happened at the initial instance in the year 1988 and continued vide order dated 24.04.1989 (Annexure P-2) on ad hoc basis.

Even otherwise, it is well settled principle of law that the writ Court would not sit in appeal over the orders passed by the disciplinary authority or the punishing authority or for that matter even of the appellate authority in that regard. It is not a case in which the punishment inflicted by the punishing authority is not commensurate to the wrong doing of the delinquent official so as to shock the conscience of the Court.

Learned senior counsel is not in a position to refer to any document or provision of law so as to defend the employment secured on the basis of a fake matriculation certificate, and that the delinquent should be protected. In the peculiar facts and circumstances of the case, even a sympathetic view to be taken in the matter would perpetuate more injustice, and there is no equity in favour of the delinquent official.

In view of the above, we are of the considered opinion that the instant letters patent appeal is liable to be dismissed.

Before parting with this judgment, it may be noticed that this Court vide order dated 20.02.2018 had also issued notice to 'The Central Board of Higher Education' and to Haryana School Education Board, Bhiwani. The said two Boards were served by dasti process. Mr. Rajesh Sheoran had filed Power of Attorney on behalf of Haryana School Education Board but none put in

appearance on behalf of the Central Board of Higher Education. This Court had also called upon the Union of India, through its Senior Panel Counsel, to ascertain the genuineness of the 'The Central Board of Higher Education' and if not found genuine, then what action is the Government taking against the institute and other fake Institutes/Boards to save the students from being cheated. However, no response has been placed on record despite the issue flagged by the Court being very serious in nature, which deserves to be taken to its logical end. Accordingly, fresh notice be issued to the Central Board of Higher Education and Union of India for 11.11.2022.

Accordingly, the aforesaid letters patent appeal is hereby dismissed qua the appellant-writ-petitioner and with the aforesaid observations and directions.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

July 26, 2022
Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No