

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 01.05.2023

Pronounced on: 12.05.2023

WP(C) No. 472/2022

Farooq Ahmad Parray ...Petitioner(s)

Through: Mr. M. I. Dar, Advocate with
Mr. Mohammad Yawar, Advocate
Vs

Union Territory of JK & Ors. ...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

Per Moksha, J

FRAUS ET JUS NUNQUAN COHABITANT

“FRAUD AND JUSTICE NEVER DWELL TOGETHER.”

1. A deliberate act done with deception for securing an unfair or undeserved benefit by resorting to fraud cannot clothe the beneficiary with any right much less an indefeasible right to seek its protection not to speak of its enforcement.
2. By the instant petition, the petitioner is seeking a Writ of Certiorari to the effect that the order dated 19.05.2021, (for short “impugned order”), passed by the Central Administrative Tribunal, (hereinafter referred to as “Tribunal”) in TA bearing No. 3244/2021 in case titled **Farooq Ahmad Parray vs. State of JK & Ors**, be quashed and the claim of the petitioner in consequence to such quashment may be allowed.
3. Briefly put, the case of the petitioner is that pursuant to the advertisement issued by the respondent department for filing up the posts of Constable available in 16th, 17th, 18th, 19th and 20th Battalions of the IRP of Baramulla, Bandipora and Kupwara Districts, the petitioner offered his candidature for one of the posts.

4. The selection process culminated in the issuance of a selection list by virtue of which the petitioner was shown to have been selected as constable for IRP 17th Battalion of District Bandipora figuring at Serial No. 32 in the selection list.
5. The petitioner, thereafter, joined his services, as such on 04.02.2020. Subsequent thereto, the petitioner was deputed for undergoing Basic Training Course (BTC) at Vijaypora Training College, Jammu for a period of 11 months and 17 days. The petitioner successfully completed the said course. The petitioner is also stated to have performed his duties in District Doda, Kishtwar and Baderwah, Jammu in connection with the elections. The petitioner is further stated to have performed his duties during the *Amarnath Yatra* and was being paid the salary regularly.
6. It is further stated by the petitioner that all of a sudden he was stopped from attending his duties at A-Company of the 17th Battalion, IRP Gandhi Nagar, Jammu. The petitioner moved the representations to know the reasons for not allowing him to resume his duties which, however, were not considered as no response was given by the respondents, constraining the petitioner to file a writ petition bearing SWP No. 1681/2012. The Writ Court, on consideration of the matter, in terms of the order dated 09.08.2012, while issuing notice to the other side directed for maintaining the present position of the petitioner till next date of hearing. The respondents in their objections filed in opposition to the said writ petition took a stand that the selection of the petitioner has been cancelled vide order No. 677 of 2012 dated 14.07.2012, however, the copy of the cancellation order dated 14.07.2012 was furnished to the petitioner on 03.12.2012.
7. Feeling aggrieved of the order of cancellation, the petitioner filed a writ petition bearing SWP No. 2610/2012 on the grounds taken therein. The said writ petition was, pursuant to the creation of Tribunal, Jammu Bench, being amenable to its jurisdiction, transferred to the Tribunal. The Tribunal on consideration of the matter dismissed the petition in terms of the order impugned herein.
8. The challenge to the impugned order is, *inter alia*, made on the grounds, that, it has been passed in hot haste; in disregard of the important aspect of the matter that the petitioner was appointed against the post of constable; in

disregard to the constitutional mandate of right to livelihood; has caused miscarriage of justice etc.

9. Upon notice, respondents have appeared and filed their response wherein they have raised preliminary objections in respect to the maintainability of the writ petition besides giving the factual background of the controversy. The respondents have sought dismissal of the writ petition on the grounds that the petitioner has concealed the material facts; no constitutional, statutory or legal rights of the applicant have been infringed or violated.
10. Heard learned counsel for the parties and perused the material made available.
11. Petitioner's selection and appointment as Police Constable is alleged to have been cancelled during his probation for having produced a fake driving license in order to secure few additional points in the selection process so that he gets selected and appointed against the post of Constable.
12. In order to understand the controversy a brief relook at the events that led to the filing of the instant writ petition before this Court, needs to be recorded herein, thus:-

12.1 The respondents issued an advertisement for filling up the posts of constables in various Battalions of the J&K Armed Police. Petitioner, being one of the aspiring candidates, participated in the selection process and was awarded 26 points resulting in his selection for one of the advertised posts. Out of the 26 awarded points, the petitioner had been given 02 points for having a driving license at his credit. Subsequent to his selection and appointment, during the scrutiny of his credentials, it came to fore that the driving license produced by the petitioner was not genuine. The respondents, thereafter, proceeded against the petitioner and cancelled his selection and appointment for having produced a fake document during the process of selection.

12.2 Aggrieved of such cancellation, petitioner had filed a writ petition which came to be dismissed by the Tribunal in terms of the impugned order. Against the said order of dismissal, the instant writ petition has been filed. This is how the present petition has come into being.

13. Learned counsel submits that the action of the respondents is arbitrary in nature as the petitioner was not given any opportunity of hearing before issuing the order of cancellation. He further submits that no enquiry of whatsoever nature was conducted by the respondents before issuing the order of cancellation of petitioner's selection and appointment. Learned counsel for the petitioner further submits that the alleged fakeness of his driving license cannot be attributed to the petitioner as the same was submitted by the petitioner along with requisite documents under a bonafide belief that the same is genuine having been issued by a competent authority. Learned counsel also submits that the petitioner has been meted out an invidious treatment as his right of livelihood has been snatched by the respondents with the stroke of a pen. The learned counsel further submits that even if it is presumed that the petitioner had produced a fake driving license, the proper course available to the respondents was to inflict a minor punishment taking into consideration the fact that the petitioner has been selected, appointed and is working against the post for quite a time now. However, the course resorted to by the respondents has prejudiced the petitioner which has not been unfortunately appreciated by the Hon'ble Tribunal.
14. On the other hand, Mr. Mohsin Qadri, learned senior AAG, submits that the impugned order is well reasoned and needs no interference. Learned AAG submits that the post in question is meant for those with clean image and since the petitioner has resorted to an unfair means right at the inception of his service, he could not have been continued in a disciplined force, therefore, the respondents were justified in cancelling his selection and appointment.
15. The learned senior AAG further submits that the petitioner has failed to show as to what legal statutory or fundamental right of the petitioner has been infringed by the impugned order. He further submits that the act of the petitioner was grave, therefore, called for and deserved a graver punishment.
16. Considered the submissions made.
17. It appears that the Tribunal while considering the matter has assessed the merit of the petitioner as also the last selected candidate in the unreserved category as if it had to determine the issue of non-selection of the petitioner

in a recruitment process in disregard of the fact that the subject matter before it was to test the legality or otherwise of the cancellation of selection and appointment of the petitioner impugned before it. The Tribunal appears to have got swayed by the submission of learned counsel that the selection and appointment of the petitioner will stand even if the 02 marks awarded to the petitioner on account of the alleged fake driving license are deducted because the last selected candidate in the unreserved category has also obtained 24 marks only.

18. Be that as it may, since the petitioner is aggrieved of and is questioning the impugned order as also the action of the respondents viz-a-viz the cancellation of his selection and appointment, the court will test the legality or otherwise of both together.
19. The material made available would *ex-facie* show that the petitioner has failed to prove his bonafides at the initial stage of his appointment only making doubtful his integrity by seeking support from a fake document to secure a job.
20. The submission of the learned counsel for the petitioner, that the cancellation of selection and appointment of the petitioner is bad for the reasons that no enquiry was conducted in the matter and for not affording the petitioner any opportunity of hearing, is not sustainable as the employer is within its rights to order cancellation of the selection if the same turns out to be based on the premise of fraud.
21. It needs no reiteration that every selection and the consequent appointment is subject to scrutiny of the credentials submitted by the aspiring candidates during the process of selection. Once the document, on the basis whereof the selection and appointment has been secured, turns out to be fake, the natural consequence would be the cancellation of such selection and appointment and in doing so, the respondents were neither required to conduct any enquiry nor afford any opportunity of hearing to the petitioner.
22. Insofar as the submission of learned counsel for the petitioner that the petitioner was not in know of the fact that the driving license produced by him is fake, is concerned, the same also is noted to be rejected only as the Hon'ble Apex Court in case titled "**Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar**", reported as 2022 SCC Online SC 486 has held

that the production of a fake document in a selection process is sufficient to invoke action, notwithstanding the intention of the applicant.

23. The contention of the learned counsel for the petitioner that the selection and appointment of the petitioner could not have been cancelled even if the 02 points earned by him on the basis of the alleged fake driving license would be deducted as the petitioner is still getting 24 points and is making the grade, is unreasonable to say the least. The petitioner's selection and appointment has been cancelled on the basis of a fraud played by him and not by having lesser number of points. As already noted hereinbefore, the petitioner has indulged in fraud, the subject matter of the entire controversy does not relate to a wrong marking but to the cancellation of a particular selection and appointment already made.

24. We are also not subscribing to the view that the petitioner has been prejudiced by such cancellation of selection and appointment as he did not deserve to continue in service and occupy the post in a disciplined force. Every member of the police force is required to have an exceptional integrity and if a candidate, aspiring to become a police personnel, indulges in fraud at the very initial stage of his service, he cannot be expected to become a good police officer if a lenient view is taken for the fraud committed by him. Furthermore, the appellant during the selection process has submitted a duly sworn in affidavit stating therein *inter alia* that his services will be liable for termination and registration of criminal case against him in case any of his claims/certificates are found to be invalid at any stage. It would be appropriate to reproduce paragraph 29 of the judgment of Hon'ble Apex court delivered in case titled "Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar", reported as 2022 SCC Online SC 486, as under:-

29. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a Trust. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary

Authority was justified in imposing the punishment of dismissal from service.

25. Hon'ble Apex Court, while dealing with the similar matter, in case titled Satish Chandra Yadav v. Union of India & Ors. reported as 2022 SCC Online SC 1300 has also laid down the same principle. Paragraph Nos. 37 & 42 being relevant are taken note of as under:-

37. In Union of India and Others v. M. Bhaskaran, AIR (1996) SC 686, this Court held that when an appointment is procured by a workman on the basis of a bogus and forged casual labourer service card, it would amount to misrepresentation and fraud on the employer. Therefore, it would create no equity in favour of the workman or any estoppel against the employer and for such misconduct, termination would be justified without any domestic inquiry. This Court held:

“6. ... Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. ...

... It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. ...

... The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite

qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. ...”

42. In *Kamal Nayan Mishra v. State of Madhya Pradesh and Others*, (2010) 2 SCC 169, the ratio decidendi in *Ram Ratan Yadav* (supra) was discussed and clarified as follows:

“14. Therefore, the ratio decidendi of *Ram Ratan Yadav* (2003) 3 SCC 437 is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.”

26. For all what has been said hereinbefore, we do not see any illegality attached with the impugned order dated 19.05.2021 passed by the Central Administrative Tribunal which is, accordingly, maintained. The writ petition being without any merit is *dismissed* along with all connected CM(s).

27. There shall, however, be no order as to costs.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
12.05.2023
AAMIR

Whether the judgment is speaking Yes/No

Whether the judgment is reportable Yes/No