

Gopi Ram Vs. The Chief General Manager Central Coalfields Limited Ranchi and Ors

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Court : Jharkhand

Decided On : Oct-30-2015

Appellant : Gopi Ram

Respondent : The Chief General Manager Central Coalfields Limited Ranchi and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S.) No. 4804 of 2013 Gopi Ram, son fo late Dukalu B.P., resident of village-4158, Dhorl Central Colony, Bermo, P.O. Phusro Bazar, P.S. Phusro, District-Bokaro ... Petitioner Versus 1. The Chief General Manager, Central Coalfields Limited, Darbhanga House, Ranchi.

2. Director (Personnel), Central Coalfields Limited, Darbhanga House, Ranchi.

3. The Deputy General Manager, Central Coalfields Limited, Darbhanga House, Ranchi.

4. The Deputy Manager (Personnel), Central Coalfields Limited, Darbhanga House, Ranchi.

5. The Project Officer, Dhorl Area, Central Coalfields Limited, Officer of Project Officer, P.O. Phusro Bazar, P.S. Phusro, District- Bokaro.

6. Sr. Manager (Mining), Central Coalfield Limited, Selected Dhorri Quarry No. 1, P.O. Phusro Bazar, P.S. Phusro, District- Bokaro. ... Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH PATNAIK ... For the Petitioner : Mr. Atanu Banerjee, Adv. For the Respondents : Mr. A.K. Das & Ms. Pooja Kumari, Adv. CAV on 17th September,2015 Pronounced on :

30. 10 /2015 In the accompanied writ application, the petitioner has, inter-alia, prayed for quashing the order of dismissal passed by the Project Officer, S.D.O.-I, Kalyani Project dated 11/13.10.2012 and for quashing of the order dated 03.09.2013 passed by the Director (Personnel), CCL, appellate authority.

2. The factual matrix as delineated from the writ application in the nutshell is that the petitioner was appointed on compassionate ground on the post of P.R. Worker, BA I Quarry, SDO-I, Project of CCL vide order dated 16.09.1980 vide Annexure-I to the writ application. In pursuance to the appointment order the petitioner continued to discharge his duties without any interruption of service. On 2.11.2010 a complaint was made by Smt. Bhukhain Bai alleged that the petitioner is not her son and the petitioner has been working impersonating to be the son of Late Dukalu B.P. Vide Annexure-2 to the writ application. In pursuance to the complaint, an inquiry was conducted and an inquiry 2 report was submitted vide Annexure-3 to the writ application. In pursuance to that on 17.05.2011 a charge sheet has been filed by Project Officer against the petitioner relating to false claim and possessing to be son of late Dukalu B.P. obtained employment in his place, vide Annexure-4 to the writ application. On 11/13.10.2012 the petitioner was dismissed from the services vide Annexure-5 to the writ application.

3. Being aggrieved by the order of dismissal, the petitioner filed departmental appeal against the order of Dismissal before the Director, C.C.L., Ranchi vide Annexure-6 to the writ application. During pendency of the writ application, the appellate authority vide order dated 03.09.2013 disposed of the appeal by confirming the order of dismissal dated 11/13.10.2012 passed by the disciplinary authority. Being aggrieved by the impugned order of dismissal/termination confirmed by the appellate authority during the pendency of the writ application, the petitioner left with no efficacious alternative remedy has approached this Court

by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

4. Per contra, a counter-affidavit has been filed on behalf of the respondents repelling the contentions made in the writ application. It has been, inter-alia, submitted in the counter-affidavit that a punishment in the departmental inquiry and thereafter in a departmental appeal, which was based on findings of facts and appraisal of evidences and documents, the proper remedy would lie before the appropriate authority and the forum created under the Industrial Disputes Act, 1947 and as such the writ application is not maintainable. It is also submitted that the Hon'ble Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India cannot act as a Court of Appeal to make a reappraisal of the evidences recorded in the disciplinary proceedings. It has also been submitted that the petitioner has not been able to show that either the findings of the enquiry officer are perverse and/or the departmental enquiry 3 suffers from infirmities violating the cardinal principles of natural justice. Admittedly, the petitioner was given employment in the company on compassionate ground as son of late Dukalu B.P./ ex-employee by a letter dated 16.09.1980 as per Annexure-A to the counter-affidavit. In the service book the petitioner disclosed his father name as Dukalu B.P. as evident from Annexure-B to the counter-affidavit. A complaint dated 02.11.2010 was filed by Smt. Bhukhin Bai, wife of late Dukalu B.P. that petitioner has fraudulently obtained employment in the company posing himself as her son but the fact remains that the petitioner was not her son as evident from Annexure-C to the counter-affidavit and on the receipt of the complaint a departmental enquiry was held wherein the complaint was found to be true. Subsequently, the petitioner was issued a charge-sheet dated 17.05.2011 to the vide Annexure-D to the counter-affidavit and the petitioner did not submit any reply to the charge-sheet and the departmental enquiry committee was constituted. On 18.06.2011, an inquiry officer held a free, fair and impartial enquiry following the cardinal principles of natural justice and in which the petitioner appeared and defended his case and the enquiry officer submitted his report to the effect that the charge is proved vide Annexure-G to the counter-affidavit. And a copy of the enquiry report was forwarded to the petitioner by way of second show cause notice dated 23.06.2012 seeking his comment vide Annexure-H to the counter-affidavit. The petitioner

submitted his reply to the second show cause notice stating in particular that what he had to deposed the same has been submitted in course of inquiry proceeding and beyond that he has nothing to explain as per Annexure-I to the counter-affidavit. In the inquiry proceeding dated 12.09.2011 it would be evident that the petitioner categorically admitted that he had secured employment upon death of his elder brother late Dukalu B.P. in his place posing himself as his son. Complainant Smt. Bhukhin Bai in the inquiry proceeding also submitted a family tree showing the fact that the petitioner is brother of Dukalu B.P. The Project Officer, SDQ-1 in 4 consideration of findings of the Enquiry Officer, other relevant papers and also in consideration of reply to the 2nd show cause notice passed the impugned order of dismissal against the petitioner as per Annexure-K to the counter-affidavit. Against the order of dismissal the petitioner submitted an appeal before the appellate authority on 11.03.2013 which was rejected and disposed of by the appellate authority by a letter dated 03.09.2013 as per Annexure-L to the counter-affidavit. It has further been submitted that from the order of appellate authority it would be evident that it is the findings of the appellate authority that it was an admitted case of misconduct alleged upon the petitioner.

5. Heard Mr. Atanu Banerjee, learned counsel appearing for the petitioner and Mr. A.K. Das, learned counsel appearing for the respondents.

6. During course of arguments, learned counsel for the petitioner dexterously urged that the order of dismissal passed by the respondents is disproportionate to the charges leveled against the petitioner. The respondents have also not considered the unblemished service record of petitioner for such a long period while passing the impugned order of dismissal from service. To buttress his submissions learned counsel for the petitioner referred the decision reported in 1. AIR 1987 SC23862. (2003) 9 SCC4803. 2011 (2) JCR186SC4 2011 (4) JCR105SC During course of arguments learned counsel for the petitioner also referred 9.3.3 of the National Coal Wage Agreement-V, which reads as under:

9. 3.2 The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed 5 daughter/widowed

daughter-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependants of the deceased.

7. Learned counsel for the respondents Mr. A.K. Das dexterously countered the submission advanced by the learned counsel for the petitioner by referring to the decision of Hon'ble Apex Court in (2013) 9 SCC363 Devendra Kumar Vs. State of Uttranchal and Others wherein the Hon'ble Apex Court is pleased to opine which is extracted below:

14. In A.P. State Financial Corpn. v. GAR Re-Rolling Mills and State of Maharashtra v. Prabhu this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.

15. In Shrisht Dhawan v. Shaw Bros., it has been held as under: (SCC p.533, para 20)

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.

18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India v. M. Bhaskaran this Court, after placing reliance upon and approving its earlier judgment in Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, observed as Under: (M. Bhaskaran case, SCCp. 104, para 6) If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer.

8. Having heard learned counsel appearing for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has not

been able to make out the case for interference of this Court due to following facts, reasons and judicial pronouncements: (I) Admittedly, there is absolutely no irregularities in conducting the departmental proceeding and the case is based on evidence. On bare perusal of impugned letter dated 11/13.10.2012 reveals that the petitioner got employment on compassionate ground in the company as son of Dukalu B.P. From the enquiry proceedings the petitioner deposed his father's name is Santhu Ram. The petitioner has also obtained employment claiming himself as son of Dukalu B.P. in connivance with Smt. Bhukhain Bai. Therefore, this is admitted case of misconduct on the part of the petitioner. (II) On considering the gravity of misconduct being confirmed by the appellate authority, the petitioner has been dismissed from the services and the impugned order of dismissal is quite proportionate to the offence of the petitioner, warrants no interference by this court. (III) In *S.P. Chengalvaraya Naidu v. Jagannath & Ors.*, reported in (1994) 1 SCC1 the Hon'ble Apex Court held that it is settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. fraud avoids all judicial acts, ecclesiastical or temporal. (IV) In *Ram Chandra Singh v. Savitri Devi & Others* reported in (2003) 8 SCC319 the Hon'ble Apex Court held that 7 misrepresentation itself amounts to fraud, and further held that 18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. the said judgment was reconsidered and approved by this Court in *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav*.

9. As a cumulative effect of the facts, reasons and judicial pronouncements and in view of the discussions made in the foregoing paragraphs, I am of the considered view that it is not a case in which order of penalty has been passed ignoring the relevant materials on record nor the case is based on no evidence. Therefore, the impugned order of punishment of dismissal from service vide Annexure-5 to the writ petition being confirmed by by the Director (Personnel), CCL, appellate authority Annexure-L to the counter-affidavit, do not warrant any interference of this Court.

10. Accordingly, the writ petition is dismissed being devoid of merit. (Pramath Patnaik, J.) The Jharkhand High Court, Ranchi Dated: /10/ 2015 MM /AFR/NAFR

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