Before G.S. Singhvi and Amar Dutt, JJ.

JIWAN DASS SETHI.—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS.—*Respondents*

C.W.P. No. 17515 of 1998

9th April, 1999

Constitution of India, 1950—Art. 226—Suppression of material facts—Court issuing notice to respondents on the basis of averments made in the writ petition—Impression given that petitioner was compulsorily retired and had not been paid certain dues—The fact that the petitioner had infact been dismissed from service and on appeal the punishment was converted to compulsory retirement not disclosed—Written statement disclosing true facts and showing that nothing was due—Conduct of petitioner calculated to deceive the Court—Petitioner held guilty of approaching the Court with tainted hands and writ petition dismissed with costs—Request for withdrawal of writ petition in view of the averments made in the written statement declined.

Held that, after having carefully perused the record of the case, we are not inclined to accept the petitioner's request for withdrawal of the writ petition as in our opinion, the petitioner deserves to be dismissed with costs because the petitioner has exhibited highly contumacious conduct of suppressing the facts from the Court. He must have been aware of the fact that he was dismissed from service on being found guilty of having drawn false medical bills and L.T.C. and further that the amount representing advance of G.P.F. was not entered in the G.P.F. account by none else than himself. However, with a view to mislead the Court in believing that the respondents have, with a *mala fide* design, withheld the amount due to him, the petitioner deliberately concealed these acts from the Court. If the respondents had not appeared and disclosed full facts to the Court then there was every possibility of our issuing a writ directing the respondents to release the amount due to the petitioner. Fortunately, the respondents have appeared and placed correct facts before the Court. In our view, the attempt made by the petitioner to mislead the Court is sufficient to non-suit him because it is one of the settled proposition of law that the person who invokes writ jurisdiction of the High Court, which is essentially an equitable jurisdiction must come with clean hands and any attempt by the litigant to mislead the Court must be dealt with firmly by the Court and such person should be denied hearing on the merits of the case. This rule has been evolved by the Courts in order to protect themselves against

unscrupulous litigants who try to pollute the system of administration of justice by exhibiting contumacious conduct.

(Para 5)

Further held, that the petitoner has deliberately refrained from stating that he was dismissed from service on being found guilty of grave charge of defrauding the Government and further that he was responsible for not making entries in the G.P.F. account. We, therefore, hold him guilty of having approached the Court with tainted hands. Consequently, the writ petition is dismissed with costs, which we assess as Rs. 2500.

(Para 20)

L.M. Gulati, Counsel, *for the Petitioner.*

Rupinder Khosla, Deputy Advocate General, Punjab, *for the Respondents.*

ORDER

G.S. Singhvi, J.

In this petition filed under Section 226 of the Constitution, the petitioner has prayed as under :—

"(i) A writ in the nature of *mandamus* and directing the respondents to release the benefits of leave encashment for 240 days so it stood on 4th December, 1996 in favour of the present petitioner. The 18% interest on the said amount as the petitioner has not been paid the said payment despite of the fact that the petitioner retired on 4th December, 1996 in arbitrary manner.

(ii) Writ in the nature of certiorari quashing the order Annexure-P.2 whereby the petitioner has been directed to pay unnecessary interest on the non-refundable advance.

(iii) In the peculiar facts and circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate order or direction that it may deem fit.

(iv) It is further prayed that this Hon'ble Court may be pleased to stay the operation of the order Annexure-P. 2.

(v) Services of advance notice on the respondents and condition of filing certified copies of Annexures may kindly be dispensed with.

(vi) The cost of petition may kindly be awarded in favour of the present petitioner and against the respondents."

(2) A perusal of the writ petition gives an impression that after his compulsory retirement from service in December, 1996, the petitioner has not been paid the amount of leave encashment in terms of Rule 8.21 of the Punjab Civil Services Rules, Volume-I and the respondents have made unlawful deduction of Rs. 17,996 from his pay. The petitioner has accused the respondents of having acted in violation of the rules and the principles of natural justice.

(3) In the written statement filed by the Director, Civil Aviation, Punjab on behalf of respondent Nos. 1 to 3, it has been averred that the petitoner was dismissed from service for drawing bogus medical bills and false L.T.C. claim but on his appeal a lenient view was taken and his punishment was converted from one of dismissal to that of compulsory retirement by order No. 1/12/95-4T(3)/3826—29, dated 27th March, 1997. It has also been averred that the petitioner has been paid leave encashment amounting to Rs. 11,956 on 31st March, 1998 and Rs. 6,878 on 14th December, 1998. The further assertion of the respondents is that recovery of Rs. 17,996 has been made on account of G.P.F. advance amounting to Rs. 8,000 plus interest from June 1991 to March, 1998 which was not entered in the petitioner's G.P.F. account because the petitioner had himself maintained the accounts being Accountant in the department.

(4) The petitioner has not filed replication to contest the assertion made in the written statement that he was dismissed from service on the charge of drawing bogus medical bills and false L.T.C. claim and that he had not made entry in G.P.F. account regarding the advance of Rs. 8,000 and that he was liable to repay the amount along with interest for the period between June, 1991 and March, 1998.

(5) At the commencement of hearing, Shri L.M. Gulati requested that in view of the averments made in the written statement, the petitioner may be permitted to withdraw the writ petition. However, after having carefully perused the record of the case, we are not inclined to accept his request and in our opinion, the petition deserves to be dismissed with costs because the petitioner has exhibited highly contumacious conduct of suppressing the facts from the Court. He must have been aware of the fact that he was dismissed from service on being found guilty of having drawn false medical bills and L.T.C. and further that the amount representing advance of G.P.F. was not entered in the G.P.F. account by none else than himself. However, with a view to mislead the Court in believing that the respondents have, with a *mala fide* design, withheld the amount due to him, the petitioner deliberately concealed these acts from the Court. If the respondents had not appeared and disclosed full facts to the Court then there was every possibility of our issuing a writ directing the respondents to release

the amount due to the petitioner. Fortunately, the respondents have appeared and placed correct facts before the Court. In our view, the attempt made by the petitioner to mislead the Court is sufficient to non-suit him because it is one of the settled proposition of law that the person who invokes writ jurisdiction of the High Court, which is essentially an equitable jurisdiction, must come with clean hands and any attempt by the litigant to mislead the Court must be dealt with firmly by the Court and such person should be denied hearing on the merits of the case. This rule has been evolved by the Courts in order to protect themselves against unscrupulous litigants who try to pollute the system of administration of justice by exhibiting contumacious conduct. In this respect, we may refer to the following judicial precedents :—

(i) *Hari Narain* v. *Badri Das* (1).

(ii) *Welcome Hotel* v. *State of Andhra Pradesh and others* (2).

(iii) *G. Narayanaswamy Reddy* v. *Government of Karnataka and another* (3).

(iv) *S.P. Chenqalvarara Naidu (dead) by LRs.* v. *Jagannath (dead) by LRs and others* (4).

(v) *Ramjas Foundation* v. *Union of India* (5).

(vi) *K.R. Srinivas* v. *R.M. Prem Chand (6).*

(vii) *Chint Ram Ram Chand and others v. State of Punjab and others* (7).

(viii) *Smt. Bhupinderpal Kaur* v. *The Financial Commissioner (Revenue) Punjab* (8).

(ix) *Chiranji Lal and others* v. *The Financial Commissioner, Haryana and others* (9).

(x) *Smt. Harbhajan Kaur* v. *State of Punjab* (10).

(xi) *Pawan Kumar* v. *State of Haryana and another (11).*

(1) A.I.R. 1963 S.C. 1558.
(2) A.I.R. 1983 S.C. 1015.
(3) A.I.R. 1991 S.C. 1726.
(4) J.T. 1993 (6) S.C. 331.
(5) A.I.R. 1993 S.C. 852.
(6) 1994 (6) S.C.C. 620.
(7) A.I.R. 1996 S.C. 1406.
(8) 1968 (78) P.L.R. 169.
(9) 1978 (80) P.L.R. 582.
(10) 1994 P.L.J. 287.
(11) 1994 (5) S.L.R. 73.

(xii) *Jal Bhagwan Jain* v. *Haryana State Electricity Board, Panchkula, District Ambala,* C.W.P. No. 15448 of 1993, decided on 21st September, 1994;

(xiii) *M/s Kaka Ram Paras Ram and others* v. *State of Punjab and others* (12).

(xiv) C.W. P No. 13555 of 1997, *Jai Parkash Bhargava* v. *State of Haryana and others*, decided on 2nd March, 1998;

(xv) C.W.P. No. 4381 of 1998, *M/s Arihant Super Rice Land, Safidon and others* v. *State of Haryana and others*, decided on 6th August, 1998;

(xvi) C.W.P. No. 8602 of 1997, *Kirpal Singh* v. *State of Haryana and another*, decided on 23rd September 1998; and

(xvii) C.W.P. No. 18304 of 1998, *Smt. Krishna Gupta* v. *State of Haryana and others*, decided on 1st December, 1998.

(6) We may also refer to some important observation made by the Courts on this issue. In *Jai Bhagwan* v. *Haryana State Electricity Board,* C.W.P. No. 15448 of 1993 decided on 21st September, 1994, a Division Bench of this Court laid down the principle in the following words :—

"It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the Court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the facts concerning him. The petitioner has to demonstrate his *bona fides* before seeking relief from the Court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to which of the facts are relevant and which are not relevant. The petitioner cannot become a Judge on the question of relevancy of facts. Non-disclosure of all the facts in a candid and straight forward manner will necessarily warrant dismissal of a petition.

We may further add that a petitioner will not be entitled to be heard on the merits of the case where he is found guilty of concealment of facts or of making mis-statement before the Court only on the ground that no stay order has been passed by the Court. It is to be remembered that the Court considers a petition with the assumption that the averments made in the petition are true and correct. In a given situation, the Court

(12) 1996(1) P.L.R. 691.

may finally decide a petition *ex parte* where the non-petitioner does not appear despite service of notice. It a party suppressed facts from the Court, such *ex parte* decision may be rendered on the basis of incorrect or incomplete facts. Therefore, it is no answer to the charge of suppression of facts or mis-statement of facts before the Court to say that no interim relief has been given to the petitioner or that he has not derived any benefit. In our opinion, the very issue of a notice on a petition is a benefit derived by the petitioner. If subsequently it is found that the petitioner has misled the Court or persuaded it in issuing notice by concealment of true facts of the case there will be ample jurisdiction for dismissing the petition."

(7) In *Rex* v. *Kensigton,* (13) M.R. made the observations on the conduct of a party in an *ex parte* application in the following words :—

"On an *ex parte* application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done." Lord Scrutton L.J. said :—

"It has for many years the rule of the Court and one which it is of the greatest, importance to maintain, that when any applicant comes to the Court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts. .....The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that it finds out that the facts have been fully and fairly stated to it the court will set aside any action which it has taken on the faith of the imperfact statement."

(8) It is interesting to not that in *Kensigton Commissioner's* case, the Court declined relief even though it had found that the Commissioner had no jurisdiction to make the assessment. This is clearly evident from the following observations :—

"We refuse the writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

(9) In *R.* v. *Churchwardens of All Saints Wigan* (14), Lord Haterlay observed :—

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant

(13) 1917 (1) K.B. 486.
(14) (1876) 1 A.C. 611.

of it matters connected with delay or possibly with the conduct of the parties."

(10) In *Reg.* v. *Gerland* (15), it was held :—

"Where a process is *ex debito justitiae* the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in *bona fides*."

(11) *Hari Narain* v. *Badri Das* (16) is an interesting case in which Special Leave to Appeal granted by the Apex Court under Article 136 of the Constitution of India was revoked by entertaining objection of the respondents that the appellant had made mis-statement of facts. While accepting the prayer made by the respondents for revocation of the leave, the Supreme Court observed :—

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art. 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of facts and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

(12) In *Welcome Hotel and others* v. *State of Andhra Pradesh and others* (17), the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to any consideration at the hands of the Court.

(13) In *R.G. Sinde* v. *State of Maharashtra* (18), a two-Judges Bench of the Apex Court has held as under :—

"Undoubtedly the order passed by the High Court under Article 226 was a judicial order exercising its constitutional power

(15) (1870) 39 L.J.Q.B. 86.
(16) A.I.R. 1963 S.C. 1558.
(17) A.I.R. 1983 S.C. 1015.
(18) A.I.R. 1994 S.C. 1673.

but when its process is abused and obtained, an order of *mandamus* by consent hedged with collusion and fraud on the Court and though not pleaded, on general body of principles of the society, when the facts were brought to the notice of the High Court, the High Court alone had to correct, it by exercising its power under Article 226 to prevent such abuse of judicial process and should exercise its power of high responsibility to undo injustice done to the adversary undoing the effect of the order obtained in abusing the process of the Court."

(14) This Court has also taken a serious view of the contumacious conduct of the petitioners and has declined relief in a large number of cases. In *Smt. Bhupinderpal Kaur* v. *The Financial Commissioner (Revenue), Punjab* (19), a learned Single Judge held that if the High Court comes to the conclusion that affidavit in support of the application for grant of a writ was not candid and did not fully state the facts but either suppressed the material facts or stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits and where there is such a conduct which is calculated to deceive the Court into granting the order of rule *nisi,* the petition should on that ground be dismissed.

(15) In *Chiranji Lal and others* v. *Financial Commissioner, Haryana and others* (20), a Full Bench approved the observations made in *Bhupinderpal Kaur's* case (supra) and held that where there has been a *mala fide* and calculated suppression of material facts which, if disclosed, would have disentitled. the petitioners to the extraordinary remedy under the writ jurisdiction or in any case, would have materially affected the merits on both the interim as well as ultimate relief claimed, the writ petition should not be entertained.

(16) In *Harbhajan Kaur* v. *State of Punjab and others* (21), the Division Bench held as under :—

"The writ petitioners have tried to approach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since 1986 as is revealed from a perusal of the order passed in

(19) (1968) 70 P.L.R. 169.
(20) (1978) 80 P.L.R. 582.
(21) 1994 P.L.J. 287.

petition No. 363 of 1986 (Sham Singh and another v. Punjab Wakf Board). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal, the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner; that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings Smt. Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

(17) The Court further hald that this conduct of the petitioners amounted to contempt of Court and, therefore, issued a notice of contempt of Court.

(18) In *Pawan Kumar* v. *State of Haryana and another* (22), another Division Bench held that a party who seeks relief from the High Court in the exercise of its equitable jurisdiction under Article 226 of the Constitution, must come with all *bona fides,* must make true, candid and full disclosure of all the relevant facts. Its conduct must be above board and there should not be any attempt by a party to mislead the Court.

(19) In C.W.P. No. 15802 of 1997, *Varinder Kumar Jain* v. *State of Punjab and others,* decided on. 18th February, 1999, this Court has reiterated the above mentioned legal propositions and declined relief to the petitioner who had suppressed the facts relating to cancellation of allotment and had made an attempt to secure relief *qua* the order of ejectment by withholding relevant facts from the Court.

(20) In the case in hand, the petitioner has deliberately refrained from stating that he was dismissed from service on being found guilty of grave charge of defrauding the government and further that he was responsible for not making entries in the G.P.F. account. We, therefore, hold him guilty of having approached the Court with tainted hands. Consequently, the writ petition is dismissed with costs which we assess as Rs. 2,500.

R.N.R.

(22) 1994(5) S.L.R. 73.

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