

144.
28-03-2023
debajyoti
(Ct. no.25)

WPA 11411 of 2020

**Manas Ghosh
Vs.
Union of India & Ors.**

Mr. Asim Hati,
Mr. Debabrata Mondal,
Ms. Sreetama Neogi,
Ms. Nandini Sharma

... For the Petitioner.

Mr. Imran Siddiqui

... For Union of India.

The petitioner was working as a Constable (GD) in Central Reserve Police Force (CRPF). The petitioner joined his service on March 21, 2017. It is the petitioner's claim that the period of probation was over on March 20, 2019, after completion of two years.

Mr. Asim Hati, learned counsel, appearing on behalf of the petitioner, submits that a salary slip was issued month by month to the petitioner since March, 2019. The salary slips from March, 2017 to September, 2019 would go to show that the probationary period of the petitioner was over and service was confirmed.

He submits that the petitioner could not have been terminated from service vide order dated August 19, 2019, confirmed by the appellate authority on May 19, 2020.

He submits that an opportunity of hearing should have been given to the petitioner under Article 311 of the Constitution.

Mr. Siddiqui, learned counsel, appears on behalf of the respondent authorities and submits that despite a passage of two years, the period of probation cannot be automatically held to have been completed. An order of confirmation was not passed in favour of the petitioner.

Therefore, there was no question of conducting a full scale disciplinary proceeding before passing of the office order/notice for termination of service.

The petitioner was given one month notice on August 19, 2019 in accordance with rule 5(1) of the Central Civil Services (Temporary Service) Rule, 1965 read with the CRPF Rules, 1955.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the petitioner was appointed as a Constable with the CRPF on March 21, 2017. By a Memo dated December 05, 2018, the District Magistrate, Nadia, on verification of the character and antecedent's roll of the petitioner, intimated that two criminal cases were lodged under Krishnaganj Police Station on February 05, 2014 and on January 21, 2017. The first case was lodged under the Indian Penal Code whereas the second case was lodged under POCSO Act. The petitioner had fraudulently declared in the verification roll that no court cases were pending against him and suppressed relevant material facts that two court cases were pending against him. Therefore, under rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 read with the CRPF Rules, 1955, there was no impediment in the petitioner being terminated from service with effect from September 18, 2019.

This Court finds that there is no infirmity in the order dated August 19, 2019 read with September 18, 2019 and also in the order passed by the appellate authority on May 19, 2020.

The petitioner was under an obligation to disclose all the material facts in the application form. The petitioner has suppressed the material facts and by such suppression, was able to get enlisted with the CRPF. Such conduct of the petitioner cannot be condoned. An Hon'ble coordinate Bench in W.P. No.17283(W) of 2007 held where thousands of unemployed youths were standing in the queue for some sort of employment, there was hardly any reason to show undue sympathy to the petitioner. The writ petition was dismissed. The decision was upheld by the Division Bench of this Court in FMA 171 of 2009. The Appellate Court held that the very *entry* of the *appellant* was wrong. He gave incorrect details at the time of entry in the service. Therefore, the authority was entitled to terminate him at any time prior to his regularization/confirmation without proceeding against him departmentally on that score. The said view has been also reiterated by this Court in WPA 15632 of 2021 (**Sri Jayanta Ghosh Vs. The State of West Bengal & Ors.**) relying upon **Kendriya Vidyalaya Sangathan & Ors. Vs. Ram Ratan Yadav** reported in (2003) 3 Supreme Court Cases 439. It is now well-settled that a candidate having suppressed material information and/or giving false information cannot claim a right to continue in service.

It is a cardinal principle of law that fraud will vitiate every act.

This Court has also held in a judgment passed in WPA 4277 of 2023 (**Simonta Borah Vs. Union of India & Ors.**) that Article 311 is only applicable to the holders of the civil posts.

A petitioner, who approaches the court of law, has to approach with clean hands which the petitioner herein has not.

In the light of the discussions above, **WPA 11411 of 2020** is **dismissed**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Lapita Banerji, J.)