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

% *Date of Decision: 08th February, 2023*

+ **W.P.(C) 729/2023 & C.M. APPL. 2796/2023**

MUKUL SHYAM

..... Petitioner

Through: Dr. Kedar Nath Tripathy,
Mr. Bhuwan Raj and Mr. Raghunath Pathak,
Advocates.

versus

**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

..... Respondent

Through: Mrs. Pooja M. Saigal and
Mr. Simrat Singh Pasay, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. By way of this writ petition, Petitioner seeks quashing of the order dated 04.01.2023, passed by the Respondent whereby the services of the Petitioner had been terminated with immediate effect on account of failing to qualify the computer test at the speed of 60 words per minute ('w.p.m.') within a period of one year from the date of his joining the Respondent Institute.

2. When the matter was listed on 07.02.2023, learned counsel for the Respondent had taken a preliminary objection to the maintainability of the writ petition on the ground that there are concealments of material facts inasmuch as the Petitioner has failed to disclose that he was warned on a number of occasions that he was under a mandate to qualify the computer test as also the fact that he has actually failed to qualify the test despite several opportunities and

is, therefore, not entitled to any relief from this Court in an equity jurisdiction. A compilation of documents was also handed over in support of the said plea, containing several letters written to the Petitioner requiring him to appear in the computer test and it was urged that even the said communications have not been annexed with the writ petition.

3. Confronted with this, learned counsel for the Petitioner had sought a short adjournment for ascertaining the correct facts from the Petitioner. Today, learned counsel is unable to dispute that the facts brought forth by the Respondent have not been averred in the writ petition and the documents relied upon by the Respondent are not annexed. It is, however, the case of the Petitioner that non-mentioning of these facts and the non-filing of the documents is only an inadvertent error and may be condoned.

4. It is the first principle of invoking a writ jurisdiction that he who seeks equity must come to Court with clean hands. Time and again, Courts have affirmed and reaffirmed that no indulgence can be granted to a litigant who is guilty of concealment of material facts, which when disclosed would disentitle him to the relief claimed. Without burdening this judgment with many judgments, I may for the sake of avoiding prolixity refer to one judgment of the Supreme Court in ***Arunima Baruah v. Union of India and Others*, (2007) 6 SCC 120**, relevant para of which is as follows:-

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court

cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

5. The Supreme Court relied on the following passage from Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76:-

"1303. He who seeks equity must do equity.—In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed."

6. It would be useful to refer to the following passages from the judgment of the Supreme Court in ***K. Jayaram and Others v. Bangalore Development Authority and Others***, 2021 SCC OnLine SC 1194:-

"12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. This Court in Prestige Lights Ltd. v. State Bank of India has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary

jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

14. *In Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of Uttar Pradesh, this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.”*

7. In view of the said principle which is not open to a debate, it needs to be examined whether the Petitioner is guilty of concealment of material facts, disentitling him to any relief from this Court. Petitioner was appointed pursuant to an Appointment Letter dated 22.05.2007 to the post of Computer Savvy, Lower Division Clerk with the Institute of Chartered Accountants of India (‘ICAI’). Clause 3 of the Appointment Letter required the Petitioner to qualify a computer test within one year from the date of his joining, failing which his services were liable to be terminated forthwith. Clause 3 is extracted hereunder for ready reference:-

“You should qualify the Computer test at the speed of 60 w.p.m. within one year from the date of joining the service of the institute, failing which, your services shall be terminated forthwith.”

8. It is the stand of the Respondent before this Court as also evident from the impugned termination letter that *albeit* the Petitioner was under a mandate to qualify the computer test within one year from the date of joining, the Respondent had been lenient and had granted many opportunities to the Petitioner to qualify the test which he, however, failed to qualify. There is no gainsaying that the terms and conditions of an offer of appointment are sacrosanct and having accepted the same, the Petitioner was bound to qualify the computer

test. The impugned order also indicates that a show cause notice was also issued to the Petitioner on 26.10.2022 requiring him to explain why his services should not be terminated, to which the Petitioner had replied by stating that he had qualified the test, which position is false and incorrect. In these circumstances, the Respondent terminated the services of the Petitioner and in my view rightly.

9. From a reading of the impugned order, it is evident that several opportunities were given to the Petitioner to qualify the computer test which he failed to qualify and counsel for the Petitioner does not refute this position. However, when the writ petition is holistically read, the only case set up by the Petitioner is that he has been illegally terminated without considering his reply to the show cause notice in which he had stated that he had qualified the same. It is not disclosed that several communications were addressed to the Petitioner requiring him to qualify the test and that having appeared in the computer test, he had failed to qualify. In fact, it is pertinent to mention that there is not even a whisper in the pleadings of the several letters sent to the Petitioner by the Respondent and nor are the said documents admittedly received by him appended to the writ petition. Clearing the computer test with the required speed of 60 w.p.m. was the mandatory term of the appointment of the Petitioner and concealment of facts pertaining to the communications received by the Petitioner and more importantly, the fact that he had failed to qualify the test despite several opportunities is, in my view, concealment of material facts. It would not be incorrect to say that not only the Petitioner has concealed the factum of his failure to qualify the test, an averment has been repeatedly made that he had qualified the test, which borders on misrepresentation. As rightly submitted by the counsel for the Respondent, on this score alone, the writ petition

deserves to be dismissed, as the Petitioner is disentitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution having failed to come to the Court with clean hands.

10. While this Court need not detain itself with the merits of the matter since the writ petition is being dismissed for concealment, however, even otherwise, once the Petitioner has failed to qualify the computer test as required by virtue of clause 3 of the Appointment Letter, it cannot be held that the impugned termination order is illegal, requiring interference even on merits.

11. Writ petition is accordingly dismissed along with the pending application.

FEBRUARY 08, 2023/rk/shivam

JYOTI SINGH, J