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KHUB RAM

v.

DALBIR SINGH & ORS.

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(Civil Appeal No. 2734 of 2012)

APRIL 29, 2015

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**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]**

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Service law: Appointment – Post of Chief Inspector in Haryana Roadways – KR appointed – DS challenged appointment of KR – Writ petition allowed on the ground that KR did not meet experience certificate – Appointment of KR quashed – Direction to appoint DS from retrospective effect – MP challenged the said decision on the ground that he was one amongst the selected candidates and has better claim for appointment than DS and therefore, MP should be

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appointed in place of DS – Held: The appellant-KR is not entitled to hold the office which he obtained by submitting questionable certificates of experience and more so when he lacked the essential qualification of requisite working experience – As regard DS, he was only an applicant and

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was not among the selected 14 candidates – In that view of the matter, High Court was misled to issue a direction for his appointment and that too from an earlier date when KR was appointed, and with consequential benefits – Such directions

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could not have been issued without considering the claims of other persons in the Select List – For that reason, the directions issued in favour of DS set aside – However, the other prayer made on behalf of MP that authorities be directed to offer him appointment or consider his claim cannot be

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allowed on account of the fact that writ petition of MP filed in

1991 was decided against him and had attained finality – A
 His claim thus suffered from *res judicata* as well as
acquiescence and estoppel – In that view of the matter and
 also for the reason that a long period of more than 25 years
 has passed since the preparation of the Select List, no relief
 can be granted – However in view of inaction of the State B
 Government after becoming aware that KR lacked essential
 qualification and obtained job by fraud, State is directed to
 pay compensation of Rs.3 lacs to MP and further deposit
 Rs.1 lac with Mediation Centre – Compensation. C

Disposing of the appeals, the Court

HELD: 1. KR is not entitled to hold the office which
 he obtained by submitting questionable certificates of
 experience and more so when he lacked the essential D
 qualification of working experience in a Government/
 Semi-government/Public Sector Undertaking. MP has
 shown from the pleadings that while he was at serial no.9
 of the Select List containing 14 names prepared for
 appointment to 5 advertised posts, first respondent-DS E
 did not find any place in such Select List. This fact
 escaped the attention of Single Judge as well as Division
 Bench possibly because there was no rival claimant to
 point out such shortcoming in the case of writ petitioner- F
 DS. There is no dispute that first respondent-DS was
 only an applicant and was not among the selected 14
 candidates. In that view of the matter, the High Court
 was misled to issue a direction for his appointment and G
 that too from an earlier date when KR was appointed,
 and with consequential benefits. Such directions could
 not have been issued without considering the claims of
 other persons in the Select List. For that reason, the
 directions issued in favour of first respondent are set H

A aside. To that extent, appeal of MP has to be allowed. However, the other prayer made on behalf of MP that authorities be directed to offer him appointment or consider his claim cannot be allowed on account of the fact that writ petition of MP filed in 1991 was decided against him. Rightly or wrongly, the High Court held that he could not claim any right of appointment on account of a place in the Select List. That judgment attained finality. MP chose not to appeal against that order nor he challenged the appointment of any of the persons selected and appointed. His claim thus suffered from *res judicata* as well as acquiescence and estoppel. In that view of the matter and also for the reason that a long period of more than 25 years has passed since the preparation of the Select List, it would be inappropriate to grant any relief which may require the authorities to examine the claim of persons in the Select List for appointment to the original post which may not even be available after lapse of so many years. MP is presently about 50 years of age and has not crossed the age of superannuation and is still working on another post with Haryana Roadways. Hence he is not granted any further relief and his appeal is allowed only in part as a result whereof the direction to appoint DS is set aside. [paras 10, 11, 15] [360-B-F; 362-G-H; 363-A-D]

State of Mysore v. K.N. Chandrasekhara AIR 1965 SC 532; *R.S. Mittal v. Union of India* 1995 (2) SCR 1127 : 1995 Supp. (2) SCC 230 – referred to.

2. A disturbing feature of this case is that even after notice of the writ petition when the State of Haryana became aware that KR lacked essential qualification and his certificates were unreliable, it took no action to undo

the ill effects of fraud by taking any action against KR. As a result KR continued in service for a number of years and also earned promotions. This was at the cost of claim of other genuine selected candidates whose cases could have been considered if action had been taken at appropriate time. In such a situation, although no relief is granted to MP by ordering for his appointment, the State of Haryana is directed to compensate MP by paying him Rs.3 Lacs. A further amount of Rs.1 lac should also be deposited by the State of Haryana with the Supreme Court Mediation Centre. [para 16] [363-D-G]

Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. 2011 (1) SCR 572 : (2011) 11 SCC 520; *Buddhi Nath Chaudhary v. Abahi Kumar* 2001 (2) SCR 18 : (2001) 3 SCC 328; *Meghmala v. G. Narasimha Reddy* 2010 (10) SCR 47 : (2010) 8 SCC 383; *Central Bank of India v. Madhulika Guruprasad Dahir* 2008 (11) SCR 319 : (2008) 13 SCC 170 – referred to.

Case Law Reference

2011 (1) SCR 572	Referred to.	Para 5
2001 (2) SCR 18	Referred to.	Para 5
2010 (10) SCR 47	Relied on.	Para 10
AIR 1965 SC 532	Referred to.	Para 13
1995 (2) SCR 1127	Referred to.	Para 13
2008 (11) SCR 319	Referred to.	Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2734 of 2012

A From the Judgment and Order dated 09.11.2010 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 1510 of 2010

WITH

B C.A. No. 4097 of 2015.

C P. N. Misra, Paramjit Singh Patwalia, Vikas Singh, Aruna Bhardwaj, AAG, Tarjeet Singh, Satyendra Kumar, Ashok K. Mahajan, Deepeika Kalia, Kapish Seth, Ajay Sharma, Dr. Monica Gusain, Sanjeev Tayal (for Kamal Mohan Gupta), Naresh Bakshi, for the appearing parties.

The Judgment of the Court was delivered by

D **SHIVA KIRTI SINGH, J.** 1. The Civil Appeal and the Special Leave Petition have been heard together because claim of the parties is in respect of same post of Chief Inspector in the Haryana Roadways to which the appellant - Khub Ram was initially appointed in the year 1990 pursuant to his selection in response to advertisement dated 07.05.1989. First respondent – Dalbir Singh challenged the selection and appointment of appellant Khub Ram by filing C.W.P. No.12711 of 1992 in the High Court. That writ petition was allowed on 01.10.2010 by a learned Single Judge. Not only the appointment of Khub Ram and one more person was quashed but a direction was also issued to appoint writ petitioner – Dalbir Singh from a retrospective date with all consequential benefits. Appellant's appeal before the Division Bench was dismissed by the impugned order. The petitioner of S.L.P. – Mahavir Prasad has sought permission to file the Special Leave Petition against judgment of learned Single Judge as well as of Division Bench on the ground that he is one amongst the selected candidates and has a better claim for appointment

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than respondent – Dalbir Singh and hence order should be passed for appointing him in place of Khub Ram. This judgment shall govern both the matters which involve common issues of facts and law. A

2. Permission to file Special Leave Petition (C) No.15871 of 2012 is granted. Delay condoned. Leave granted. B

3. For the sake of convenience the facts have been noticed mainly from the records of Civil Appeal No.2734 of 2012 except where indicated otherwise. For deciding the two issues arising in these cases it is not necessary to go deeper into the facts except to notice that as per terms of advertisement dated 07.05.1989, besides a Degree of Graduation and Hindi upto Matriculation level and age qualification of 17-35 years, it was essential for the candidate to have two years' experience in Government/Semi-government or Public Undertakings and Roadways Fleet. The appellant's selection was questioned in the writ petition mainly on the ground that he did not possess the requisite experience and the two certificates submitted by him were from private transporters. There were strong arguments advanced against the selection of appellant and some others on the allegation that political influence had been exercised in their favour and it was specifically pleaded that the appellant was selected in the second round of selection as he belonged to village of the then Chief Minister. The learned Single Judge noticed that appellant's experience certificates showed that he had worked with a private Bus Service from June 1986 to June 1988 as a Field Staff (Checker) for two years and also with another private roadways as Assistant Manager between 01.09.1984 to 10.03.1987. The courts below noticed that both the certificates contradicted each other because between June 1986 to 10.03.1987 the appellant as C D E F G

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A per his certificates had worked in two different capacities with
two different private bus service. The court also found that the
two years' experience as per terms of the advertisement could
not be satisfied by showing experience of working with private
transporters as they were not covered by the expression
B 'Government/Semi-government or Public Undertakings and
Roadways Fleet'.

4. On behalf of Mahavir Prasad it has been pleaded
that the Select List contained names of 14 persons which
C included Khub Ram and Ram Niwas Rathi whose
appointments were quashed by the learned Single Judge as
well as name of appellant – Mahavir Prasad but not that of first
respondent – Dalbir Singh. On account of his place in the
D Select List Mahavir Prasad represented for appointment and
ultimately filed a writ petition for that purpose bearing C.W.P.
No.17600 of 1991 but no relief was given to him by the final
order dated 04.08.1992 which for some reason was
challenged by the State of Haryana before the Division Bench
E but not by Mahavir Prasad. But when he learnt that respondent
– Dalbir Singh has succeeded in getting a judgment against
Khub Ram and a direction for his own appointment, Mahavir
Prasad chose to challenge those judgments in favour of Dalbir
Singh by preferring the Special Leave Petition directly in this
F Court and the same was tagged for hearing along with the
Civil Appeal.

5. On behalf of appellant - Khub Ram, Mr. P.N. Misra,
Sr. Advocate raised a strong objection that writ petition should
G not have been allowed in 2010 in view of delay in impleading
the appellant as late as in 2004 when he had already earned a
promotion on 01.03.1996 and a second promotion as Traffic
Manager on 05.05.2000. It was also highlighted that because
of interim order of this Court he has continued in service and
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has been promoted as General Manager in December 2014. A
He pointed out that objection was taken to the impleadment
application dated 16.02.2004 on grounds of delay as well as
promotion already earned by the appellant. In support of the
aforesaid plea reliance was placed on judgment of this Court
in the case of Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. B
(2011) 11 SCC 520 and in the case of Buddhi Nath Chaudhary
v. Abahi Kumar (2001) 3 SCC 328.

6. Learned senior counsel Mr. Misra also submitted that
experience in private roadways fleet would meet the C
requirement of advertisement if the word 'and' appearing
before the 'Roadways Fleet' is understood and treated as 'or'.
According to him, now when the appellant - Khub Ram has
worked for long years, he cannot be denied continuance in D
service for lack of minimum experience at the stage of
recruitment. He further pointed that the appellant noticed the
error in experience certificate dated 05.06.1989 relating to
experience of two years in Shyam Bus Service from June 1986
to June 1988 and therefore he obtained a corrected certificate E
on the next day, i.e., 06.06.1989 showing such experience to
be from June 1987 to June 1988. According to the appellant,
the corrected experience certificate dated 06.06.1989 is on
record as Annexure P-2.

7. In reply, Mr. Vikas Singh, Sr. Advocate for first
respondent has pointed out that issue of delay in impleading
the appellant as a respondent in the writ petition was not argued
before the learned Single Judge or before the Division Bench.
He pointed out that in respect of two years of working G
experience in paragraph 2 of the writ petition it was claimed
that the experience required was of working in a Government
or semi-government department and such claim was admitted
by the State, second respondent in para 2 of its reply. It was

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A also shown that the learned Single Judge as well as the Division
Bench have returned concurrent findings that the appellant –
Khub Ram did not meet the experience qualification and not
only his certificates were from private bus operators but also
the same were untrustworthy because of apparent conflict and
B overlapping of a particular period in both the certificates.

8. Anticipating the arguments on behalf of appellant –
Mahavir Prasad in the light of pleadings in the appeal filed by
him, Mr. Vikas Singh, learned senior counsel for first respondent
C highlighted that no other claimant for the post joined the
litigation when first respondent preferred the connected writ
petition in the year 1992 and even till 2010 when the writ petition
was allowed, no other candidate came forward with a rival
D claim and in such circumstances writ court committed no error
in directing for appointment of first respondent as a
consequence of setting aside the appointment of appellant –
Khub Ram and another person.

E 9. Before adverting to the claims of first respondent and
similar claim of appellant – Mahavir Prasad for appointment
to the post held by the appellant – Khub Ram, it would be
appropriate to first examine the merit of appeal preferred by
appellant – Khub Ram. We have carefully looked into the
F averments made in the writ petition, the reply filed by State
and other respondents as well as the judgment of the learned
Single Judge as well as the Division Bench. We find no good
reason to take a different view in respect of the finding that the
appellant lacked the essential qualification of experience
G because his experience certificates were only from private bus
operators. It is also found that even the alleged corrected
certificate said to be dated 06.06.1989 contained in Annexure
P-2 is an unreliable document inasmuch as the date
06.06.1989 is clearly a subsequent correction without any

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authorization by way of counter signature and so is the case with the words and letters 'June 1987' which have been altered subsequently by converting '1986' to '1987'. Even after such unauthorized corrections the total experience as per last line of the certificate remains two years. Had the concerned Bus Service issued a fresh corrected certificate then the experience from June 1987 to June 1988 could not have been certified to be experience for two years. The list of dates also has been subsequently corrected to show the date of experience certificate, Annexure P-2 as 06.06.1989 in place of 05.06.1989. This appears to have been done at the instance of the appellant to justify his stand and apparently a bogus claim that he had obtained a correct certificate on the very next date when he found mistakes in the certificates dated 05.06.1989. Had this been the case, there was no occasion for submission of the certificate dated 05.06.1989 with his application which issue has been discussed in detail by the learned Single Judge.

10. Had the appellant not committed such acts for obtaining selection and appointment, we could have considered the issue of delay as well as judgments supporting such a claim. However, Mr. Patwalia has rightly submitted that delay in impleading the appellant could not weigh with this Court when a case of fraudulent entry into service has been found by the learned Single Judge as well as Division Bench and an attempt has been made by the appellant even to mislead this Court by producing Annexure P-2 and claiming it to be copy of the corrected certificate freshly issued on 06.06.1989. Such conduct of the appellant in our considered view disentitles the appellant – Khub Ram to get any relief under Article 136 of the Constitution of India. Mr. Patwalia has rightly placed reliance to support the aforesaid submissions, on a judgment of this Court in the case of Meghmala v. G. Narasimha Reddy (2010)

A 8 SCC 383. The law relating to effect of fraud upon a
competent authority to get an appointment/office as well as
effect of fraud upon court has been discussed in detail in
paragraphs 28 to 36 of the said judgment with which we are in
respectful agreement. As a result, we hold that the appellant –
B Khub Ram is not entitled to hold the office which he obtained
by submitting questionable certificates of experience and more
so when he lacked the essential qualification of working
experience in a Government/Semi-government/Public Sector
C Undertaking. Hence his appeal is dismissed.

11. The next question is whether in the facts and
circumstances of the case the direction of the High Court to
appoint first respondent from a retrospective date along with
consequential benefits deserves to be upheld or not,
D particularly when a strong challenge has been made to such
direction through a Special Leave Petition of Mahavir Prasad.
On this issue Mr. Patwalia, learned senior advocate appearing
for Mahavir Prasad has shown from the pleadings that while
E Mahavir Prasad was at serial no.9 of the Select List containing
14 names prepared for appointment to 5 advertised posts,
first respondent Dalbir Singh did not find any place in such
Select List. This fact escaped the attention of learned Single
Judge as well as Division Bench possibly because there was
F no rival claimant to point out such shortcoming in the case of
writ petitioner – Dalbir Singh.

12. Mr. Patwalia has shown from the supplementary
affidavit filed in the Special Leave Petition to support the
G application for condonation of delay, that as far back as on
25.08.1993 the High Court had passed an order in the writ
petition directing the writ petitioner to implead the selected
candidates (emphasis added) who are likely to be affected by
the result of the present writ petition. The writ petitioner was

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given liberty to file an application for early hearing after
impleading the affected party. The writ petitioner filed the
impleadment application only for adding Khub Ram and one
another person and did not implead all the selected
candidates. As a result appellant – Mahavir Prasad was
denied the opportunity of contesting the claim of the writ
petitioner by placing the relevant correct facts particularly the
fact that Dalbir Singh was not a selected candidate.

13. A number of judgments including *State of Mysore v. K.N. Chandrasekhara* AIR 1965 SC 532 and *R.S. Mittal v. Union of India* 1995 Supp. (2) SCC 230 were relied upon by Mr. Patwalia in support of his submission that if challenge to an appointment succeeds, the court will direct for appointment against consequent vacancy only as per the merit list prepared for the purpose of such appointment. The list has to be given due weightage unless the court has proceeded to quash the Select List itself. Since the proposition is well founded in law and there is no caveat on this issue, there is no need to discuss the case law on the subject in any detail.

14. Learned counsel for the State of Rajasthan has submitted that Khub Ram was ineligible for want of a requisite experience and hence by working on the post as claimed by him for subsequent two years he cannot get the required eligibility. He placed reliance upon a judgment of this Court in the case of *Central Bank of India v. Madhulika Guruprasad Dahir* (2008) 13 SCC 170. That judgment was rendered in a case where the caste certificate which was the basis for claiming and getting appointment was found to be false. The court, in the facts of the case held the action of the applicant concerned to be fraudulent and on that basis, after discussing the relevant case law in detail in paragraphs 15, 16 and 17, declined to endorse the lenient view taken by the High Court

A and instead, upheld the order of termination of service of the
concerned employee with a sound reasoning - "the selection
of the employee was conceived in deceit and, therefore, could
not be saved by equitable considerations". According to
learned counsel for the State Dalbir Singh did not find place in
B the list of selected candidates and hence it would not be proper
to uphold the direction for his appointment and if Mahavir's
claim finds favour then the authority concerned may be directed
to consider the claim of all selected candidates including that
of Mahavir Prasad but only against original post, if available.
C The appointment should not be ordered from any retrospective
date or with any consequential benefits.

15. There is no dispute that first respondent – Dalbir
Singh was only an applicant and was not among the selected
D 14 candidates. In that view of the matter, the High Court was
misled to issue a direction for his appointment and that too
from an earlier date when Khub Ram was appointed, and with
consequential benefits. Such directions could not have been
E issued without considering the claims of other persons in the
Select List. For that reason, the directions issued in favour of
first respondent are set aside. To that extent, appeal of Mahavir
Prasad has to be allowed. However, the other prayer made
on behalf of Mahavir Prasad that authorities be directed to
F offer him appointment or consider his claim, in our considered
view cannot be allowed on account of the fact that writ petition
of Mahavir Prasad filed in 1991 was decided against him by
order dated 04.08.1992 passed in C.W.P.No.17600 of 1991.
G Rightly or wrongly the High Court held that he could not claim
any right of appointment on account of a place in the Select
List. That judgment attained finality. Mahavir Prasad chose
not to appeal against that order nor he challenged the
appointment of any of the persons selected and appointed.
H His claim thus suffers from *res judicata* as well as

acquiescence and estoppel. In that view of the matter and also for the reason that a long period of more than 25 years has passed since the preparation of the Select List, in our view it would be inappropriate to grant any relief which may require the authorities to examine the claim of persons in the Select List for appointment to the original post which may not even be available after lapse of so many years. We have been told that Mahavir is presently about 50 years of age and has not crossed the age of superannuation and is still working on another post with Haryana Roadways. That in our opinion, will not change the relevant factors indicated above. Hence we are not persuaded to grant any further relief to Mahavir Prasad and his appeal is allowed only in part as a result whereof the direction to appoint first respondent – Dalbir Singh is set aside.

16. A disturbing feature of this case is that even after notice of the writ petition when the State of Haryana became aware that Khub Ram lacked essential qualification and his certificates were unreliable, it took no action to undo the ill effects of fraud by taking any action against Khub Ram. As a result Khub Ram continued in service for a number of years and also earned promotions. This was at the cost of claim of other genuine selected candidates whose cases could have been considered if action had been taken at appropriate time. In such a situation, although we have granted no relief to Mahavir Prasad by ordering for his appointment, we direct the State of Haryana to compensate Mahavir Prasad by paying him an amount of Rs.3,00,000/- (Rupees Three Lacs) within two months. A further amount of Rs.1,00,000/- (Rupees one lac) should also be deposited by the State of Haryana with the Supreme Court Mediation Centre within the same time. The State of Haryana would be at liberty to fix responsibility as to who was at fault for not taking action in the matter after the deceitful acts came to its knowledge through filing of the writ

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- A petition in 1992, and if possible, to recover the aforesaid amount of Rs.4,00,000/- (Rupees Four Lacs) from the concerned persons, in accordance with law, if they are still in office.
- B 17. As discussed above, Civil Appeal No.2734 of 2012 is dismissed and the other Civil Appeal arising out of S.L.P.(C)No.15871 of 2012 is allowed only to the extent indicated above. There shall be no further order as to costs.
- C Devika Gujral Appeal disposed of.