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Harshal Suresh Rawate, Vs. Harshal Suresh Rawate,

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Court : Mumbai

Decided On : Oct-21-2010

Judge : D. D. Sinha; a. P. Bhangale, Jj.

Appeal No. : CRIMINAL APPEAL NO.544 OF 2005

Appellant : Harshal Suresh Rawate,

Respondent : The State of MaharashtrA.

Advocate for Def. : Mr.H.J. Dedhia, Adv.

Advocate for Pet/Ap. : Mr.Abhaykumar Apte, Adv.

Judgement :

01. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, taken up for final hearing at the admission stage itself.

02. The petitioner has assailed the communication/order dated 15.5.2009 passed by Respondent No.2-Principal District Judge, Beed, thereby discontinuing the services of the petitioner as a peon.

03. The factual matrix of the present case is that the petitioner had applied for the post of peon, in District Court, Beed, in pursuance of the advertisement published in newspaper. According to the petitioner, name of his father in the village record was recorded as "Suryakant", whereas his school record disclosed his father's name as "Sureshrao". Accordingly, in the application made for the post of peon,

the petitioner mentioned his father's name as "Sureshrao" as per the school record.

04. Thereafter, the petitioner was called for written test by Respondent No.2, on 17.9.2006 (page 11). The petitioner appeared thereto and passed the said written test. Accordingly, he was called for practical test on 24.9.2006, which was also cleared by the petitioner. Thereafter, he was called for oral interview, along with original documents, on 4.10.2006. The petitioner filed death certificate of his father, ration card and the statement of marks obtained by him in 10th standard and the affidavit dated 3.10.2006 (Exh. B Colly.) stating that his father, namely, `Sureshrao' was also known as `Suryakant'.

05. Thereafter, waiting list was published by Respondent No.2 on 12.6.2007 wherein name of the Petitioner was at serial No.35, and thereafter appointment orders were issued to the selected candidate, including the petitioner, on 31.7.2008 (Exh.C, page 17). The petitioner was at serial No.12 in the said appointment order and was posted as peon in the court of Joint Civil Judge, Junior Division, Patoda. Accordingly, he joined the said post on 6.8.2008. Thereafter, he was transferred to Shirur- Kasar Court, on 12.8.2008 and after joining the said Court, he was further transferred to the Court of Civil Judge, Junior Division, Patoda, and accordingly, was relieved from the Court at Shirur-Kasar, on 4.10.2008 and he joined the new place i.e. Court at Patoda, on 5.10.2008.

06. However, to the shock and surprise of the petitioner, he received the impugned order dated 15.5.2009 (Exh. D, pages 20,20-A) issued by Respondent No.2, thereby discontinuing services of the petitioner suddenly, contending that Respondent No.2 intended to verify the documents of the petitioner, and also stating that there was difference in the name of father of the petitioner in the application form and the documents produced by him.

07. Hence, the petitioner made representation dated 25.5.2009 (Exh. E, page 21) and invited attention of Respondent No.2 to the fact that there was no suppression of the fact, as he had filed affidavit dated 3.10.2006 to the effect that his school record disclosed the name of his father as 'Sureshrao', whereas the village record showed name of his father as 'Suryakant' and requested to cancel the order of

discontinuation of his services and reinstate him on the post of peon. However, since there was no response from Respondent No.2, the petitioner again made representation dated 29.5.2009 (Exh. F colly., pg.22) to Respondent No.2, annexing the copy of Govt. Notification dated 21/27th May 2009 thereto, disclosing therein rectification in the name of his father from "Sureshrao" to "Suryakant". However, there was no response from Respondent No.2 to said representation also and hence, the petitioner has filed the present writ petition, challenging the impugned order dated 15.5.2009 (Exh. D) and prayed for quashment thereof.

08. Shri Bhavthankar, learned counsel for the petitioner canvassed that there is absolutely no suppression on the part of petitioner in respect of name of his father, since the village record and even the death certificate of his father disclosed the name of his father as "Suryakant", whereas his school record reflected the name of his father as "Sureshrao" and the said fact was brought to the notice of Respondent No.2 by the Petitioner, when he was called for interview on 4.10.2006, since on that very day, he had filed affidavit dated 3.10.2006 along with other documents, such as death certificate of his father, ration card and the statement of marks obtained by him in 10th Standard examination etc., specifically stating in the said affidavit dated 3.10.2006 that the death certificate of his father disclosed his name as "Suryakant",whereas the school record of the petitioner disclosed his father's name as `Sureshrao' and further that his father was known in the village also as "Suryakant" and further specifically stating therein that the names "Suryakant Tapse" and "Sureshrao Tapse" belong to one and the same person, but in spite of that, Respondent No.2 did not consider the said aspect, properly.

09. Shri Bhavthankar, learned counsel for the petitioner, also submitted that the petitioner was doing his duty without any complaint and to the satisfaction of the superiors and he did not receive any adverse remarks and even his work was appreciated from time to time, and yet he received the impugned order dated 15.5.2009, suddenly discontinuing his services as a peon, which causes injustice to him.

10. Learned Counsel Shri Bhavthankar for the petitioner further canvassed that no show cause notice was issued to the petitioner and even no enquiry was conducted and the services of the petitioner were discontinued by Respondent No.2 without giving him any opportunity which is against the principles of natural justice and, therefore, learned counsel for the petitioner urged that the impugned order dated 15.9.2009 deserves to be quashed and set aside.

11. Shri V.B.Ghatge, learned A.G.P. for Respondent No.1 and Shri V.B.Jadhav, learned counsel, holding for Shri V.D.Hon, learned counsel for Respondent No.2, opposed the present petition vehemently and submitted that the application form submitted by the petitioner for the post of peon, discloses his father's name as"Suryakant", whereas school record of the petitioner i.e. school leaving certificate, statement of marks obtained by the petitioner in 10th standard examination (Exh. B colly., pgs. 12/13) disclose his father's name as "Sureshrao" and,therefore,learned Civil Judge, Junior Divn.,Patoda, sought guidance from Respondent No.2, by letter dated 7.5.2009, as to which name of the petitioner's father was to be entered into the service book of the petitioner and hence, consequently, Respondent No.2 issued the impugned order dated 15.5.2009 to the petitioner, stating therein that there was difference in the name of the petitioner's father, in the application form submitted by him and in his school record, which fact is required to be verified and accordingly, his services were discontinued by the impugned order. Thus, learned A.G.P. and learned Counsel for Respondent Nos.1 and 2 respectively, submitted that the impugned order dated 15.5.2009 has been issued, rightly and no interference therein is called for in exercise of the writ jurisdiction.

12. Learned Counsel for the respondents also submitted that the notification issued by the Govt.of Maharashtra dated 21/27th May 2009, which is produced by the petitioner along with his second representation dated 29.5.2009 addressed to the 2nd Respondent, is subsequent to the impugned order dated 15.5.2009 and hence, the said notification dated 21st/27th May 2009 issued by the Government of Maharashtra, rectifying the name of petitioner's father, cannot be of any aid and assistance to the petitioner's case. Learned Counsel for the Respondents further canvassed that the petitioner failed to satisfy the then Principal District Judge

about the difference in the name of his father and, therefore, the impugned order dated 15.5.2009 has been issued by Respondent No.2, rightly, and, therefore, urged that the present petition bears no substance and same is devoid of any merits and, therefore, same be dismissed.

13. We have perused the contents of the petition, its annexures, and also the contents of true copy of the affidavit-in-reply dated 4.8.2009 filed on behalf of Respondent No.2 which is sworn in by the then Principal Dist.Judge Madhusudansingh Laxmansingh Chouhan, along with its annexures and also considered the submissions advanced by learned counsel for the parties, anxiously.At the outset, indisputably, it may be noted that in the village record, as well as in the death certificate,the name of the petitioner's father was recorded as "Suryakant", whereas in the school record, name of father of the petitioner is recorded as `Sureshrao'. Pertinently, the said fact was brought to the notice of Respondent No.2 by the petitioner on his own, at the inception itself i.e at the time of interview held on 4.10.2006, by filing an affidavit dated 3.10.2006 along with other documents, such as death certificate of his father, statement of marks obtained by petitioner in 10th standard, by specifically stating in the said affidavit that the petitioner had submitted the application form mentioning his name as "Balbhim s/o Suryakant Tapse" as the death certificate issued by the concerned Gram Panchayat disclosed the name of his father as "Suryakant Tapse", and further specifically stating that, but the school record of the petitioner reflected his name as "Balbhim Sureshrao Tapse". It is further specifically stated by the petitioner in the said affidavit that his father was known in the village by name "Suryakant Tapse" and also categorically stating therein that "late Suryakant Tapse" and "late Sureshrao Tapse" is one and the same person, but it appears that the said affidavit dated 3.10.2006 and the facts stated therein were not considered by Respondent No.2, in proper perspective, before issuance of the impugned order dated 15.5.2009, thereby discontinuing the services of the petitioner.

14. Moreover, it is also material to note that, no show cause notice was issued to the petitioner and no enquiry was conducted by Respondent No.2 prior to issuance of impugned order dated 15.5.2009, discontinuing services of the

petitioner and hence, it is apparent that no principles of natural justice were followed by Respondent No.2 before issuing the impugned order dated 15.5.2009. The said fact is strengthened by the letter dated 7.10.2010 issued by present Principal District Judge to Advocate Shri V.D. Hon appearing for Respondent No.2, who produced the copy thereof during the course of arguments, which is taken on record and marked "X" for the purpose of identification. The said letter discloses that prior to discontinuation of services of the petitioner, no opportunity of personal hearing was given to him. Hence, it is apparently clear that neither any explanation was called for from the petitioner in respect of any doubt about the genuineness of the documents submitted by him, nor any audience was given to the petitioner nor due process of law was followed by Respondent No.2, before issuance of the impugned order dated 15.5.2009, discontinuing his services and, therefore, the impugned order deserves to be quashed and set aside.

15. Besides that, although the petitioner had sent two representations dated 25.5.2009 and 29.5.2009, clarifying therein the true position and also annexing a copy of the notification issued by the Govt. of Maharashtra dated 21st/27th May, 2009, thereby rectifying his father's name from "Sureshrao Tapse" to "Suryakant Tapse" to representation dated 29.5.2009, and although the said notification dated 21st/27th May 2009 was later in point of time to the impugned order dated 15.5.2009, Respondent No.2 neither took any cognizance thereof even subsequently, nor considered the aforesaid representations dated 25.5.2009 and 29.5.2009 respectively, and no communication in that respect was sent to the petitioner and, therefore, the petitioner had no alternative, but to approach this forum.

16. In the circumstances, we are inclined to accept the submissions advanced by the learned counsel Shri Bhavthankar for the petitioner, and we are of the considered view that this is a fit case to exercise the extra-ordinary writ jurisdiction and, therefore, the impugned order dated 15.5.2009 issued by Respondent No.2, discontinuing the services of the petitioner from the post of peon, deserves to be quashed and set aside.

17. In the result, present petition succeeds and same is, accordingly, allowed in terms of prayer clause (A) thereof and the impugned order dated 15.5.2009 issued by Respondent No.2 stands quashed and set aside.

18. Rule made absolute, accordingly. In the facts and circumstances, there shall be no order as to costs.

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