IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 25th OF OCTOBER, 2024

WRIT PETITION No. 39 of 2024

DHARAMDAS BHALEKAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rajendra Prasad Gupta, learned counsel for the petitioner.

Shri Manhar Dixit, learned Panel Lawyer for the respondent/State.

ORDER

Reserved on: 23.10.2024
Pronounced on: 25.10.2024

Challenge is made in the present petition to order dated 20/12/2023 issued by the Additional Collector District Balaghat, whereby fact finding enquiry has been instituted in the matter of submission of forged disability certificate produced by the petitioner at the time of his entry into service.

2. The petitioner challenges the said notice on the ground that the respondent-State authorities could not have initiated enquiry into the certificate of disability which was submitted by the petitioner at the time of his appointment in service in the year 1993 after a lapse of 30 years moreso when after completing almost the 80% tenure of service only few years remain for his retirement. At this advance stage of career no enquiry can be instituted into the initial appointment of the petitioner due to sheer efflux of time.

3. It is further contended by the learned counsel for the petitioner that the petitioner has submitted number of complaints as to the activities of respondent No.6 who is holding the post of Assistant Commissioner in the Department and the said person is facing prosecution based on complaints of the petitioner. It is contended that the complainant Dharmendra Lilhare respondent No.7 is a non existant person and the complaints are being made only at the instance of respondent No.6 that are anonymous in nature because they are made in the name of non existant person. Learned counsel for the petitioner also points out to the order dated 06/06/2024 whereby this Court has recorded that the service be effected on respondents No.6 & 7 through the Collector and if the Collector fails to serve them then they may be proceeded ex-parte. It is submitted that respondents No. 6 and 7 have not been served despite that and thus, the case of the petitioner is that respondent No.7 is a non existant person and he cannot be served at all.

4. It is further contended by learned counsel for the petitioner that the entire proceedings instituted against him are actuated by malice because the petitioner has been an activist against the dubious activities of respondent No.6 who is officer of the department and holds a senior position. On these grounds, the proceedings instituted by order dated 20/12/2023 are prayed to be quashed.

5. Per contra, the petition is opposed by learned counsel for the State vehemently arguing that if the petitioner had obtained appointment on the basis of a fraud and forged certificate then it is something which goes to the

root of his appointment to and it is immaterial whether the complainant has any malice against him or not. It is further argued that if the petitioner has procured appointment wrongfully then no efflux of time would validate such illegality which is obtained by fraud because it is settled in law that fraud vitiates everything.

6. Heard.

7. The complaint against the petitioner which is stated to be anonymous is said to be that the petitioner was not having a permanent disability of atleast 40% as per the Persons With Disabilities Equal Opportunities, Protection of Rights and Full Participation Act 1995. It is averred in the complaint that the petitioner was only having 15% temporary disability at the time of appointment and on the basis of the certificate evidencing 15% temporary disability, the petitioner has been given appointment wrongfully against a post reserved for disabled person.

8. From a perusal of the complaint made against the petitioner it is crystal clear that the complaint does not allege that the certificate which has been relied by the petitioner while seeking appointment was forged or manufactured document. The allegation is that the said certificate is in respect of 15% disability that too temporary and a person having 15% temporary disability does not fall within the purview of disabled person so as to seek reservation in appointment meant for disabled persons.

9. Counsel for the petitioner had argued that the Act of 1995 was enforced later to the date of appointment to the petitioner and also that in the physical

examination conducted on 02/02/2024 he has been found to be 40% disabled. However, it is undisputed that a certificate obtained in the year 2024 will not validate an appointment got by the petitioner in the year 1993 under disabled quota against the post reserved for disabled person.

10. However, it is the contention in the complaint against the petitioner that the certificate though is a disability certificate but is a temporary disability certificate that too less than 40% disability which does not entitle a person to seek appointment against a post reserved for disabled person.

11. If the complaint of the complainant is seen, it is clear that the complainant does not alleged that any fraud has been committed in the matter of issuance of such certificate. It is only alleged that such certificate though is a disability certificate but does not indicate a status of disability to such an extent that would entitle a person to get appointment on a post reserved for disabled person.

12. Acceptance of an unacceptable certificate is one aspect and a certificate obtained which is forged is another aspect. It is settled in law that fraud vitiates everything but there is no allegation against the petitioner that the certificate that he has relied upon while taking appointment is a forged certificate. There is no averment in the complaint that the petitioner was not having 15% temporary disability as contained in the said certificate. If the allegation had been that the petitioner was not having even 15% temporary disability then it would have been a case where the certificate was obtained by fraud. If the complaint had been that the certificate was actually never

issued then it would have been a case of forgery. None of these allegations are contained in the complaint against the petitioners.

13. The authorities of the State while giving appointment to the petitioner in the year 1993 have given the appointment to the petitioner with open eyes and have given effect to the certificate containing 15% temporary disability.

14. It is not the case of suppression or misrepresentation of any facts. It is settled in law that if the authority has accepted some qualification as acceptable at the time of appointment and the order is issued in favour of selectee and he settles down in his positions then after long years if any complaint is filed and it is found that the qualification was actually not proper then it is not appropriate to disturb the selectee who has settled down in the post.

15. In the case of admission of students it has been held by the Supreme Court that admission of the students which though were illegal but was not based on any suppression of fact or misrepresentation of fact will not result in cancellation of admission and the Court refused to interfere with the admissions. Kindly see **Shri Krishan vs The Kurukshetra University reported in AIR 1976 SC 376** (para-7) and **Guru Nanak Dev University vs. Sanjay Kumar Katwal and Another reported in (2009) 1 SCC 610** (para 19,22).

16. Similarly, in cases of ***Vikas Pratap Singh v. State of Chhattisgarh*, (2013) 14 SCC 494**, the Supreme Court in the case of a public servant, held as under :-

27. Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

I n ***Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat, 1994 Supp (2) SCC 591****, the following has been held :*

11. The entire appointment of direct recruits, therefore, from the waiting list was not proper. But these persons have been appointed

and are working now at least for five years. It would, therefore, be unjust and harsh to quash their selection at this stage. Therefore, while refraining from quashing the appointment made in pursuance of the direction issued by the High Court, we are of the opinion that the waiting list for one year cannot furnish source of recruitment for future years, except in very exceptional cases. It is, however, necessary to add that non-holding of examination at the instance of the Government could not result in reducing the quota of direct recruits to be worked out on the principle for determination of such vacancies. Therefore, if vacancies had collected between 1983 and 1993 due to interim orders passed by the courts, and they have not been taken into account when the examination for 1993 was held then it would be expedient to direct the Government to work out the same immediately and send the requisition to the Commission for holding selection for if the next examination is going to be held within one year from today. We may clarify that it is nobody's case that the quota rule has broken. Therefore the direction is being issued to protect the quota of direct recruits during 1983 to 1993 in the peculiar facts of the present case.

In the case of ***Buddhi Nath Chaudhary v. Abahi Kumar, (2001) 3 SCC 328****, it was held as under :-*

6. *The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now*

that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup v. State of Haryana [(1979) 1 SCC 168 : 1979 SCC (L&S) 35] ; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] and H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore [1991 Supp (2) SCC 421 : 1992 SCC (L&S) 53 : (1992)

19 ATC 292] . Therefore, we must let the matters lie where they are.

17. In view of the above the law is clear that if the authority has accepted some qualification or document as acceptable then after a long period which in the present case is 30 years, the authority cannot suddenly wake up and say that its predecessors wrongfully gave effect to a document which otherwise was not acceptable. Settled things cannot be allowed to be unsettled in this manner at drop of a hat.

18. Resultantly, this petition deserves to be and is partly allowed.

19. The impugned notice dated 20/12/2023 is maintained. However, it is ordered that the enquiry being conducted by the official respondents will be restricted to enquire whether the disability certificate which was produced by the petitioner at the time of appointment was indeed issued by the issuing authority or not. In other words, the enquiry shall be limited to the respect of forgery and fraud.

20. If the certificate is indeed found to be validly issued then the authority shall not be at liberty to pass any adverse order against the petitioner only on the ground on the date of appointment the certificate indicated an extent of disability which was not acceptable and its predecessor authority wrongfully accepted the certificate.

21. With the aforesaid observations, the petition is **partly allowed and disposed of.**

(VIVEK JAIN)
JUDGE

RS