

Khub Ram vs Dalbir Singh & Ors on 29 April, 2015

Equivalent citations: 2015 AIR SCW 4739, 2015 (8) SCC 368, 2015 LAB. I. C. 3760, AIR 2015 SC (SUPP) 2253, (2015) 146 FACLR 80, (2016) 1 SERVLR 148, (2015) 3 PAT LJR 248, (2015) 4 MAD LJ 377, (2015) 2 CURLR 491, (2015) 3 SCT 74, (2015) 4 ALLMR 444 (SC), (2015) 3 JLJR 126, (2015) 3 JCR 128 (SC), (2015) 5 SCALE 671, AIR 2015 SC (CIV) 2457

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Bench: Shiva Kirti Singh, Fakkir Mohamed Ibrahim Kalifulla

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2734 OF 2012

Khub Ram

....Appellant

Versus

Dalbir

Singh

&

Ors.

....Respondents

W I T H

CIVIL APPEAL NO. 4097 OF 2015

[Arising out of S.L.P.(C)No.15871 of 2012]

Mahavir Prasad

....Appellant

Versus

Dalbir

Singh

&

Ors.

....Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

The Civil Appeal and the Special Leave Petition have been heard together because claim of the parties is in respect of same post of Chief Inspector in the Haryana Roadways to which the appellant - Khub Ram was initially appointed in the year 1990 pursuant to his selection in response to advertisement dated 07.05.1989. First respondent – Dalbir Singh challenged the selection and appointment of appellant Khub Ram by filing C.W.P. No.12711 of 1992 in the High Court. That writ petition was allowed on 01.10.2010 by a learned Single Judge. Not only the appointment of Khub Ram and one more person was quashed but a direction was also issued to appoint writ petitioner – Dalbir Singh from a retrospective date with all consequential benefits. Appellant's appeal before the Division Bench was dismissed by the impugned order. The petitioner of S.L.P. – Mahavir Prasad has sought permission to file the Special Leave Petition against judgment of learned Single Judge as well as of Division Bench on the ground that he is one amongst the selected candidates and has a better claim for appointment than respondent – Dalbir Singh and hence order should be passed for appointing him in place of Khub Ram. This judgment shall govern both the matters which involve common issues of facts and law. Permission to file Special Leave Petition (C) No.15871 of 2012 is granted. Delay condoned. Leave granted.

For the sake of convenience the facts have been noticed mainly from the records of Civil Appeal No.2734 of 2012 except where indicated otherwise. For deciding the two issues arising in these cases it is not necessary to go deeper into the facts except to notice that as per terms of advertisement dated 07.05.1989, besides a Degree of Graduation and Hindi upto Matriculation level and age qualification of 17-35 years, it was essential for the candidate to have two years' experience in Government/Semi-government or Public Undertakings and Roadways Fleet. The appellant's selection was questioned in the writ petition mainly on the ground that he did not possess the requisite experience and the two certificates submitted by him were from private transporters. There were strong arguments advanced against the selection of appellant and some others on the allegation that political influence had been exercised in their favour and it was specifically pleaded that the appellant was selected in the second round of selection as he belonged to village of the then Chief Minister. The learned Single Judge noticed that appellant's experience certificates showed that he had worked with a private Bus Service from June 1986 to June 1988 as a Field Staff (Checker) for two years and also with another private roadways as Assistant Manager between 01.09.1984 to 10.03.1987. The courts below noticed that both the certificates contradicted each other because between June 1986 to 10.03.1987 the appellant as per his certificates had worked in two different capacities with two different private bus service. The court also found that the two years' experience as per terms of the advertisement could not be satisfied by showing experience of working with private transporters as they were not covered by the expression 'Government/Semi- government or Public Undertakings and Roadways Fleet'. On behalf of Mahavir Prasad it has been pleaded that the Select List contained names of 14 persons which included Khub Ram and Ram Niwas Rathi whose appointments were quashed by the learned Single Judge as well as name of appellant – Mahavir Prasad but not that of first respondent – Dalbir Singh. On account of his place in the Select List Mahavir Prasad represented for appointment and ultimately filed a writ petition for that purpose bearing C.W.P. No.17600 of 1991 but no relief was given to him by the final order dated 04.08.1992 which for some reason was challenged by the State of Haryana before the Division Bench but not by Mahavir Prasad. But when he learnt that respondent – Dalbir Singh has succeeded in getting a judgment against Khub Ram and a direction for his own appointment, Mahavir Prasad chose to

challenge those judgments in favour of Dalbir Singh by preferring the Special Leave Petition directly in this Court and the same was tagged for hearing along with the Civil Appeal. On behalf of appellant - Khub Ram, Mr. P.N. Misra, Sr. Advocate raised a strong objection that writ petition should not have been allowed in 2010 in view of delay in impleading the appellant as late as in 2004 when he had already earned a promotion on 01.03.1996 and a second promotion as Traffic Manager on 05.05.2000. It was also highlighted that because of interim order of this Court he has continued in service and has been promoted as General Manager in December 2014. He pointed out that objection was taken to the impleadment application dated 16.02.2004 on grounds of delay as well as promotion already earned by the appellant. In support of the aforesaid plea reliance was placed on judgment of this Court in the case of Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. (2011) 11 SCC 520 and in the case of Buddhi Nath Chaudhary v. Abahi Kumar (2001) 3 SCC 328. Learned senior counsel Mr. Misra also submitted that experience in private roadways fleet would meet the requirement of advertisement if the word 'and' appearing before the 'Roadways Fleet' is understood and treated as 'or'. According to him, now when the appellant - Khub Ram has worked for long years, he cannot be denied continuance in service for lack of minimum experience at the stage of recruitment. He further pointed that the appellant noticed the error in experience certificate dated 05.06.1989 relating to experience of two years in Shyam Bus Service from June 1986 to June 1988 and therefore he obtained a corrected certificate on the next day, i.e., 06.06.1989 showing such experience to be from June 1987 to June 1988. According to the appellant, the corrected experience certificate dated 06.06.1989 is on record as Annexure P-2.

In reply, Mr. Vikas Singh, Sr. Advocate for first respondent has pointed out that issue of delay in impleading the appellant as a respondent in the writ petition was not argued before the learned Single Judge or before the Division Bench. He pointed out that in respect of two years of working experience in paragraph 2 of the writ petition it was claimed that the experience required was of working in a Government or semi-government department and such claim was admitted by the State, second respondent in para 2 of its reply. It was also shown that the learned Single Judge as well as the Division Bench have returned concurrent findings that the appellant – Khub Ram did not meet the experience qualification and not only his certificates were from private bus operators but also the same were untrustworthy because of apparent conflict and overlapping of a particular period in both the certificates.

Anticipating the arguments on behalf of appellant – Mahavir Prasad in the light of pleadings in the appeal filed by him, Mr. Vikas Singh, learned senior counsel for first respondent highlighted that no other claimant for the post joined the litigation when first respondent preferred the connected writ petition in the year 1992 and even till 2010 when the writ petition was allowed, no other candidate came forward with a rival claim and in such circumstances writ court committed no error in directing for appointment of first respondent as a consequence of setting aside the appointment of appellant – Khub Ram and another person. Before adverting to the claims of first respondent and similar claim of appellant – Mahavir Prasad for appointment to the post held by the appellant – Khub Ram, it would be appropriate to first examine the merit of appeal preferred by appellant – Khub Ram. We have carefully looked into the averments made in the writ petition, the reply filed by State and other respondents as well as the judgment of the learned Single Judge as well as the Division Bench. We find no good reason to take a different view in respect of the finding that the

appellant lacked the essential qualification of experience because his experience certificates were only from private bus operators. It is also found that even the alleged corrected certificate said to be dated 06.06.1989 contained in Annexure P-2 is an unreliable document inasmuch as the date 06.06.1989 is clearly a subsequent correction without any authorization by way of counter signature and so is the case with the words and letters 'June 1987' which have been altered subsequently by converting '1986' to '1987'. Even after such unauthorized corrections the total experience as per last line of the certificate remains two years. Had the concerned Bus Service issued a fresh corrected certificate then the experience from June 1987 to June 1988 could not have been certified to be experience for two years. The list of dates also has been subsequently corrected to show the date of experience certificate, Annexure P-2 as 06.06.1989 in place of 05.06.1989. This appears to have been done at the instance of the appellant to justify his stand and apparently a bogus claim that he had obtained a correct certificate on the very next date when he found mistakes in the certificates dated 05.06.1989. Had this been the case, there was no occasion for submission of the certificate dated 05.06.1989 with his application which issue has been discussed in detail by the learned Single Judge.

Had the appellant not committed such acts for obtaining selection and appointment, we could have considered the issue of delay as well as judgments supporting such a claim. However, Mr. Patwalia has rightly submitted that delay in impleading the appellant could not weigh with this Court when a case of fraudulent entry into service has been found by the learned Single Judge as well as Division Bench and an attempt has been made by the appellant even to mislead this Court by producing Annexure P-2 and claiming it to be copy of the corrected certificate freshly issued on 06.06.1989. Such conduct of the appellant in our considered view disentitles the appellant – Khub Ram to get any relief under Article 136 of the Constitution of India. Mr. Patwalia has rightly placed reliance to support the aforesaid submissions, on a judgment of this Court in the case of Meghmala v. G. Narasimha Reddy (2010) 8 SCC 383. The law relating to effect of fraud upon a competent authority to get an appointment/office as well as effect of fraud upon court has been discussed in detail in paragraphs 28 to 36 of the said judgment with which we are in respectful agreement. As a result, we hold that the appellant – Khub Ram is not entitled to hold the office which he obtained by submitting questionable certificates of experience and more so when he lacked the essential qualification of working experience in a Government/Semi-government/Public Sector Undertaking. Hence his appeal is dismissed.

The next question is whether in the facts and circumstances of the case the direction of the High Court to appoint first respondent from a retrospective date along with consequential benefits deserves to be upheld or not, particularly when a strong challenge has been made to such direction through a Special Leave Petition of Mahavir Prasad. On this issue Mr. Patwalia, learned senior advocate appearing for Mahavir Prasad has shown from the pleadings that while Mahavir Prasad was at serial no.9 of the Select List containing 14 names prepared for appointment to 5 advertised posts, first respondent Dalbir Singh did not find any place in such Select List. This fact escaped the attention of learned Single Judge as well as Division Bench possibly because there was no rival claimant to point out such shortcoming in the case of writ petitioner – Dalbir Singh. Mr. Patwalia has shown from the supplementary affidavit filed in the Special Leave Petition to support the application for condonation of delay, that as far back as on 25.08.1993 the High Court had passed an

order in the writ petition directing the writ petitioner to implead the selected candidates (emphasis added) who are likely to be affected by the result of the present writ petition. The writ petitioner was given liberty to file an application for early hearing after impleading the affected party. The writ petitioner filed the impleadment application only for adding Khub Ram and one another person and did not implead all the selected candidates. As a result appellant – Mahavir Prasad was denied the opportunity of contesting the claim of the writ petitioner by placing the relevant correct facts particularly the fact that Dalbir Singh was not a selected candidate. A number of judgments including *State of Mysore v. K.N. Chandrasekhara* AIR 1965 SC 532 and *R.S. Mittal v. Union of India* 1995 Supp. (2) SCC 230 were relied upon by Mr. Patwalia in support of his submission that if challenge to an appointment succeeds, the court will direct for appointment against consequent vacancy only as per the merit list prepared for the purpose of such appointment. The list has to be given due weightage unless the court has proceeded to quash the Select List itself. Since the proposition is well founded in law and there is no caveat on this issue, there is no need to discuss the case law on the subject in any detail.

Learned counsel for the State of Rajasthan has submitted that Khub Ram was ineligible for want of a requisite experience and hence by working on the post as claimed by him for subsequent two years he cannot get the required eligibility. He placed reliance upon a judgment of this Court in the case of *Central Bank of India v. Madhulika Guruprasad Dahir* (2008) 13 SCC 170. That judgment was rendered in a case where the caste certificate which was the basis for claiming and getting appointment was found to be false. The court, in the facts of the case held the action of the applicant concerned to be fraudulent and on that basis, after discussing the relevant case law in detail in paragraphs 15, 16 and 17, declined to endorse the lenient view taken by the High Court and instead, upheld the order of termination of service of the concerned employee with a sound reasoning - “the selection of the employee was conceived in deceit and, therefore, could not be saved by equitable considerations”. According to learned counsel for the State Dalbir Singh did not find place in the list of selected candidates and hence it would not be proper to uphold the direction for his appointment and if Mahavir’s claim finds favour then the authority concerned may be directed to consider the claim of all selected candidates including that of Mahavir Prasad but only against original post, if available. The appointment should not be ordered from any retrospective date or with any consequential benefits.

There is no dispute that first respondent – Dalbir Singh was only an applicant and was not among the selected 14 candidates. In that view of the matter, the High Court was misled to issue a direction for his appointment and that too from an earlier date when Khub Ram was appointed, and with consequential benefits. Such directions could not have been issued without considering the claims of other persons in the Select List. For that reason, the directions issued in favour of first respondent are set aside. To that extent, appeal of Mahavir Prasad has to be allowed. However, the other prayer made on behalf of Mahavir Prasad that authorities be directed to offer him appointment or consider his claim, in our considered view cannot be allowed on account of the fact that writ petition of Mahavir Prasad filed in 1991 was decided against him by order dated 04.08.1992 passed in C.W.P.No.17600 of 1991. Rightly or wrongly the High Court held that he could not claim any right of appointment on account of a place in the Select List. That judgment attained finality. Mahavir Prasad chose not to appeal against that order nor he challenged the appointment of any of the

persons selected and appointed. His claim thus suffers from res judicata as well as acquiescence and estoppel. In that view of the matter and also for the reason that a long period of more than 25 years has passed since the preparation of the Select List, in our view it would be inappropriate to grant any relief which may require the authorities to examine the claim of persons in the Select List for appointment to the original post which may not even be available after lapse of so many years. We have been told that Mahavir is presently about 50 years of age and has not crossed the age of superannuation and is still working on another post with Haryana Roadways. That in our opinion, will not change the relevant factors indicated above. Hence we are not persuaded to grant any further relief to Mahavir Prasad and his appeal is allowed only in part as a result whereof the direction to appoint first respondent – Dalbir Singh is set aside.

A disturbing feature of this case is that even after notice of the writ petition when the State of Haryana became aware that Khub Ram lacked essential qualification and his certificates were unreliable, it took no action to undo the ill effects of fraud by taking any action against Khub Ram. As a result Khub Ram continued in service for a number of years and also earned promotions. This was at the cost of claim of other genuine selected candidates whose cases could have been considered if action had been taken at appropriate time. In such a situation, although we have granted no relief to Mahavir Prasad by ordering for his appointment, we direct the State of Haryana to compensate Mahavir Prasad by paying him an amount of Rs.3,00,000/- (Rupees Three Lacs) within two months. A further amount of Rs.1,00,000/- (Rupees one lac) should also be deposited by the State of Haryana with the Supreme Court Mediation Centre within the same time. The State of Haryana would be at liberty to fix responsibility as to who was at fault for not taking action in the matter after the deceitful acts came to its knowledge through filing of the writ petition in 1992, and if possible, to recover the aforesaid amount of Rs.4,00,000/- (Rupees Four Lacs) from the concerned persons, in accordance with law, if they are still in office.

As discussed above, Civil Appeal No.2734 of 2012 is dismissed and the other Civil Appeal arising out of S.L.P.(C)No.15871 of 2012 is allowed only to the extent indicated above. There shall be no further order as to costs.

.....J. [FAKKIR MOHAMED IBRAHIM KALIFULLA]
J. [SHIVA KIRTI SINGH] New Delhi.

April 29, 2015
