



RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 17491/2018

Rohitashwa Kumar

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Secondary Education, Government Secretariat, Jaipur, Rajasthan
2. Director, Secondary Education, Bikaner, Rajasthan
3. Dy. Director, Secondary Education, Churu, Rajasthan

----Respondents

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For Petitioner(s) : Mr. Mahendra Shah, Sr. Counsel with  
Ms. Pragya Seth, Adv.

For Respondent(s) : Mr. S. Zakawat Ali, Addl. Govt.  
Counsel

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**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Order**

RESERVED ON :: 05.07.2023  
PRONOUNCED ON :: 11.07.2023

**REPORTABLE**

1. By way of invoking the extra-ordinary jurisdiction of this Court contained under Article 226 of the Constitution of India, the petitioner has approached this Court challenging the validity of the impugned orders dated 03.10.2017 and 10.07.2018 by which services of the petitioner have been terminated on the ground of suppression of the material fact regarding his conviction in a criminal case involving offence under Section 326/34, 324/34 and 323/34 of Indian Penal Code (for short, 'IPC').



2. The petitioner was working on the post of teacher and a criminal case was registered against him at Police Station Sadar, Jhunjhunu on 23.03.1994 and he was arrested on the same day and he remained in judicial custody for 49 days w.e.f. 23.03.1994 till 10.05.1994 and he concealed this fact from the department and submitted application seeking extraordinary leaves of these 49 days on the ground of illness of his daughter and family circumstances and the same was sanctioned. Thereafter, he faced trial for the offences under section 307/34, 326/34, 324/34 and 323/34 IPC before the Court of Additional Sessions Judge, Jhunjhunu in Sessions Case No. 75/1994 (37/1997) and he was convicted for the offences punished under Section 326/34, 324/34 and 323/34 IPC and he was sentenced to undergo two years imprisonment vide judgment dated 24.08.1998. The petitioner submitted SB Criminal Appeal No. 639/1998 against the said judgment before this Court and the same was partly allowed on 15.05.2015 and his conviction was upheld by this Court and he was released on the sentence already undergone by him. A charge-sheet under Rule 17 of the Rajasthan Civil Services (Classification, Control, Appeal) Rules, 1958 (for short, 'the Rules of 1958') was served upon him and two charges were framed against him that he concealed the fact regarding his arrest in a criminal case and getting the 49 days of arrest period sanctioned as extraordinary leaves and received the half pay salary. The petitioner submitted his explanation that due to lack of knowledge about the rules, this fact regarding his arrest was not disclosed and he had been acquitted in that criminal case by the High Court



vide judgment dated 15.05.2015. Relying upon the above explanation furnished by the petitioner, the departmental proceedings under Rule 17 of the CCA Rules was dropped and the 49 days arrest period of the petitioner was sanctioned as extraordinary leaves vide order dated 01.05.2017. Immediately thereafter, the petitioner submitted an application seeking voluntary retirement (for short, 'VRS') and the same was allowed on 03.07.2017 and his VRS was accepted w.e.f. 06.09.2017. Prior to the effect of the voluntary retirement on 06.09.2017, the VRS order dated 03.07.2017 was withdrawn on 04.09.2017 and the principle of school was directed not to relieve the petitioner.

3. Thereafter, considering all above facts regarding his conviction and decision of the High Court upholding his conviction and looking to the misconduct of the petitioner about concealment of his conviction in a criminal case, a decision was taken on 03/10/2017 to terminate the services of the petitioner. The petitioner assailed his termination order dated 03/10/2017 before the Appellate Authority i.e. Director, Secondary Education Bikaner by way of filing an appeal under Rule 23 of the CCA Rules 1958 but the same was rejected vide impugned order dated 10.07.2018.

4. Feeling aggrieved and dissatisfied by these two impugned order dated 03/10/2017 and 10/07/2018, the petitioner has approached this Court by way of filing of this petition.

5. Learned counsel for the petitioner submitted that once the departmental proceedings under Rule 17 of the Rules 1958 were



dropped and the application for voluntary retirement of the petitioner was accepted by the respondents, the petitioner was not in service and the petitioner became a dead person for the respondents, hence, services of the dead person cannot be terminated. Counsel submitted that without recalling the VRS acceptance order dated 03.07.2017, the respondents have terminated the services of the petitioner without holding any enquiry under Rule 16 or 17 of the Rules of 1958. Counsel submits that the misconduct and conviction of the petitioner was not related to official discharge of his duties hence, the impugned order of his termination is not legally sustainable in the eye of law. In support of his contention, he has relied upon the judgment passed by the Division Bench of this Court in the case **H.R. Choudhary Vs. Central Administrative Tribunal, Jaipur and ors.: DBCWP No. 12437/2012**, decided on 27.01.2017.

6. Counsel submits that in view of the submissions made hereinabove, the impugned order be quashed and set aside with all consequential benefits.

7. Per contra; learned counsel for the State/respondents opposed the arguments raised by the counsel for the petitioner and submitted that intentionally and deliberately the petitioner concealed the fact regarding his involvement, arrest and conviction in a criminal case. Counsel submitted that the petitioner mislead the department by furnishing an incorrect information that he has been acquitted by this Court in the said criminal case. Counsel submitted that due to the above incorrect and false



information furnished by the petitioner, the department dropped the departmental proceedings and accepted his voluntary retirement on 03.07.2017 w.e.f. 06.09.2017 but prior to his retirement, the above material facts and misconduct of the petitioner came into the notice of the department, that is why the VRS order dated 03.07.2017 was recalled and withdrawn on 04.09.2017 prior to due date of his retirement i.e. 06.09.2017, and thereafter invoking the power contained under Rule 19 of the Rules of 1958, the decision was taken on 03.10.2017 to terminate the services of the petitioner. Counsel submitted that the petitioner was in service at the time of his termination and the respondents have not committed any error in passing the impugned orders. Counsel submitted that under these facts and circumstances of the case, the interference of this Court is not warranted.

8. Heard and considered. The submissions made at the bar and perused the material available on the record.

9. The undisputed facts of this case are that the petitioner was involved, arrested and convicted in the criminal case for the offences punishable under Section 326, 324 and 323 read with Section 34 of IPC and he was arrested and kept in judicial custody for 49 days and finally he was sentenced to undergo imprisonment vide judgment dated 24.08.1998 by the Court of Additional Sessions Judge, Jhunjhunu. This fact is not in dispute that in criminal appeal the conviction of the petitioner was upheld by this Court vide judgment dated 15.05.2015 and he was released on



the sentence already undergone by him. Meaning thereby his judgment of conviction had attained finality. The petitioner mislead the authorities by suppressing and concealing these material facts and aspect of the case and made an incorrect and false statement in the departmental proceedings that he has been acquitted by this Court vide judgment dated 15.05.2015 rather his conviction was upheld by this Court. Relying upon the above incorrect information, the department dropped the charge-sheet and accepted the application submitted by the petitioner seeking voluntary retirement vide order dated 03.07.2017 w.e.f. 06.09.2017. Subsequently, all these facts came into notice of the respondents and the order accepting voluntary retirement was recalled and withdrawn on 04.09.2017 i.e. two days prior to his retirement and the Principal of the concerned school was informed not to relieve the petitioner from the service and post hold by him. In other words, the petitioner remained in service at the time of passing of his termination order dated 03.10.2017.

10. Now, the issue remains for adjudication for this Court is “whether the petitioner can be terminated from service only on the basis of his conviction in a criminal case?”

11. Rule 19 of the CCA Rules 1958 deals with the special procedure of taking action against a government servant on the ground of conduct which had led to his conviction on a criminal charge.

12. For ready reference Rule 19 is reproduced as under:



**19. Special procedure in certain cases.-**  
Notwithstanding anything contained in rules 16, 17 and 18,

(i) where a penalty is imposed on a Government Servant on the ground of conduct which has led to him conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure, the disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary."

13. Perusal of Rule 19 indicates where a Government Servant is convicted for an offence and the disciplinary authority is of the view that the conduct of the government employee which led to his conviction is such that it is warranted to impose any of the three penalties mentioned in Rule 19 viz dismissal, removal or reduction in rank and where the disciplinary authority is satisfied that it is not reasonably practicable to follow the procedure of Rules 16, 17 and 18 of the Rules of 1958, then, the authority may consider the circumstances of the case and pass such order as it deems fit.

14. The petitioner has not only suppressed and concealed about his involvement, arrest and conviction in a criminal case but also he made a false declaration before the authorities that he has been acquitted in the said criminal case by the High Court vide judgment dated 15.05.2015, such act of the petitioner amounts to gross misconduct on his part. On the basis of such false



information and misconduct of the petitioner the proceedings under Rule 17 of CCA Rules, 1958 were dropped against him and his application seeking voluntary retirement was accepted.

15. Aforesaid act of the petitioner not only amounts to misrepresentation but also playing fraud with the department. Such misconduct of the petitioner cannot be sustained in the eyes of the law.

16. In the instant case, even holding the inquiry as contemplated under Rule 16, 17 and 18 of the Rules of 1958, would be nothing but a futile exercise for the reason that it is undisputed that the petitioner has been convicted by the Court of Additional Sessions Judge, Jhunjhunu, and his conviction has been upheld and maintained by this Court and the same has attained finality and therefore, the fact of conviction even if the inquiry is conducted would remain as such and cannot be controverted.

17. Hon'ble Apex Court in the case of **Devendra Kumar Vs. State of Uttranchal** reported in **2013(9) SCC 363** has held that where an employee gets an order by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal". It was further observed that dishonesty should not be permitted to bear the fruit and benefit those persons who have defrauded or misrepresented themselves and in such circumstances, the Court should not perpetuate the fraud by entertaining petition on their behalf. The observations made by the Hon'ble Apex Court in the case of





**Devendra Kumar (supra)** in para No.12, 13, 18 and 25 which reads as under:

12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

13. It is a 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 eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." In *Lazarus Estate Ltd. v. Besalay* 1956 All E.R. 349, the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

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 and Ors. v. M. Bhaskaran* MANU/SC/0178/1996MANU/SC/0178/1996 : AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* MANU/SC/0478/1990MANU/SC/0478/1990 : (1990) 3 SCC 655, observed as under:-

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.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "Subla Fundamento cedit 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.

Nor can a person claim any right arising out of his own wrong doing. (Juri Ex Injuria Non Oritur)."



18. In the case of **Jainendra Singh Vs. State of UP THROUGH PRINCIPAL SECRETARY, HOME and Ors.** reported in **2012(8) SCC 748**, the Hon'ble Apex Court summarized the principle to be considered in a case where the appointment is obtained by misrepresentation and/or suppression of facts by the candidates/appointees in para 29.1 to 29.10, which reads as under:

"29.1.(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the Respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

(ii) Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

(iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

(iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as



other aspects, has the discretion to terminate his services.

Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

(viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

(ix) An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

(x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

19. The issue/question may be considered from another angle, from the employers point of view. The question is not whether the offence committed by the petitioner was with regard to his official discharge of duties or not. The question is about the credibility and the trustworthiness of the petitioner who has at every stage



not only suppressed and concealed about his involvement, arrest and conviction in a criminal case but also he played a fraud by making a false declaration that he has been acquitted by this Court vide judgment dated 15.05.2015. Rather his conviction was upheld by this Court and the same has attained finality. If the correct facts would have disclosed, the respondents would not have continued the petitioner in service. Thus, the question is of trust. Therefore, in such a situation, where the employer feels that an employee like the petitioner, who has misled the department by playing fraud and did not disclose the correct facts and suppressed the material facts and therefore, he cannot be continued in service because such an employee cannot be relied in future, the employer cannot be forced to continue such an employee like the petitioner. Such an employee cannot claim his right to continue in service. The judgment relied by the counsel for the petitioner is not applicable looking to the peculiar facts and circumstances of the present case.

20. Since the petitioner has not only misled the respondents about his involvement, arrest and conviction in a criminal case but also he has committed fraud with the respondents by saying that he has been acquitted in the criminal case. The petitioner does not deserve any sympathy by this Court. The respondents have not caused any illegality in taking the decision to terminate the services of the petitioner.

21. In view of the above and for the reasons stated above, the present writ petition fails and the same is hereby dismissed.





[CW-17491/2018]

22. Stay application and all pending applications stand dismissed.

(ANOOP KUMAR DHAND),J

Pcg/28

