



GAHC010234062017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WP(C) No.1816 of 2017

Abdul Karim Sarkar,
Son of Late Abdur Rahman Sarkar,
Resident of Village: Atghoritari, PO: Maragadadhar,
PS: Golokganj, District: Dhubri, Assam, PIN – 783335.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department, Dispur, Guwahati – 781006.
2. The Director of Secondary Education, Assam, Kahilipara, Guwahati – 781019.
3. The I/C Head Mudaris of Lohajani Barbalarchar Pre-Senior Madrassa, Village: Lohajani, PO: Moragadadhar, PIN – 783335, District: Dhubri, Assam.
4. Abdul Karim,
Son of Late Ansar Ali Sarkar,
Village: Lahajani (Borbalachar), PO: Moragadadhar,
District: Dhubri, Assam, PIN – 783336.

...Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A.R. Bhuyan, Advocate.

For the Respondents : Ms. H. Terangpi, Standing Counsel, Education (Secondary) Department, for respondent Nos.1 & 2.

Date of Judgment : 14.12.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Ms. H. Terangpi, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.1 & 2.

2. The petitioner, by way of instituting the present writ proceeding, has presented a challenge to the Notification dated 16.01.2017 issued by the Director of Madrasa Education, Assam, by which his services as Head Mudaris of Lohajani Barbalarchar Pre-Senior Madrasa came to be terminated.

3. The petitioner was initially appointed as Head Mudaris of Lohajani Barbalarchar Pre-Senior Madrasa on 28.07.1996. The said Madrasa, at the relevant point of time, was in the venture stage. The case of the petitioner and other eligible staff of the said Madrasa came to be considered for provincialisation and upon such consideration being made under the provisions of the Assam Venture Madrasa Educational Institution (Provincialisation of Services) Act, 2011 (as amended) vide order dated 27.12.2013, the services of the petitioner came to be provincialised as Head Mudaris.

4. Poised thus, a show cause notice came to be issued to the petitioner on 18.08.2016 requiring him to submit his original mark-sheets pertaining to the Higher Secondary qualification acquired by him from the Assam Higher Secondary Education Council (hereinafter referred to as "the Council"). The said show cause notice was issued on the basis of a complaint received from one Abdul Karim (respondent No.4 herein). The said notice was followed by communications dated 18.08.2016 and 16.09.2016 requiring the petitioner to submit his written statement in the matter as well as to appear for an enquiry.

The petitioner submitted his written statement on 29.06.2016.

The respondent authorities thereafter on consideration of the matter, vide Notification dated 16.01.2017, holding that the certificates pertaining to the Higher Secondary qualification as submitted by the petitioner were all fabricated and counterfeit, as confirmed by the Council proceeded to terminate the services of the petitioner.

5. Being aggrieved by his termination, the petitioner preferred the instant writ petition.

6. Mr. A.R. Bhuyan, learned counsel for the petitioner has urged that the certificates as submitted by the petitioner to his Higher Secondary qualification for the purpose of his provincialisation were the same certificates that were handed over to him by his colleague Abdul Karim. It is contended by Mr. Bhuyan that the petitioner had appeared for his Higher Secondary Final Examination in the year 2007 and therein had secured compartmental in English paper. Thereafter, in the year 2008, the petitioner had appeared in the English subject as a compartmental candidate, however, his result was withheld. It is at that stage that Abdul Karim had assured the petitioner that he would clear the reasons behind withholding of the results of the petitioner and bring from the Office of the Council the certificates of the petitioner, which were subsequently brought and handed over to the petitioner. Mr. Bhuyan submits that it is these certificates that the petitioner produced before the authorities for the purpose of consideration of his case for provincialisation. It is thus, contended by Mr. Bhuyan that the petitioner is at not fault and he was actually a victim in the matter.

7. Mr. Bhuyan has submitted that the requirement of possessing a

Higher Secondary qualification is not prescribed for holding the post of Head Mudaris in a Pre-Senior Madrassa and as such, even if it is held that the certificate of the petitioner pertaining to his Higher Secondary qualification is not acceptable, the petitioner still can be continued as a Head Mudaris of the Madrassa in question. It is further submitted by Mr. Bhuyan that the services of the petitioner having been provincialised, he had become a Government servant and without recourse to the provisions of the Assam Services (Discipline & Appeal) Rules, 1964 (hereinafter referred to as "the 1964 Rules") read with Article 311 of the Constitution of India, the services of the petitioner could not have been terminated. In other words, no Departmental Proceeding having been initiated against the petitioner and conclusions reached therein not based on material proved in such enquiry, the impugned order dated 16.01.2017 is not sustainable and requires interference from this Court.

8. Per contra, Ms. H. Terangpi, learned standing counsel, Education (Secondary) Department submits that the provincialisation of the services of the petitioner was obtained by misrepresentation. The Departmental Authorities on receipt of a complaint from the respondent No.4 herein, i.e. Abdul Karim, about the Higher Secondary certificate of the petitioner to be forged and the said fact being approved by the Council, vide its communication dated 09.05.2016, wherein it was stated that the Higher Secondary certificates of the petitioner were counterfeit, the show cause notice dated 18.08.2016 came to be issued to the petitioner.

9. It is submitted by Ms. Terangpi that the contention of the petitioner in his written statement that he had not committed any fraud in the matter but was a victim inasmuch as he had only produced on a *bonafide* belief before the

Authorities the certificates as were handed over to him by Abdul Karim is not sustainable inasmuch as it is clear from the application submitted by the petitioner that he had therein in categorical terms disclosed that he possessed the Higher Secondary qualification, which he had stated to have acquired in the year 2010. Further, learned counsel representing the Education (Secondary) Department submits that the said contention of the petitioner is further not acceptable on the fact that after issuance of the show cause notice dated 18.08.2016, the petitioner was asked to submit his reply and the petitioner vide his reply dated 30.08.2016 had categorically stated that he required further time for submission of his documents as he had lost all certificates that were required to be produced by him before the Authorities.

10. It is submitted by Ms. Terangpi that the said stand of the petitioner reflects that the stand taken by him in his subsequent show cause reply dated 26.09.2016 is clearly an afterthought and was so taken to give coverage to the illegality committed by him. By making the above submissions, the learned standing counsel, Education (Secondary) Department has submitted that the Notification dated 16.01.2017 requires to be upheld and a fraud being apparent, there is no occasion for subjecting the petitioner to a proceeding under Rule 9 of the 1964 Rules, which would be nothing but an empty formality.

11. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

12. The petitioner for the purpose of provincialisation of his services had submitted his requisite information in the prescribed format on 18.06.2012 under his signatures. In the said application, the petitioner had also disclosed

his educational qualifications and had stated that he had acquired his Higher Secondary qualification in the year 2010 from the Council with 40.18% marks. Basing on the said disclosure, the respondent authorities, vide order dated 27.12.2013, provincialised the services of the petitioner as Head Mudaris of Lohajani Barbalarchar Pre-Senior Madrassa. Thereafter, the respondent No.4, basing on an RTI reply obtained by him, approached the Director of Madrassa Education, Assam, vide his representation dated 06.08.2016, informing the authority that in terms of the RTI reply, as received by him, the documents submitted by the petitioner pertaining to his Higher Secondary Final Examination, 2010 were all forged.

Basing on the said disclosure and the verification made by the Departmental Authorities, the petitioner was issued with a show cause notice dated 18.08.2016.

13. As revealed from the records, the petitioner in pursuance to receipt of the said show cause notice dated 18.08.2016 had submitted an application dated 30.08.2016, wherein he sought for 45(forty-five) days time for submitting the documents sought for on the ground that the certificates sought for by the Departmental Authorities were lost by him. Thereafter, in pursuance to further communications issued to the petitioner by the Departmental Authorities, the petitioner finally on 26.09.2016 submitted his written statement of defence. In his written statement, the petitioner had projected a story to the effect that he had appeared in the Higher Secondary Final Examination in the year 2007 but secured compartmental in English paper. He had again appeared for the compartmental paper in the year 2008 but his results were withheld. The respondent No.4 at the time when the provincialisation exercise was to be undertaken had approached him and undertook to get the petitioner's

certificates from the Council. The respondent No.4 thereafter, had incorporated the mark-sheet and certificate of the petitioner pertaining to his Higher Secondary qualification in the application submitted by the petitioner, which was thereafter forwarded to the concerned authorities for processing the case of the petitioner for provincialisation.

The said stand of the petitioner was reiterated by Mr. A.R. Bhuyan during the course of hearing of the matter. Accordingly, at the first instance the said stand is to be considered.

14. It is the categorical stand of the petitioner that he had appeared in the Higher Secondary Final Examination in the year 2007 and thereafter, in the year 2008 for the compartmental paper in English. The petitioner had not contended that he again had appeared in the Higher Secondary Examination in the year 2010 or appeared in any examination pertaining to his compartmental paper after 2008. Accordingly, acquisition of the Higher Secondary qualification by the petitioner will pertain to the year 2007 or 2008 and can never be of 2010. The petitioner in his application dated 18.06.2012 had disclosed that he had passed the Higher Secondary Examination in the year 2010. The said information as furnished by the petitioner is a clear misrepresentation.

Accordingly, the contention of the petitioner that he had not committed any fraud in the matter but was a victim of the fraud committed upon him by the respondent No.4, is clearly an afterthought and cannot be given any sustenance.

15. This when viewed in the context of the disclosure made by the petitioner in his communication dated 30.08.2016, wherein he had sought time for submission of the documents, as required by him in the show cause notice

dated 18.08.2016, on the ground of having lost all the said documents as sought for, clearly depicts that the stand subsequently taken in his show cause reply dated 26.09.2016 was an afterthought. The petitioner in his communication dated 30.08.2016 had not even whispered that the respondent No.4 had kept back the certificates pertaining to his Higher Secondary qualification. As such, the said contention cannot be accepted and accordingly, the same stands rejected.

16. It is settled law that when an appointment is procured by a person on the basis of forged documents, it would amount to a misrepresentation and fraud upon 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 enquiry. It is also a settled position of law that dishonesty should not be permitted to bear the fruit and benefit those who have frauded or misrepresented themselves. In such circumstances, the Court should not perpetuate the fraud by entertaining petitions on their behalf. If by obtaining 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 options of the employer. When a person 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 law. Fraud vitiates everything.

17. The said settled position of law when applied to the facts obtaining in the present case, it is seen that the provincialisation of the services of the petitioner was effected only on account of the misrepresentation made by him by producing forged documents pertaining to his Higher Secondary qualification. In the event the said forged documents were not placed before the concerned

authorities, the petitioner's case for provincialisation as Head Mudaris would not have materialized. This Court in exercise of its equitable jurisdiction cannot permit perpetration of a fraud as the Courts are obliged to do justice by promoting good faith. It is trite law that fraud and justice never dwell together. Accordingly, the provincialisation of the services of the petitioner based on the forged documents amounts to a misrepresentation and the same cannot be sustained.

18. The contention of the petitioner that the Notification dated 16.01.2017 could not have been issued without resorting to a proceeding under the provisions of 1964 Rules, is considered only to be rejected. The provincialisation of the services as now established was so obtained by the petitioner by resorting to misrepresentation by submitting forged documents. The Higher Secondary qualification as projected by the petitioner to be possessed by him has now been established to be based on forged documents. The petitioner was given a due opportunity for submission of his reply by way of issuance of the show cause notice dated 16.01.2017 and in the reply after taking a stand, the petitioner had contended that he had nothing to say if there was a fabrication in his certificates.

19. The position that the certificates submitted by the petitioner were false/forged stood established and as noted hereinabove, the petitioner had projected himself to have acquired the Higher Secondary qualification in the year 2010 without contending of having taken any exam for the purpose after 2008, there is no material left to be proved, which would require initiation of a proceeding under the provisions of the said 1964 Rules. The basic materials having been established and proved, there is no requirement to further subject

to the petitioner to a proceeding under the provisions of the said 1964 Rules, which exercise would also be only to arrive at the same conclusion with regard to the certificates as produced by the petitioner pertaining to his Higher Secondary qualification were false/forged.

20. The contention of the learned counsel for the petitioner that the insistence by the respondent authorities on the Higher Secondary qualification for provincialisation of the services of the petitioner as Head Mudaris is clearly misplaced inasmuch as for holding the said post, Higher Secondary qualification is not called for, is rejected on the ground that the requirement or not of the said qualification for holding the post of Head Mudaris would not arise in the present case inasmuch as the petitioner had produced his Higher Secondary qualification particulars in the application and the said particulars having been found to be a misrepresentation, the provincialisation of the services of the petitioner was cancelled by the respondent authorities basing on such misrepresentation, which cannot be said to be an act done arbitrarily or illegally. In such view of the matter, the issue whether the Higher Secondary qualification is called for or not for holding the post of Head Mudaris will not arise in the matter and cannot be considered given the conduct of the petitioner in furnishing a forged document and laying a claim basing thereon for provincialisation of his services. Accordingly, the said contention also stands rejected.

21. As such, in my considered opinion, the non-holding of a proceeding under the provisions of the 1964 Rules had not caused any prejudice to the petitioner and he cannot now be permitted to contend that the admitted facts available on record pertaining to his Higher Secondary qualification must again



be proved by subjecting the same through a proceeding under Rule 9 of the 1964 Rules. Accordingly, it is held that non-initiation of any Departmental Proceeding in the matter against the petitioner has caused no prejudice and it is further held that the Departmental Proceeding even if would have initiated, would have come to the same conclusion as available on record with regard to the educational qualification of the petitioner pertaining to his Higher Secondary Examination results. In other words, the initiation of a Departmental Proceeding in the fact circumstances involved would be just a mere empty formality.

22. In view of the conclusions reached hereinabove, the writ petition has got no merits and accordingly, it stands dismissed. However, there shall be no order as to cost.

JUDGE

Comparing Assistant