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W.P. 16748 (W) of 2018

**Bhriguram De
Versus
State of West Bengal & others**

Mr. Saktipada Jana,
Mr. Sankha Subhra Roy
... for the petitioner.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag
... for the State.

Mr. Biswajit De,
Mr. D. Chakraborti,
Ms. Soma Chakraborty
... for respondent no.5.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the stoppage of his salary by way of letters dated July 9, 2018 and July 19, 2018 issued by the Administrator of the Chittaranjan Colony Hindu Vidyapit (H.S.), a government sponsored higher secondary school.

2. It is the case of the writ petitioner that his salary has been stopped from the month of August, 2018 and he is greatly prejudiced by the same. The petitioner submits that on April 12, 2018 the Administrator had written to him regarding the leave record in his Service Book and had requested him to submit the leave record and clarification with proper supporting documents so as to enable the

Administrator to process the e-pension payable to the writ petitioner upon his retirement on January 31, 2019.

3. The petitioner thereafter wrote to the school authorities on May 8, 2018 requesting the authorities to submit his pension papers to the concerned authorities. The petitioner thereafter replied to the letter dated April 12, 2018 vide his letter dated June 5, 2018 posted on June 6, 2018 seeking the details of his service book in relation to the leave availed by him from May 1, 2009 till date.

4. The petitioner has not annexed any supporting documents wherein he has submitted the leave records to the school authorities.

5. Mr. Biswajit De, counsel appearing on behalf of the respondent no. 5 submits that there is gross suppression of material facts before this Court amounting to an abuse of process of Court, as the writ petitioner has suppressed the documents in relation to leave that has been enjoyed by him from 1991 to 2018. He submits that the leave records were reconstructed as per the discussion with the petitioner on May 28, 2018 and the same was also handed over to the petitioner on July 6, 2018. Documents evidencing receipt by the petitioner were handed over to the court.

6. Counsel appearing for respondent no.5 further submits that the petitioner has been absent in school in the most part of August and September, 2018 except for a mere 6 days.

7. It has also been brought to my notice by the respondents (neither any statement with regard to the same in the pleadings nor any documents have been annexed to the writ petition) that the petitioner himself had made an application dated April 19, 2018 for sanctioning special leave in exceptional circumstances for a period of 356 days from 2011 to 2017. This application has been forwarded to the West Bengal Board of Secondary Education (Board) by the concerned school authorities on April 27, 2018. However, no reply has yet been received from the Board with regard to the special leave sought by the writ petitioner.

8. Accordingly, he prays that the matter be either dismissed in limine or he may be allowed to file an affidavit to bring on record the material documents suppressed by the writ petitioner.

9. I have heard the counsel appearing for the parties and perused the materials on record.

10. On a perusal of the documents handed over by the counsel appearing for respondent no. 5, I am unable to comprehend as to why the petitioner has suppressed the documents in relation to application for leave for 356 days made

on April 19, 2018 while filing this writ petition. For him to get justice, it is required that he comes before this court with clean hands. Suppression of all the 'leaves' that he has taken and admitted to is a material fact that is relevant in the present case as he is challenging the salary overdrawn by him, as a result of the unsanctioned leave taken by him in the school. Without producing these documents in Court, he has tried to create an impression that great injustice has been done to him by the school authorities for stopping the salary overdrawn on account of leave. These documents have not been disclosed in the writ petition and since these documents are the basis of the salary overdrawn calculated by the Administrator and provided to the petitioner the same amounts to suppression of material facts.

11. The letters dated July 9, 2018 and July 19, 2018 clearly state the salary he has overdrawn and the calculation has been done after checking the leave record of the petitioner that were handed over to him on July 6, 2018. Apart from the fact that there is no detailed calculation provided to the writ petitioner, there is nothing wrong with the above letters.

12. The only question that arises in this writ petition is whether this court sitting in its writ jurisdiction should take note of the material suppression by the writ petitioner and dismiss this writ petition. It is trite law that a petitioner has to come with clean hands and has to disclose the relevant materials and act in good faith. Any departure from the same may lead to a dismissal of a writ petition at

the very threshold. At this juncture, I embark on an examination of the definition of fraud, fraudulent concealment and the doctrine of clean hands, and thereafter, on how courts in the past have handled such situations.

13. ‘Fraud’, according to Black’s law Dictionary, 10th Edition, is a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment; a reckless misrepresentation made without justified belief in its truth to induce another person to act; a tort arising from a knowing or reckless misrepresentation or concealment of material fact made to induce another to act to his or her detriment.

14. “Fraudulent concealment” as defined in Black’s law Dictionary, 10th Edition, is the affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal.

15. According to the Law Lexicon, Third Edition (2012), the Latin Maxim “*Suppressio veri, suggestio falsi*” defines that the suppression of the truth is equivalent to the suggestion of falsehood. The suppression or failure to disclose what one party is bound to disclose to another, may amount to fraud. Where a person is found to be guilty of *suppressio veri suggestio falsi* for having concealed material information from scrutiny of the Court, he is not entitled for any

equitable relief under order 39 of CPC (5 of 1908). [*Arbind Kumar Pal v. Hazi Md. Faizullah Khan*, AIR 2007 (NOC) 1035 (Pat) : (2006) 1 BLJR 430].

16. The maxim that one who comes to Court must come with “clean hands” is based on conscience and good faith. The maxim is confined to misconduct in regard to, or at all events connected with, the matter in litigation. “Clean hands” means a clean record with respect to the transaction with the defendant, and not with respect to any third person.

17. As authored by Ruma Pal, J. in ***S.J.S. Business Enterprises (P) Ltd. -v- State of Bihar and others*** reported in **(2004) 7 SCC 166** [*Coram: Ruma Pal and P. Venkatarama Reddi, JJ.*], suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion is provided below:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken.....”

18. In ***S.P Chengalvaraya Naidu (Dead) by LRs -v- Jagannath (Dead) by LRs and Others*** reported in **(1994) 1 SCC 1** [*Coram: Kuldeep Singh and P.B. Sawant, JJ.*], the Supreme Court came down heavily on petitioners filing cases based on falsehood and suppression and observed as follows:

“5.The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation.

6. A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage of another..... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.”

19. In a well-known Calcutta High Court case in **Chittaranjan Das -v- Durgapore Project Ltd. & Ors.** reported in **99 CWN 897** [Coram: Satya Brata Sinha and Basudeva Panigrahi, JJ.], the Court observed at paragraph 64 that *“Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts.”*

20. In **Asiatic Engineering Co. -v- Achhru Ram and others** reported in **AIR 1951 Allahabad 746 (Full Bench)** [Coram: Malik, C.J., Sapru and V. Bhargava, JJ.], the Court observed that no relief can be granted in a writ petition under Article 226 which is based on misstatement or suppression of material facts. The Court observed in paragraph 51, at page 767 as follows:

“51. In our opinion, the salutary principle laid down in the cases quoted above should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution. A person obtaining an *ex parte* order or a *rule nisi* by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining *ex parte* orders by suppression, misrepresentation or misstatement of facts.”

21. In ***Indian Bank –v- M/s Satyam Fibres (India) Pvt. Ltd.*** reported in ***JT 1996 (7) SC 135*** [Coram: Kuldip Singh & S. Saghir Ahmad, JJ.] , the Apex Court further observed as follows:

“23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court, it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.”

22. Similar principles have been enunciated in English cases. In ***The King –v- Williams and Others*** reported in ***(1914) 1 KB 608*** [Coram: Channell, Rowlatt, Atkin, JJ.], the Court observed at page 614 as follows:

“.....In my view the writ is discretionary. A party may by his conduct preclude himself from claiming the writ *ex debito justitiae*, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of *certiorari*. This special remedy will not be granted *ex debito justitiae* to a person who fails to state in his evidence on moving for the *rule nisi* that at the time of the proceedings impugned he was unaware of the facts on which he relies to impugn them.”

23. As seen from the various judgments discussed above, the Indian and English Courts have consistently taken the view that one who approaches the Court must come with clean hands. It is the bounden duty of the Court to keep the stream of justice absolutely clean. Anyone who approaches must give full and fair disclosure of all the materials. The Courts must not allow anyone to abuse the court process. In case the petitioner conceals anything that is known to be material such an action would lead to an inference of fraud, and even if not fraud, definitely would lead to a presumption that the petitioner has not approached the court with clean hands.

24. One must be even more careful when one approaches this court in its extraordinary jurisdiction for seeking a writ of mandamus and no person can be permitted to adopt dubious, dishonest and fraudulent means and make false averments or conceal the facts while submitting such a writ petition. If a person does so, not only is the petitioner not entitled to any relief from the Court but should be subject to exemplary costs so as to deter future litigants from pursuing a similar course of action.

25. I have no hesitation in saying that the doors of justice would be closed for a litigant whose case is based on falsehood or suppression of material facts. Fraud and justice never dwell together. They are alien to each other. Fraud pollutes the

sanctity, regularity, orderliness and solemnity of the judicial proceedings. It is the bounden duty of the Court to keep the stream of justice absolutely clean.

26. Finally, upon examination of the above mentioned judgments, it is axiomatic that any petitioner seeking a writ of mandamus, has to approach the court with clean hands and to produce before the court all material facts that are relevant for adjudication of the said matter. The principle of *uberrima fides* – abundant good faith - as stated in ***The King –v- The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington*** reported in **(1917) 1 KB 486** applies in the present case. A petitioner who does not bring on record the relevant true facts before the court, does not deserve to get any relief from the court.

27. From examination of the documents produced by the respondent no. 5, I am of the view that the writ petitioner has suppressed the material facts that should have been brought to the notice of this Court. This view of mine is buttressed by the fact that the documents produced by the respondent no. 5 referred to calculation of leave that has been made in the presence of the writ petitioner and were also handed over to him in the month of July, 2018. Furthermore, his own application for grant of special leave made in the month of April, 2018 has not been annexed to the writ petition. The petition having been

filed on August 28, 2018, I see no justified reason as to why these documents were suppressed before this Court.

28. It is to be further noted that the writ jurisdiction is a discretionary jurisdiction and the court applying its judicial discretion may refuse to entertain this writ petition when appraised of the facts that the writ petitioner has not acted *uberrima fides*.

29. Before finally pronouncing my decision, I must state that this court, in all fairness gave an opportunity, after hearing and going through the documents produced by the respondents, to the petitioner to withdraw the writ petition (with liberty to file afresh with better particulars). However, Mr. Saktipada Jana appearing on behalf of the petitioner, refused and pressed the writ petition unabated. One is reminded of the saying, “*you can take a horse to the well, but cannot force it to drink*”. In view of the same, I dismiss the writ petition in limine. I am of the view that exemplary costs should be awarded. However, on a compassionate plea made by Mr. Jana, the order as to costs is limited to Rs.5,000/- only, payable to the West Bengal State Legal Services Authority, Kolkata, within two weeks from date.

30. All parties are to act on the server copy of this order.

31. Documents handed over by the respondent no.5 in court should be kept on record.

32. Urgent certified website copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)