

RSA-2530 of 1993

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

RSA-2530 of 1993
Date of decision :-20.01.2024

Naresh Kumar

...Appellant

Versus

The State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. S.S. Ahlawat, Advocate for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana,
for the respondent.

SUVIR SEHGAL, J.

1. Plaintiff-appellant is before this Court in a second appeal challenging the judgment and decree of the First Appellate Court, whereby appeal by defendant-respondent was accepted and suit was dismissed.
2. Factual matrix, leading to the filing of the appeal, is that by order dated 01.01.1990, plaintiff-appellant was appointed as a driver with Haryana Roadways, subject to verification of his character and antecedents. His appointment was cancelled by impugned order dated 19.02.1990 on the ground that the District Magistrate had intimated vide memo dated 11.01.1990 that plaintiff-appellant had been convicted twice in different

FIRs. Plaintiff-appellant challenged the cancellation order by filing suit for declaration to the effect that the order is illegal, violative of principles of natural justice, void ab-initio and not binding and that the plaintiff-appellant be deemed to continue in service from the date of the order.

3. Upon notice, defendant-respondent filed a written statement raising various preliminary objections. It was admitted that the plaintiff-appellant was appointed as a driver, but when his criminal past was revealed, impugned order was passed. The stand taken in the written statement was controverted by filing a replication. After the issues were framed and the parties led evidence, the Trial Court by judgment and decree dated 09.10.1992, decreed the suit. In appeal by defendant-respondent, the judgment and decree was reversed by the learned Additional District Judge, Karnal, by judgment dated 17.08.1993. Hence, this second appeal.

4. Counsel for the appellant has urged that the Courts below failed to appreciate that in one of the criminal cases lodged against the appellant, he was released on probation and as such his conviction was not a hindrance to his appointment. Still further, by making a reference to memo dated 02.02.1973 issued by the Chief Secretary, Government of Haryana, on the subject of rehabilitation of ex-convicts released from jail, he urges that the convicts should be able to obtain an employment so as to undergo reformation. Reliance has also been placed by him upon judgment passed by this Court in **Satyavan Singh Versus State of Haryana, 1994 (2) SCT 412.**

5. State counsel has opposed the appeal by submitting that as the appellant had suppressed his criminal past, from his prospective employer, the appointment order has been rightly cancelled. It is his submission that

the appellant was appointed as a driver and both his convictions were on account of vehicular accidents.

6. I have heard counsel for the parties and examined the record with their able assistance.

7. It is evident from the record that the plaintiff-appellant was involved in two criminal cases. FIR No.12 of 01.03.1987, Ex.P-2, was lodged against him for offences under Sections 279 and 336 of IPC and he was convicted on 20.03.1997. In another case bearing FIR No.54 dated 12.03.1987, Ex.P-3, lodged for the same offences, he was convicted, fined and released on probation. Both the criminal cases had been registered against him for rash and negligent driving and causing hurt, endangering human life and personal safety of others. Plaintiff-appellant had applied for the post of the driver with the Haryana Roadways. It was imperative for him to have disclosed both the criminal cases, which were lodged against him for faulty driving. By suppressing the past, he succeeded in obtaining a government employment and it was only on verification that the convictions came to the notice of the government and his appointment order was cancelled. A person who secures appointment by playing fraud, does not deserve any sympathy.

8. In **S.P.Chengalvaraya Naidu (Dead) by LRs Versus Jagannath (Dead) by LRs and others (1994) 1 SCC 1**, in the opening paragraph, Supreme Court has observed that: “Fraud avoids all judicial acts, ecclesiastical or temporal”.

9. In **Regional Manager, Central Bank of India Versus Madhulika Guruprasad Dahir and others** (2008) 13 SCC 170, the highest court of the land has held as under:

*“15..... An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. (See: **R. Vishwanatha Pillai Vs. State of Kerala & Ors.** (2004) 2 SCC 105, **Bank of India and another Vs. Avinash D. Mandivikar and others** (2005) 7 SCC 690; **Addl. General Manager Vs. Suresh Ramkrishna Burde** (2007) 5 SCC 336; **Derry Vs. Peek (L.R.)** (1889) 14 AC 337, **Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education & others**, (2003) 8 SCC 311 and **Bhaurao Dagdu Paralkar Vs. State of Maharashtra & others**, (2005) 7 SCC 605.*

*16. In **Ram Chandra Singh Vs. Savitri Devi & others** (2003) 8 SCC 319, this Court had observed that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by application of any equitable doctrine.”*

10. In **Rajasthan Rajya Vidyut Parsan Nigam Limited and another Vs. Anil Kanwaria** (2021) 10 SCC 136, in almost a similar situation, Hon’ble Supreme Court examined the matter from the view point of the employer and observed as under:-

“14. The issue/question may be considered from another angle, from the employer’s point of view. The question is not about whether an employee was

involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

11. In view of the enunciation of law, as the plaintiff-appellant had deliberately tried to mislead the defendants and had succeeded in getting the employment, he cannot be trusted as an employee. The judgments and the argument raised by counsel for the appellant do not hold any water. It is not a case of rehabilitation of an ex-convict or of giving him an opportunity to reform himself. The factual position shows that the plaintiff-appellant had been appointed as a driver and did not have a clean driving record.

RSA-2530 of 1993

-6-

Permitting such a person to ply public transport would put lives of hundreds of commuters in jeopardy. This Court, therefore, does not find any infirmity, illegality or perversity in the finding recorded by both the Courts below, which deserve to be upheld.

12. Finding no merit in the appeal, it is dismissed with no order as to costs.

20.01.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No