
(2002) 10 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18929 of 2002

A. Sagar

APPELLANT

Vs

State Level Police Recruitment Board and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 379

Citation : (2003) 1 ALD 380 : (2002) 6 ALT 468

Hon'ble Judges : Ghulam Mohammed, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : A. Giridhar Rao, for the Appellant; Government Pleader for Services-I, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—Heard the learned Counsel for the petitioner and the learned Government Pleader for Services-I and at their request, the matter is taken up for final disposal at the stage of admission.

2. Rule Nisi.

3. The petitioner herein invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the legality of the order dated 2.8.2002 made in O.A. No. 3320 of 2002 by the Andhra Pradesh Administrative Tribunal whereunder the Tribunal refused to grant any relief whatsoever to the petitioner herein. The said Original Application is filed by the petitioner herein challenging the action of the third respondent herein in not permitting him to attend basic training of Police Constable as arbitrary and illegal.

4. Before adverting to the question as to whether the petitioner is entitled for any relief in this Writ Petition, it may be necessary to briefly notice the relevant facts leading to filing of this writ petition.

5. The first respondent herein issued a notification in newspapers in July, 2001

calling for applications from the eligible candidates for recruitment to the post of Police Constables. The petitioner herein is one of the applicants. He belongs to Mahabubnagar District in the State of Andhra Pradesh. The petitioner also possesses the requisite educational qualification. He fulfils all the requisite conditions for making an application for the selection and appointment to the post of Police Constable. The petitioner submitted his preference for the post of Police Constable, A.P. Special Police.

6. There is no dispute whatsoever that the petitioner had passed in all the physical efficiency tests conducted by the respondents.

7. The second respondent-Superintendent of Police, Mahabubnagar District vide his proceedings dated 25.2.2002 directed the petitioner herein to report before the Reserve Inspector of Police, D.A.R., Mahabubnagar on 7.3.2002 for sending him for medical test to be conducted by the Superintendent, Headquarters Hospital, Mahabubnagar. The petitioner accordingly appeared for the medical test and was found fit medically for recruitment to the post of Police Constable. Thereafter, the second respondent directed the petitioner to report before him on 21.3.2002 for sending him to basic training in A.P. Special Police Battalion. The petitioner accordingly appeared before the second respondent along with all the original certificates and also an amount of Rs.2,000/- which is required to be deposited as advance towards mess charges. The second respondent upon verification of all the certificates, by the proceedings dated 21.3.2002 directed the petitioner herein to report before the third respondent to undergo basic training.

8. The third respondent did not allow the petitioner for the basic training commenced from 23.3.2002 without assigning any reason. The fact remains that there is no order even as on today passed by the third respondent informing the petitioner as to why he has not been permitted to undergo training though he is deputed by the second respondent herein for such training

9. It is under those circumstances, the petitioner filed O.A. No. 3320 of 2002 challenging the action of the third respondent herein as illegal and arbitrary. The Tribunal having admitted the Original application granted appropriate interim order directing the third respondent herein to permit the petitioner to undergo the training. However, the Tribunal by its order-dated 2.8.2002 dismissed the original application filed by the petitioner herein following its earlier judgment dated 16.3.1995 made in O.A. No. 4491 of 1994. That is how the petitioner invokes the jurisdiction of this Court questioning the correctness of the order passed by the Tribunal.

10. The third respondent herein filed a detailed counter-affidavit both in the Tribunal as well as in this Court. It is the case of the third respondent that the petitioner was duly informed by him as to why he was not entitled to undergo training. According to the third respondent, the petitioner has suppressed the factum of his involvement in four criminal theft cases i.e., Crime Nos. 201/ 99,

228/99 on the file of Rural Police Station, Mahabubnagar, 139/99 and 1/2000 on the file of II-Town Police Station, Mahabubnagar and all the above cases are registered against the petitioner for the offence punishable u/s 379 of the Indian Penal Code. It is specifically stated in the counter-affidavit filed by the third respondent that the petitioner in his Application Form in Column No. 16 simply did not furnish the requisite information. In the attestation form, the petitioner mentioned as "no" in Column No. 12. According to the third respondent, there is no provision in the general recruitment rules to issue any written information to the non-selected candidates. It is under those circumstances, the third respondent refused to send the petitioner for training as Stipendary Trainee Police Constable. The action of the third respondent is not vitiated for any reason whatsoever, is the submission of the third respondent.

11. The sum and substance of the case of the third respondent is that the petitioner has not given any detailed information about his involvement in four criminal theft cases. The petitioner ought to have revealed this information in the application and as well as in the attestation form and suppression of relevant information about his involvement in the criminal cases itself would be a valid ground for non-selection of the petitioner.

12. We have elaborately heard the submissions made by the learned Counsel for the petitioner and as well as the learned Government Pleader for Services-1.

13. The rule making authority in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, in supersession of the Special Rules issued in G.O. Ms. No. 1015, G.A.D., dated 7.7.1960 as "amended from time to time, made Special Rules for the Andhra Pradesh Police (Special Police Battalions) Subordinate Service. These rules are called as "Andhra Pradesh Police (Special Police Battalions) Subordinate Service Rules, 1996". The post of the Police Constable is in Category-4 of the Service. Rule 3 deals with method of appointment and appointing authority. The rules would make it clear that so far as the post of Police Constable is concerned it is only by way of direct recruitment and the Commandant of each Battalion is the appointing authority. In the circumstances, as rightly contended by the learned Government Pleader for Services-I the third respondent herein is the appointing authority.

14. But the question that falls for consideration is as to whether the third respondent is justified in refusing to permit the petitioner to undergo training though he had successfully completed all the formalities for joining the training?

15. The petitioner possesses the requisite educational qualification and is well within the prescribed age limit and has satisfactorily completed other tests required to be undergone by a candidate for the purpose of selection and appointment to the post of Police Constable. The proceedings of the second respondent in categorical terms reveal that the petitioner has been selected and accordingly deputed for undergoing training with the third respondent. It is true that the petitioner has not been appointed so far in accordance with the said

rules. But the fact remains that he has been selected.

16. There is also no dispute whatsoever that the criminal cases that were registered against the petitioner were ended in clean acquittal. The police having registered the criminal cases against the petitioner failed to produce any evidence whatsoever against him and, in the circumstances, the competent Court of criminal jurisdiction acquitted the petitioner herein of the charge framed against him for the offence punishable u/s 379 of the Indian Penal Code. The judgment of the trial Court has become final. These facts are known to all the respondents herein since the respondents have verified the antecedents of the petitioner even before his selection.

17. The short question that falls for consideration in the instant writ petition is as to whether the registration of criminal cases itself would be enough and would give rise to a cause for not selecting and appointing -the petitioner as Police Constable?

18. The contention of the third respondent is that the petitioner is not entitled for any appointment for the simple reason of his making false statement. It is not as if the petitioner is being penalised for his involvement in the criminal cases, but his non-selection is on account of false information furnished by the petitioner in his application form as well as in attestation form. It is contended by the third respondent such person who furnishes the false information and misleads the authority is not entitled for selection and appointment into the public service and particularly into security agencies.

19. Therefore, the question that falls for consideration is as to whether the petitioner wilfully suppressed any relevant information from the respondents herein?

20. It is true that the Column No. 16 of the application form requires the applicant to furnish information about the involvement in any criminal case and arrest by the police. The applicant is required to furnish full details, such as FIR number and name of the Police Station. So far as Column No. 17 of the application form is concerned, the applicant is required to furnish the information as to whether he has been prosecuted or convicted by a Court of Law in the past or facing trial in any case at the relevant time. The applicant is required to furnish full details such as name of the Court and conviction particulars etc. So far as the petitioner is concerned as against Column Nos. 16 and 17 nothing is stated by him. Both the Columns are left blank. The petitioner signed the application form on 8.9.2001. It is required to notice that by that time the petitioner has been acquitted of all the criminal cases registered against him for the offence punishable u/s 379 of the Indian Penal Code and the acquittal is on merits. It is true that nothing prevented the petitioner herein to furnish the details of the cases in which he was involved and which have subsequently ended in acquittal. The petitioner by inadvertence did not divulge the requisite information and the same, in our considered opinion, in the peculiar facts and

circumstances of the case, may not amount to wilful suppression or concealment of facts. The fact remains that the cases registered against the petitioner ended in acquittal one and half years prior to the notification issued by the respondents. The petitioner is admittedly not involved in any criminal case whatsoever after disposal of those criminal cases referred to hereinabove registered against him.

21. Yet another important aspect of the matter that is required to be noticed is that the petitioner perhaps having realised the indiscretion committed by him in refusing to divulge the requisite information in the application form voluntarily stated about his involvement and arrest by the police in connection with the criminal cases registered against him before the authority who came to verify his antecedents. The authority accordingly submitted a complete and comprehensive report about the petitioner's involvement in the criminal cases and his acquittal by the Court of competent criminal jurisdiction and the same was available with all the respondents herein. It is only thereafter the respondents have deputed the petitioner herein to undergo training with the third respondent. It means, the respondents were fully aware of the registration of some criminal cases against the petitioner and their ending in acquittal. The respondents perhaps having impressed by the fact that the criminal cases registered against the petitioner were ended in acquittal on merits thought it fit to depute the petitioner to undergo the training since he possesses all the requisite qualifications and satisfies eligibility criteria for being selected and appointed as Police Constable. In our considered opinion, the same now cannot be put against the petitioner for deleting his name even from the select list.

22. So far as the attestation form is concerned, the petitioner as against Column No. 12 stated "no". We may notice Column No. 12 which is as follows:

"Have you ever been arrested by the police, convicted by Court or detained of any offence."

23. In our considered opinion, the language employed in Column No. 12 is somewhat vague and indefinite. It appears to us that arrest by the police unless resulted in conviction is of no consequence. Precisely for the said reason, the petitioner stated "no" since he has not been convicted by any criminal Court.

24. In *T.S. Vasudavan Nair v. Director of V.S.S.C.* 1998 (Supp) SCC 795, the Supreme Court observed that "denial of appointment on sole ground of non-disclosure of conviction is not justified under any circumstances. Each case may depend upon its own facts". The Court observed:

We have heard learned Counsel for the parties. In the special facts and circumstances of this case, we feel that the appellant should not have been denied the employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. We, therefore, set aside the judgment of the High Court and also the order dated August 1, 1983 cancelling the offer of appointment. The respondents shall issue the order of appointment to the

appellant within three months appointing him as a Lower Division Clerk, if he is not otherwise disqualified, with effect from the date on which he assumes duty. It is open to the respondents to employ the appellant at any place of their choice.

25. In Commissioner of Police, Delhi and Another Vs. Dhaval Singh, , the Supreme Court after an elaborate consideration of the matter and in the similar circumstances as the one on hand and having noticed the conduct of the candidate therein held that the "correction of such inadvertent mistake may cure the error if any committed in not giving the information against the relevant column in the application form." In order to appreciate the principle enuciated in the said judgment, it may be necessary to briefly notice the relevant facts in the said case.

26. The respondent therein while seeking post of a Constable during the special recruitment drive is alleged to have concealed from mentioning in the Application Form, against the relevant column, that there was a criminal case pending against him. The respondent there had put a cross mark in the relevant column. The Application Form was submitted by him on 21/27-8-1995 and he was provisionally selected after passing the written test, physical endurance test and was interviewed, pending verification on his character. However, before any order of appointment could be issued in his favour, he, realising the mistake, wrote a letter to the Deputy Commissioner of Police on 15-11-1995 in which he, inter alia, stated that "....I have to point out here that at the time of submission of Application Form I have inadvertently not mentioned criminal case pending against me in the appropriate column. This has been done due to lack of knowledge. I may be excused for the above lapse and this application may be treated as an information from my side."

27. It is under those circumstances, the Supreme Court came to the conclusion that there has been no deliberate and wilful suppression or concealment of any material fact. In the instant case what is required to be noticed is that even as on the date of the petitioner submitting his application and attestation form, the criminal cases registered against the petitioner were ended in clean acquittal. No case as on the date of issuance of notification by the respondents herein was pending against the petitioner, like facts in Dhaval Singh's case (supra). Here also the petitioner voluntarily disclosed about the registration of the criminal cases against him and their ending in acquittal in the competent Court of criminal jurisdiction while the requisite information was being collected in order to verify the antecedents of the petitioner. The authority entrusted with the job of verification of antecedents, based upon the statement of the petitioner, submitted all the requisite particulars to the respondents herein. They were taken into consideration and only thereafter the petitioner was sent for undergoing training. It is not as if the respondents have found out something against the petitioner at the time when he was actually sent to undergo training. All these information was available with the respondents herein at every stage anterior to the decision of sending the petitioner to undergo training with the

third respondent. The same material now cannot be used against the petitioner in order to deprive him of his legitimate right to appointment.

28. In the circumstances, we are not inclined to agree with the strenuous submission made by the learned Government Pleader that the petitioner herein has wilfully suppressed and concealed the relevant material from the respondents herein.

29. For all the aforesaid reasons, the impugned order under challenge is set aside. In the result, there shall be a direction to the respondents herein to permit the petitioner to complete his training. The decision of the third respondent to prevent the petitioner from undergoing the training is accordingly held arbitrary.

30. The Writ Petition is accordingly allowed. No order as to costs.