

LIFE INSURANCE CORPORATION OF INDIA & ORS

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v.

TRIVENI SHARAN MISHRA
(Civil Appeal No. 4335 of 2007)

SEPTEMBER 2, 2014.

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[SUDHANSU JYOTI MUKHOPADHAYA AND
PRAFULLA C. PANT, JJ.]

Service Law :

Removal from service – On the ground that the employee gave a false declaration of his educational qualifications at the time of his recruitment – Post of peon – Maximum qualification prescribed as IX pass – Respondent though pursuing his M.A. (previous) at the time of recruitment, gave his educational qualification as XI – High Court directing his reinstatement and to consider imposition of penalty as was done in the case of another similarly situated employee – Held: High Court has rightly taken note of the fact that another similarly situated candidate was awarded punishment of two increments with cumulative effect, and rightly directed the employer to consider imposition of similar penalty after reinstatement of writ petitioner – Prescribing maximum educational qualification for the post of peon, disapproved – Constitution of India, 1950 – Arts. 14 and 16.

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The Senior Divisional Manager of the appellant-Life Insurance Corporation invited applications for the post of Peon through Employment Exchange. As regards educational qualifications it was prescribed that a candidate should be IX pass and a candidate with more than 50% marks in XII or a graduate or a post-graduate would not be considered. The appellant, in his application, mentioned his qualification as Higher Secondary (XIth old) and also made a declaration that he did not possess any higher qualification. However,

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A after a couple of years of his appointment, it was found that he was a graduate and at the time he applied for the post he was pursuing M.A. (previous). As such, he was removed from the service. However, the High Court, on the writ petition filed by the respondent, found that the
B criterion that a candidate should not possess a higher qualification than IX standard was violative of Art. 14 of the Constitution of India and further that the punishment awarded to the respondent was discriminatory, as
C another similarly situated employee was inflicted with a penalty of stoppage of two increments with cumulative effect. The High Court, therefore, directed the respondent to be reinstated and to consider to impose upon him the penalty similar to the other candidate.

Dismissing the appeal, the Court

D HELD : 1.1 It is not disputed that the respondent was already graduate on the date he submitted his application for the post of Peon, and the declaration made by him at the time of seeking employment that he possessed no other qualification was incorrect.
E However, the High Court has rightly relied on the law laid down by this Court in *Mohd. Riazul Usman Gani's* case * wherein it has deprecated the criteria of maximum qualification for the post of peon. [Para 8 and 11]
F [700-D-E; 702-C-D]

**Mohd. Riazul Usman Gani and Ors. v. District & Sessions Judge, Nagpur and Ors.* 2000 (1) SCR 771 : (2000) 2 SCC 606 – relied on.

Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. (2006) 13 SCC 619 – distinguished.

G 1.2 For mentioning less qualification to secure the job, similarly situated another employee was let off by the appellant by awarding punishment of stoppage of increments for two years with cumulative effect. The High
H Court has rightly taken note of said fact while allowing

the writ petition, and directing the employer to consider the imposition of similar penalty after reinstatement of the writ petitioner. There is no sufficient reason to interfere with the impugned order passed by the High Court. [Para 13-14][703-E-G] A

Kendriya Vidyalyaya Sangathan and Ors v. Ram Ratan Yadav 2003 (2) SCR 361 : (2003) 3 SCC 437 – held inapplicable. B

CASE LAW REFERENCE

(2006) 13 SCC 619	distinguished	para 9	C
2000 (1) SCR 771	relied on	para 11	
2003 (2) SCR 361	held inapplicable	para 12	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4335 of 2007.

From the judgment and order dated 06.01.2006 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 542 of 2004 (S). D

B. B. Sawhney, Sr. Adv, and Ms. Indra Sawhney, Adv's. for the Appellants. E

Rajesh Singh, Adv. for the Respondent.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J.

1. This appeal is directed against the judgment and order dated 6th January, 2006 passed by the High Court of Madhya Pradesh in Writ Petition No. 542 of 2004 whereby the writ petition has been allowed, and the writ petitioner is directed to be reinstated in service. It is further directed by the High Court that the appellant may consider to impose the penalty against the present respondent as was awarded in the case of Daluram Patidar, another employee of the appellant-Corporation. F G

2. Brief facts of the case are that Senior Divisional Manager of Life Insurance Corporation of India, at Shahdol in H

A order to recruit peons (sub-staff) invited applications from the qualified candidates through Employment Exchange. Pursuant to that, respondent - Triveni Sharan Mishra submitted his application. As per the qualification prescribed by the appellant, a candidate was required to have passed Standard IX, but the candidates who have passed Standard XII and have secured 50% or more marks, Graduates or Post-graduates were not to be considered for the post. The respondent (writ petitioner) in his application (Annexure P-3) for the above post mentioned his qualification "Higher Secondary (XIth old)". At the end of the application dated 20th January, 1996, a declaration was made by the candidate (writ petitioner) that he did not possess any other qualification except the one mentioned in the application. The respondent – writ petitioner appears to have got selected for the post of Peon. However, after couple of years of his service, it was found that he possessed Bachelor's Degree and he was pursuing M.A. (previous) in Economics at the time he applied for the post as above. On this, the respondent was served with the charge-sheet by the appellant and departmental enquiry was initiated. On conclusion of the departmental enquiry, the respondent (writ petitioner) was found guilty of misconduct. Consequently, he was served with the show-cause notice as to why he be not removed from the service. On consideration of the reply submitted by the respondent, the Senior Divisional Manager, L.I.C. of India, Shahdol vide his order dated 30th October, 2000 (Annexure P-11), removed the respondent - writ petitioner from the service. The said order was challenged by the respondent before the Departmental Appellate Authority i.e. Zonal Manager, Life Insurance Corporation of India, Delhi. Upon consideration of the appeal submitted by the respondent against imposition of penalty of removal in terms of Regulation 39(1)(f) of the LIC of India (Staff) Regulations, 1960 (hereinafter to be referred to as "the Regulations") passed by the Senior Divisional Manager, Shahdol, the Appellate Authority concurred with the view taken by the said Authority, and dismissed the appeal on 18th February, 2003.

3. Aggrieved by said order, the respondent filed writ A
petition No. 542 of 2004(s) before the High Court. The High
Court after taking action and hearing the parties found that the
qualification fixed by the present appellant that the candidate
should not possess the higher qualification than the IXth B
Standard, is violative of Article 14 of the Constitution of India. It
further found that similarly situated another employee with the
department was inflicted with the penalty of stoppage of
increments for two years with cumulative effect, as such the
punishment awarded to the writ petitioner was discriminatory.
Accordingly, the writ petition was allowed by the High Court. C
Aggrieved by the said decision of the High Court, this appeal
was preferred by the employer – Life Insurance Corporation
of India.

4. We have heard learned counsel for the parties and D
perused the papers on record.

5. The qualification prescribed by the appellant for the
post of peon, as mentioned in Annexure P-1 reads as under:

“b) Qualifications A pass in ST.IX. However Candidates E
who passed XII Std. and have secured 50% or more
marks, graduates or post graduates will not be
considered.

Xx xx xx xx xx.”

6. The charge-sheet served on the writ petitioner is F
reproduced below:

CHARGE SHEET

You, Shri Triveni Sharan Mishra, SR no.704768,
Sub Staff, Divisional Office Shahdol are hereby charged G
as under:

1. That, in your application dated 20.01.1996 for the post
of Sub-Staff, submitted to Shahdol Divisional Office of
LIC of India, you have mentioned your educational
qualification as Higher Secondary (11th old), whereas your
educational qualification at that time was of Graduation H

A level, which was more than the desired qualification for the post of Sub-Staff.

B 2. That you have got appointment for the post of Sub-Staff by fraudulently making false statement regarding the educational qualification, whereas you had taken admission as a regular student in Govt. Post Graduation College Shahdol in B.A.(Final) in academic year 1989-90 and your Roll no. was 48717 to appear in the examination. And in year 1990-91 also you had taken admission as a Regular student in M.A.(Previous) Economics & to appear in the examination your Roll No. was 12696, which was deliberately suppressed by you.

C 3. That in the declaration given on 22.03.1996 at the time of interview also, you have suppressed your actual educational qualification and fraudulently produced the duplicate Transfer Certificate no.79, of Government Raghuraj Higher Secondary School no.1, Shahdol in support of your having passed XI th standard.

D (The provisional list of the documents on the basis of which the charges are to be proved is enclosed)

E Your aforesaid act, is in contravention to rules of the Corporation and prejudicial to good conduct, thereby violating the provisions of Regulations 21, 24 and 39(1) of the aforesaid (Staff) Regulations 1960, for which one or more of the penalties specified under Regulation 39(1) (a) to (g) can be imposed on you.

F However, before I proceed further in the matter, I hereby give you an opportunity to either admit or deny the aforesaid charges in writing. In case you admit the charges, a statement of admission and in the event of your denying the charges, a statement of denial, together with the list of documents by which and a list of witnesses through whom you propose to defend your case may be submitted to the undersigned within a period of 15 days from the date of receipt of this charge sheet.

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In case your written statement, as mentioned above, is not received within the stipulated period or if it is found to be unsatisfactory, further proceedings shall ensue without any reference to you.” A

7. The reply given by the writ petitioner to above charge-sheet to the Department is quoted below: B

“To

The Divisional Manager I/C.
LIC of India
Divisional Office
Shahdol
M.P. C

Through Proper Channel

Dear Sir,

RE: DISCIPLINARY PROCEEDINGS UNDER D
REGULATION 39 OF THE LIC OF INDIA (STAFF)
REGULATIONS, 1960 AND CHARGESHEET DATED
29.02.2000, ISSUED TO ME.

With reference to above charge sheet, my submission is as under : E

1. That I was an unemployed person, and I was in dire need of employment. Therefore, when I got information regarding vacancy for the post of Sub-Staff from Employment Exchange Office, I immediately applied for the post of Sub-Staff. F

2. It is true that the desired qualification for the post of Sub-Staff was XIth pass along with other documents.

3. Since I was XIth passed, hence I had mentioned my educational qualification as XIth, as the additional higher qualification was not a constraint in fulfilling the responsibilities for the applied post, I had not disclosed it. By doing so I did not intend to suppress my additional qualification. G

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A 4. After having been appointed on the post of Sub-Staff, I have served the Corporation with utmost integrity, honesty & capacity. And my higher qualification has been useful in performing my duties towards the Corporation. Thus I have not violated the regulations 21 & 24.

B 5. If I have unknowingly violated any rules & regulations, I regret for the same. I have never intended to violate the regulations.

C With my aforesaid submission, I humbly request you to take a sympathetic view in my case and absolve me from the above referred charges.

Yours faithfully,

Triveni Sharan Mishra
Sub-staff, Divisional Office,
Shahdol .R.No.704768."

D 8. It is not disputed before us that the respondent was already graduate on the date he submitted his application for the post of Peon, and the declaration made by him in Annexure P-3 at the time of seeking employment that he possessed no other qualification was incorrect. The question before us is as to whether the qualification as mentioned above is violative of Article 14 of the Constitution of India or not, and as to whether awarding punishment of removal to the writ petitioner, is discriminatory in the light of the one awarded to similarly situated one Daluram Patidar i.e. only punishment of stoppage of increments for two years with cumulative effect.

F 9. Mr. B.B. Sawhney, learned senior counsel appearing on behalf of the appellants heavily relied in the case of **Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Anr.** (2006) 13 SCC 619, and it is pointed out that in said case the maximum educational qualification for a "badli" workman was 8th standard, and the respondent of said case had made false declaration on which services of said workman were terminated. This Court in said case quashed the award of the Labour Court dated 23rd March, 1992 setting aside the order

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of termination dated 3rd March, 1989 of the workman, and further set aside the order passed by the High Court of Kerala upholding the award of the Labour Court. A

10. We have carefully gone through the aforesaid case law. In said case issue involved was not whether or not maximum qualification can be fixed for a Class-IV/Grade-D employee, nor was in said case the employer appears to be either State or instrumentality of the State. What this Court has held in **Kerala Solvent Extractions Ltd. (Supra)** is that the Court should not be led by misplaced sympathy. Paragraphs 9 and 10 of the said judgment are re-produced below: B C

"9. Shri Vaidyanathan, learned senior counsel for the appellant, submitted, in our opinion not without justification, that the Labour Court's reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in the administration. He stated that the management will have no answer to the claims of similarly disqualified candidates which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and those who suppressed it stood to gain. He further submitted that this laxity of judicial reasoning will imperceptibly introduce slackness and unpredictability in the legal process and, in the final analysis, corrode legitimacy of the judicial process. D E F

10. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and H

A private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive
 B judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability”.

C 11. In our opinion, in the present case the High Court has rightly relied on the law laid down by this Court in Mohd. Riazul Usman Gani and Ors. Vs. District & Sessions Judge, Nagpur and Ors. (2000) 2 SCC 606 wherein it has deprecated the criteria of maximum qualification for the post
 D of peons. Relevant parts of para 16 and para 18 of the said judgment are quoted herein below:

E “16. In the present case we find that the candidates with higher education than Standard VII were completely shut out for being considered for the posts of Peons. The Recruitment Rules also provide for promotion. Rule 3(ii) we may quote:

“(ii) The District Judge may promote-

- F (a) a Peon, a Watchman, a Gardener, or a Sweeper to the post of Bailiff:
- (b) a Peon, a Watchman, a Gardener, a Sweeper or a Bailiff to the post of a Regional (Language) Section Writer, an English Section Writer or a Clerk; and
- G (c) a Peon, a Watchman, a Gardener, a Sweeper, a Bailiff, a Regional (Language) Section Writer, and English Section Writer or a Clerk to the post of Stenographer”.

18. If the appointment of a candidate to the post of Peon is restricted to his having qualified up to Standard VII he will have no chance of promotion to the post of Regional Language Section Writer or Clerk.....” A

12. However, on behalf of the appellants it is contended that suppression of material information and making false statement to secure the employment, is a serious offence to attract the dismissal of service. In this connection, learned senior counsel for the appellants referred to the case of Kendriya Vidyalaya Sangathan and Ors vs. Ram Ratan Yadav (2003) 3 SCC 437. But in our opinion, the aforesaid case referred on behalf of the appellants cannot be applied to the present case for the reason that in the said case the employee had concealed the facts relating to his character and antecedents. In said case, the employee who was selected for the post of a Teacher suppressed the information that a criminal case relating to offences punishable under sections 323, 341, 294, 506-B read with section 34 of Indian Penal Code was registered against him. As such the facts in the present case cannot be equated with the case referred. B C D

13. From the papers on record before us, it appears that for mentioning less qualification to secure the job, similarly situated another employee (one Daluram Patidar) was let off by the Life Insurance Corporation of India by awarding punishment of stoppage of increments for two years with cumulative effect. We are of the opinion that the High Court has rightly taken note of said fact while allowing the writ petition, and directing the employer to consider the imposition of similar penalty after reinstatement of the writ petitioner. E F

14. Therefore in view of the above discussion, we do not find any sufficient reason to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed. No order as to costs. G