

Union Of India And Ors vs Prohlad Guha . Etc on 1 August, 2024

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Bench: Sanjay Karol, J.K. Maheshwari

2024 INSC 563

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4434-4437 OF 2014

UNION OF INDIA & ORS. ETC.

VERSUS

PROHLAD GUHA ETC.

WITH

CIVIL APPEAL NO.4445 OF 2014

JUDGMENT

SANJAY KAROL, J.

CIVIL APPEAL NOS. 4434-4437 OF 2014 :

1. The extant appeals filed by the Union of India¹ take exception to a common judgment and order dated 2nd August 2012² passed in WPCT Nos.207, 213, 214, Appellant-Employer Impugned Judgment

¹|CA Nos.4434-4437 of 2014 and 215 of 2012, by the High Court of Calcutta whereby the common order passed in Original Application Nos.794, 797, 795, and 796 of 2008, respectively, passed by the Central Administrative Tribunal, Calcutta Bench, was reversed and relief claimed by the respondents were allowed.

2. A brief review of facts giving rise to the present appeals, is necessary.

2.1 Respondent-employees were appointed on compassionate ground with the Engineering Department, Howrah Division, Eastern Railway. The disciplinary authority placed the respondents under suspension due to contemplation/pendency of departmental enquiry³. 2.2 On issuing show cause notice⁴, information was sought as to why their appointments on compassionate ground should not be terminated as it was based on forged and fabricated documents with respect to the employment of their respective fathers. After receiving their responses, the authority found that their appointments were based on forged/fabricated and bogus documents, however, terminated their services.

2.3 On filing appeals against the order of termination, they were dismissed by the appellate authority, vide order⁵ reproduced as under -

“...Sri Biswanath Biswas, however, could not able to produce an’ documents to establish his initial appointment on compassionate ground against death of his father while in service or any other relevant details regarding his father’s identity, proof of working in Suspension order dated 29th August 2005 in respect of Sri Biswanath Biswas 4 Show Cause notice dated 11th November, 2005 in respect of Sri Biswanath Biswas Order of Appellate Authority dated 31st March 2008 in respect of Sri Biswanath Biswas

2|CA Nos.4434-4437 of 2014 the Railways, Station and place of posting, relevant documents viz.

Identity, Medical Card of his deceased father. There is also whisper about retiral benefits received by the family on account of pre- mature death of his deceased father.

Therefore, the Disciplinary Authority has arrive at a conclusion that grounds exposed in the show cause notice have been proveyed and accordingly decided to terminate him from Railway Service.

Sri Biswanath Biswas, cannot claim any protection under the Discipline & Appeals Rule since his initial appointment was itself by fraudulent means.” 2.4 On filing original applications before the Central Administrative Tribunal against the termination order and the Appellate Authority’s order, the Tribunal dismissed the applications by a common order dated 21st September, 2010, observing thus:-

“9. In the OA also the applicants have not stated about the service particulars of their fathers viz where their father working or whom they retired etc as referred to in the appellate order. It is the settled position of law that a person who has not come up with clean hands cannot get equity from a court of law. The only point the applicant have raised is that no protection under 311 of the Constitution was given and no enquiry was held. We are not inclined accept these contention because job obtained fraudulently is void ab initio and such a person cannot get protection under the constitution. Moreover FIR was also lodge against them and the matter is pending before appropriate Court of Law.”

3. The respondent-employees preferred writ petitions wherein the High Court held that the order of the Tribunal was untenable. It was observed that the Railway Servants (Discipline & Appeal) Rules, 1968 have been misinterpreted because as per circular of the Railway Board, Rule 14 thereof only provides for dismissal of government servants upon the charges levelled against them being proved when they are temporary employees. The Rule, however, does not Hereinafter 'Discipline Rules'

3|CA Nos.4434-4437 of 2014 indicate that when a person is in regular service the dismissal can take place sans any disciplinary inquiry. The appellant-employers were directed to reinstate the respondent-employees with the liberty to place them under suspension if they choose to hold a departmental inquiry in accordance with the Discipline Rules. Further, it was directed that during the period of such suspension, subsistence allowance would have to be paid.

4. Having perused the record, the question that arises for our consideration is that whether the dismissal from service handed down to the respondent- employees is legally sustainable or not.

5. The undisputed position is that ever since the suspension orders were issued qua the respondent-employees, they have not rendered any service to the appellant-employer. It is further not in dispute that the original order of termination was not stayed either by the High Court or this Court. The impugned judgment was stayed by this Court vide order dated 29th July 2013 which has been extended at regular intervals.

6. Prior to delving into analysis, certain well-established principles may be recalled putting the controversy in question, in context -

6.1 The principles of natural justice, the violation of which is alleged, have been noticed as essential, in *Biecco Lawrie Ltd. v. State of W.B.*⁷ in the following terms:-

“24. It is fundamental to fair procedure that both sides should be heard—audi alteram partem i.e. hear the other side and it is often (2009) 10 SCC 32

4|CA Nos.4434-4437 of 2014 considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.” 6.2 The principle of compassionate appointment has been stated by this Court in *Central Coalfields Ltd. v. Parden Oraon*⁸, as follows-

“8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered

to the eligible member of the family [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 :

1994 SCC (L&S) 930] . It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.” 6.3 The relationship of ‘compassionate appointment’ with constitutional principles has been discussed in SAIL v. Madhusudan Das⁹, wherein it was held that “15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for (2021) 16 SCC 384 (2008) 15 SCC 560

5|CA Nos.4434-4437 of 2014 appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See SBI v. Anju Jain [(2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724] , SCC para 33.)” (Emphasis supplied) 6.4 The Tribunal observed that the respondent-employees had not approached the Court ‘with clean hands’. About this principle, a Bench of two learned Judges of this Court in Dalip Singh v. State of U.P.¹⁰, has observed:

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post- Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

x x x x

3. In Hari Narain v. Badri Das [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558) “It is of utmost importance that in making material

statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading... x x x x

7. In *Prestige Lights Ltd. v. SBI* [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material (2010) 2 SCC 114

6|CA Nos.4434-4437 of 2014 facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R. v. Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)] , and observed: (*Prestige Lights Ltd. case* [(2007) 8 SCC 449] , SCC p. 462, para 35) In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

7. The principle of compassionate appointment, as we have noticed above, has been put in place to ameliorate suffering that is cast upon members of a family upon the sudden death of the earning member. An equally well-recognized principle is that compassionate appointment cannot be claimed as a matter of right. It is therefore clear that a person, claiming an appointment on such ground, has to demonstrate his relationship to the deceased person and eligibility for appointment. The same cannot be done without placing all relevant documents before the competent authority. The Tribunal as also the authority has recorded a categorical finding that the respondent-employees had not submitted any document to establish their claim and submitted forged and bogus documents.

8. On the aspect of non-compliance of the principles of natural justice, we find that the authority had issued show-cause notices to the respondent- employees, to which they responded. It was subsequent thereto, upon finding the

7|CA Nos.4434-4437 of 2014 responses to be unsatisfactory, they were removed from the service. On approaching the Tribunal and receiving favorable orders, their appeals against such dismissal were heard and acted upon by the authority, with the dismissal being confirmed. Before the High Court, it was averred that the respondent- employees were not given an opportunity to prove their

innocence, nor were any documents, on the basis of which the impugned order of dismissal was passed, provided to them. All of this, it was submitted, flies against the protection envisaged under Article 311 of the Constitution of India.

9. It is difficult to find substance in the averments made. The respondent- employees have, at every stage, actively participated in the adjudication process of their alleged improper and illegal appointments. The Tribunal records that they did not produce any document, as they were asked to, instead they questioned the procedure adopted. This in itself does not absolve them from producing documents as asked for. In the Original Applications filed by the respondent-employees also, the service particulars of their fathers in place of whom such employment was sought, have not been disclosed, as recorded by the Tribunal. So, whereas a respondent-employee may state that onus of proof on the part of the appellant-employer was not discharged properly in respect of the disciplinary proceedings initiated by the latter, as far as the O.As. were concerned, the respondent-employees were the ones pleading their case before a judicial or quasi-judicial authority. Therefore, it was incumbent upon them to produce all documents, on the basis of which they could have said that their

8|CA Nos.4434-4437 of 2014 dismissal from service on the part of the appellant-employer was incorrect and unjust in law.

10. It is apparent from record that the respondent-employees did not furnish any document as part of the O.As. When the claim made before the Tribunal itself is not clear, unequivocal and supported by relevant material, the same being rejected is not a matter of surprise. The very basis upon which the relief claimed rests is found to be circumspect then the relief, if awarded, suffers from the vice of being improper.

11. Whether or not the Tribunal ought to have heard the matter together or separately is to be decided solely by the adjudicating authority. Comments by the High Court in this regard do not appear to be just. Before parting with the matter, however, in the facts of this case, we express our surprise towards the actions of the appellant-employer who appointed the respondent-employees on the basis of questionable documentation, which was later found to be forged, fabricated and bogus. How could someone be appointed to a government job without proper checking and verification of documents? The Railways are recorded to be one of the largest employers in the country and yet such incidents falling through the cracks, ought to be checked.

12. Upon it being discovered that the respondent-employees had secured appointments on the basis of forged and fabricated documents, an FIR bearing No.29/05 dated 17th December 2005 stood registered against them under Sections

9|CA Nos.4434-4437 of 2014 467, 468, 471, 419, 420 and 120-B Indian Penal Code, 1860. There is no bar, as has been held in *M. Paul Anthony v. Bharat Gold Mines Ltd.*¹¹ and as recently reiterated in *State Bank of India & Ors. v. P. Zadenga*¹² for departmental and criminal proceedings to continue simultaneously. As such, the criminal proceedings initiated as a result of alleged fraud committed by the respondent- employees are independent of the proceedings initiated by the appellant- employer.

It has been held that in certain cases it would be ideal if the criminal proceedings were stayed in the pendency of the departmental proceedings, however, no such prayer having been made, is on record.

13. The impugned judgment is liable to be set aside on a further ground, since the requisite to establish eligibility for compassionate appointment was not properly fulfilled, they were appointed on the basis of false claims and fabricated documents. It then becomes imperative to discuss what constitutes fraud and what is its impact on an act afflicted by such vice. R.M. Sahai, J. writing in *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers*¹³ observed -

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon (1999) 3 SCC 679 (2023) 10 SCC 675 (1992) 1 SCC 534

10|CA Nos.4434-4437 of 2014 it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. ...From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false.

....The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised.” 13.1 The words of Denning L.J. in *Lazarus Estates Ltd. v. Beasley*¹⁴ are of importance qua the impact of fraud. He wrote – “.....I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgment, contract and all transactions whatsoever....” 13.2 ‘Fraud’ is conduct expressed by letter or by word, inducing the

other party to take a definite stand as a response to the conduct of the doer of such (1956) 1 QB 702

11|CA Nos.4434-4437 of 2014 fraud. [See; Derry v. Peek¹⁵; Ram Preeti Yadav v. U.P. Board of High School of Intermediate Education¹⁶] 13.3 In R. Vishwanatha Pillai v. State of Kerala & Ors.¹⁷, a Bench of three learned Judges observed that a person who held a post which he had obtained by fraud, could not be said to be holding a post within the meaning of Article 311 of the Constitution of India. In this case, a person who was not a member of Scheduled Castes, obtained a false certificate of belonging to such category and, as a result thereof, was appointed to a position in the Indian Police Service reserved for applicants from such category.

14. The above discussion reiterates that fraud vitiates all proceedings. Compassionate appointment is granted to those persons whose families are left deeply troubled or destitute by the primary breadwinner either having been incapacitated or having passed away. So when persons seeking appointment on such ground attempt to falsely establish their eligibility, as has been done in this case, such positions cannot be allowed to be retained. So far as the submission of non-compliance of the Rules is concerned, the judgment in Vishwanatha Pillai (supra) answers the question. The respondent-employees in the present case, having obtained their position by fraud, would not be considered to be holding a post for the purpose of the protections under the Constitution. We are supported (1889) 14 AC 337 (2003) 8 SCC 311 (2004) 2 SCC 105

12|CA Nos.4434-4437 of 2014 in this conclusion by the observations made in Devendra Kumar v. State of Uttaranchal¹⁸. In paragraph 25 thereof it was observed – “25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur).

(Emphasis supplied)

15. The impugned judgment passed by the High Court, in view of the above discussion, is set aside and the order passed by the Tribunal dismissing the respondent-employees’ Original Applications is restored. The respondent- employees were rightly dismissed from service by the appellant-employer. It is clarified that the observations made herein are only with respect to the dismissal from service, of the respondent-employees and shall have no bearing on the criminal proceedings pending in the concerned Court. The said case(s) is to be decided on its merits uninfluenced by the observations made hereinabove.

16. As such, the appeals are allowed. Pending application(s), if any, shall stand disposed of with costs made easy.

(2013) 9 SCC 363

13|CA Nos.4434-4437 of 2014 CIVIL APPEAL NO.4445 OF 2014 :

17. In view of the foregoing discussion made in Civil Appeal Nos.4434-4437 of 2014, this appeal is also, on similar facts, allowed accordingly. Pending application(s), if any, shall stand disposed of.

..... J.

[J.K. MAHESHWARI] J.

[SANJAY KAROL] New Delhi;

August 1, 2024.

14|CA Nos.4434-4437 of 2014