

(2012) 03 CAL CK 0083
In the Calcutta High Court
Case No : W.P.S.T. No. 5 of 2012

Alok Sarker

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 325, 34, 379

Citation : (2012) 03 CAL CK 0083

Hon'ble Judges : Subhro Kamal Mukherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Tapas Kumar Bhattacharya, Mr. Hindol Nandi, for the Appellant;
Chaitali Bhattacharya, for the State, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—By this writ application, the petitioner has challenged the decision of the West Bengal State Administrative Tribunal dated August 5, 2011 dismissing his original application. No relief has been granted to the petitioner on the ground that the police verification report was against him and therefore he was not entitled for appointment to the post of "sweeper" in the Kolkata Police force. The tribunal, also, directed the petitioner to collect material under the Right to Information Act with respect to the police verification report and thereafter to challenge its veracity and legality before the tribunal. Aggrieved by this decision, the petitioner has approached this Court under Article 226 of the Constitution of India.

2. The State Government issued an advertisement on 25th December 2008 for recruitment to the post of "sweeper" with the Kolkata Police. The petitioner applied for the post on 1st January 2009. He was selected after being interviewed on 17th August 2009. The Joint Commissioner of Police Headquarters issued a letter to the petitioner on 2nd September 2009, informing him that he had been selected for appointment to the post of "sweeper", subject to the

submission of his verification roll. Accordingly, the petitioner submitted his verification roll on 29th September 2009.

3. Clause 13 of the verification roll required the petitioner to answer whether he had been convicted by a court for any offence or charge-sheeted by the police in connection with any criminal proceeding. Particulars in this regard were sought from the candidate applying for appointment in the event he was so involved. The petitioner did not answer this clause. It appears that the authorities verified the antecedents of the petitioner and it was found that a First Information Report had been lodged against him on 16th January, 2009 u/s 379 read with Section 34 of the Indian penal Code in the Karimpur Police Station. A charge-sheet in this regard was submitted in court on July 16, 2009.

4. As the petitioner did not receive any communication from the concerned department regarding his appointment, he preferred an application before the West Bengal State Administrative Tribunal which was registered as Original Application No. 1222 of 2010. This Original Application was decided ex parte. The Commissioner of Police, Kolkata, was directed to examine the record of the petitioner and, if there was nothing adverse regarding his antecedents, to consider his case for appointment, if he had been selected for the post of "sweeper". This exercise was to be completed within three months.

5. Accordingly, on 21st January, 2011, the Commissioner of Police, Kolkata, examined the records and passed the following order:-

In compliance with the order dated 09.12.2010 passed by Hon"ble State Administrative Tribunal in respect of O. A. No. 1222 of 2010 (Alok Sarkar -Vs- State of West Bengal and Others), necessary consultation with the official record has been made and it appears that the petitioner Sri Alok Sarkar is unsuitable for appointment in connection with Police Verification of his character and antecedents.

6. Aggrieved by that decision, the petitioner approached the West Bengal Administrative Tribunal once again by preferring Original Application No. 298 of 2011. The impugned order has been passed in this original application.

7. The principal contention raised by Mr. Tapas Kumar Bhattacharya, learned advocate appearing for the petitioner, is that the petitioner had been denied employment on the basis of an incorrect assessment of his antecedents. According to him, when the petitioner had applied for appointment there was no criminal case pending against him. It was only on 16th January, 2009, that a complaint was lodged against him in the Karimpur Police Station. He pointed out that the allegation against the petitioner in the complaint is that he had stolen bananas and bamboo. According to the learned advocate for the petitioner, such an offence, if at all it is proved, is not serious enough to deny the petitioner the post of "sweeper".

8. Mr. Bhattacharya has relied on the decision of the Supreme Court in the case

of Commissioner of Police and others Versus Sandeep Kumar reported in (2011)3 WBLR (SC) 624 in support of his submission that it may be an indiscretion on the part of the petitioner in not mentioning that he has been charge-sheeted in a criminal case in the verification roll, which should not lead to a denial of appointment as the offence was trivial.

9. Mr. Bhattacharya has also relied on a judgment of a Division Bench this Court in the case of MohanKumar Halder Versus State of West Bengal and others reported in 2010(2) CHN (CAL) 312 in support of the same submission.

10. Mrs. Chaitali Bhattacharya, learned advocate appearing for the respondents, has vehemently opposed the submissions of Mr. Bhattacharya, learned advocate for the petitioner. She submitted that memoranda were issued by the State of West Bengal regarding verification of the character and antecedents of potential appointees to any department of the Government. According to her, the first memorandum is of 6th September 1958, where the candidates have been directed that the column regarding verification should not be left blank. Subsequently, on 21st December 1972, another memorandum was issued with respect to verification of the antecedents of persons being employed on emergent temporary basis on non-technical Classes III and IV services. A similar memorandum was issued on 25th February 1974.

11. Thereafter on 4th August 1977, the Government of West Bengal issued a circular under which the verification of the antecedents of candidates for appointments both to permanent and temporary posts in both superior and inferior services was made mandatory. Clause (ii) of the circular reads as follows: A candidate with a record of past criminal activities may be declared unsuitable for employment under the State Government or in any State Government Undertaking/Organisation but no candidate shall be considered unsuitable for employment under the State Government or in any State Government Undertaking/Organisation by reason only of the fact that he is or was a member of or is or was associated or connected with the activities of any political party, group or organization prior to his appointment.

12. Mrs. Bhattacharya has submitted that the aforesaid circular of 1977 is applicable to the present case and the petitioner, after being selected for the post of "sweeper", was directed by letter dated September 2, 2009 to fill up the verification roll.

13. According to the learned advocate for the respondents, the petitioner suppressed the fact that he has been charge-sheeted by the police in connection with a criminal proceeding. This fact was revealed when police undertook the verification. It was found that a complaint against the petitioner was lodged on 16th January, 2009 u/s 379 read with Section 34 of the Indian Penal Code and the charge-sheet was filed in court on 16th July, 2009. The learned advocate for the respondents submitted that this non-disclosure of his antecedents is a serious lapse on the part of the petitioner. She submitted further that as the

employer, the State of West Bengal, in its wisdom decided not to appoint the petitioner. According to the learned advocate, it is only the employer, who can decide, who should be appointed and it is not for the court to suggest or direct that a particular candidate should be appointed, even assuming his antecedents are unblemished. For this proposition, the learned advocate for the respondents has relied on the judgment of the Supreme Court in the case of State of Andhra Pradesh and others Versus V. Sadanandam and others.

14. The learned advocate for the State-respondents then submitted that suppression of his criminal antecedents must necessarily result in the petitioner being denied appointment in government service. For this proposition she relied on several judgments of the Supreme Court of India which are as follows:

- 1) Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav,
- 2) R. Radhakrishnan Versus Director General of Police And Others reported in (2008) 1 SCC 660,
- 3) Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, and
- 4) The State of West Bengal and Others Vs. Sk. Nazrul Islam,

15. The learned advocate has brought to our notice the judgement of the Supreme Court in the case of Daya Shankar Yadav Vs. Union of India (UOI) and Others, in which all the aforesaid judgements except the case of State of West Bengal And Others Versus Sk. Nazrul Islam (supra) have been considered by the Supreme Court. She has pointed out to us that in all these cases, the Supreme Court has denied relief to a candidate who had suppressed the material fact that he was either arrested or detained or convicted.

16. According to the learned advocate for the respondents, the judgment of the Supreme Court in the case of Commissioner of Police And Others versus Sandeep Kumar(supra) is per incuriam as it does not deal with any of the earlier judgments of the court. She has cited an unreported judgment of the division bench of this Court in the case of State of West Bengal And Others Versus Golak Behari Jana in W. P. C. T. No. 286 of 2000 in support of her proposition that, the judgment of a coordinate bench which does not consider earlier judgments of the Court must be considered to be per incuriam.

17. There cannot be any dispute that when a person is to be appointed in government service, more so in the police force, his antecedents must be verified. It is not necessary that in each case, after ascertaining the antecedents of a person, the State would have to disclose why he is not being appointed. However, in the present case, the State has chosen to disclose the fact that the petitioner has been denied appointment, as he was "unsuitable for appointment in connection with police verification of his character and antecedents".

18. Mrs. Bhattacharya was at pains to point out that this order was passed only in compliance of the direction issued by the West Bengal State Administrative

Tribunal in Original Application No. 1222 of 2010.

19. We have perused that decision. In our view the intimation dated January 21, 2011 sent to the petitioner by the Commissioner of Police goes a step ahead of the necessary compliance of the order of the tribunal. The petitioner has been informed that he was not appointed only because his character and antecedents were found unsuitable for appointing him in service.

20. A letter dated May 2, 2010 which is annexed to the affidavit-in-opposition has been issued by the Superintendent of Police, D.I.B., Nadia, to the Deputy Inspector of General of Police, Intelligence Branch, West Bengal. The recipient of the letter has been informed that after an enquiry it was found that the petitioner was named as an accused person in a First Information Report in connection with an offence u/s 379 read with Section 34 of the Indian Penal Code and that a charge-sheet had been submitted and the matter was pending before the court of the Additional Chief Judicial Magistrate to the District of Nadia.

21. There is no dispute that the petitioner had not disclosed this fact in the police verification roll. However, the instructions relating to verification of character and antecedents issued on August 4, 1977 which were harped upon by Mrs. Bhattacharyya indicate that the candidate with a record of "past criminal activities" should be declared unsuitable for employment.

22. The phrase "past criminal activities" must be given its true meaning. In our opinion, it would presuppose that for declaring a person unsuitable for employment with the State Government he should be a habitual offender or in any event the offence must be so grave as to warrant him being declared unsuitable. The State Government has in its wisdom, clarified that a person associated or connected with activities of political parties or groups or organizations prior to his appointment would not found unsuitable for employment. Thus, even a candidate with some criminal record, he would be absolved of his past conduct and found suitable for employment, if he participated in political activities.

23. In the present case the allegation against the petitioner is that he had committed theft of some bananas and bamboo in his village. Whether the offence is proved, is an issue that the learned Magistrate, before whom the matter is pending, will decide. Let us assume that the petitioner has committed theft of bananas and bamboo. Would it be necessary in such a case to deny him employment? In our opinion, the answer must be in the negative. The notification of 1977 does not make it mandatory to deny employment to a person, who is involved in a criminal offence. The word used is "may" and, therefore, it is always open for the authorities to consider whether the alleged offence is of such a grave nature, which would warrant denial of employment.

24. We are fortified in this view that we have taken by the judgment of the Supreme Court in the case of Commissioner of Police and others Versus Sandeep Kumar (supra). In this case the Supreme Court considered whether employment

should be denied to a candidate seeking appointment to the post of head constable, on the ground that he had answered the question whether he had been arrested, prosecuted, detained, fined and convicted by a court of law for any offence, incorrectly. It was found that the answer was false as the candidate and some of the members of his family were involved in a criminal case for an offence punishable u/s 325 read with Section 34 of the Indian Penal Code. This case was compromised and all the persons were convicted. The Supreme Court confirmed the decision of the Delhi High Court by giving their opinion in the matter. Mr. Justice Katju, speaking for the bench, has observed thus:

12) When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretion, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

13) In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel "Les Miserables", in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

14) The modern approach should be to reform a person instead of branding him as a criminal all his life.

15) We may also here refer to the case of Welsh students mentioned by Lord Denning in his book "Due Process of Law". It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of Court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of appeals. Allowing the appeal, Lord Denning observed:

I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which

the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and show respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." (Vide: *Morris v. Crown Office*, (1970)2QB 114)

16) In our opinion, we should display the same wisdom as displayed by Lord Denning.

17) As already observed above, youth often commit indiscretions, which are often condoned.

18) It is true that in the application form the respondent did not mention that he was involved in a criminal case u/s 325/34, IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

19) At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

25. In our opinion, we should follow the same reasoning and grant relief to the petitioner. We are not impressed by Mrs. Bhattacharya's submission that the Petitioner is not entitled to any relief as he had suppressed his antecedents by leaving clause 13 of the Verification Roll blank. There is no material on record to indicate that the Petitioner who has studied upto Class VIII had sufficient knowledge of the English language, the language used in the Verification Roll. We do not know whether the form has been filled in by him or he has merely appended his signature on the same.

26. However, we will now have to consider the judgments cited by Mrs. Bhattacharya.

27. In the case of *Daya Shankar Yadav Versus Union of India And Others* (supra), the Supreme Court has culled out the legal position in the matter after taking a conspectus of its earlier judgments in the cases of *Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* (supra), *R. Radhakrishnan v. Director General of Police* (supra), *Union of India v. Bipad Bhanjan Gayen* (supra). The law has been in para 15 where the Court has observed thus:

15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence / crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/ attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

28. The Supreme Court has observed that a candidate may be denied or found unfit for employment having regard to the nature and gravity of the offence/ crime in which he is involved. Therefore, it is not in each and every case that a candidate involved in an offence/crime should be denied employment. The gravity of such an offence must be ascertained by the employer before taking such a step.

29. The offence here is of theft of bananas and bamboo. In our opinion, it is not so grave as to deny the petitioner the post of a sweeper. Significantly, in each case cited by Mrs. Bhattacharya, the post for which the candidate was seeking employment was that of a constable. This is obviously a more responsible post than that of a sweeper, requiring a higher degree of integrity.

30. The submission of Mrs. Bhattacharya is that the decision of the Supreme

Court in the case of Commissioner of Police versus Sandeep Kumar (supra) is per incuriam as it does not consider the earlier judgments of the Supreme Court including the judgment in the case of Daya Shankar Yadav (supra).

31. In our opinion, there is no conflict between the judgments cited by Mrs. Bhattacharya and the judgment in the case of Commissioner of Police and others Versus Sandeep Kumar (supra). The court has merely opined that the modern approach should be reformatory rather than branding a person a criminal all his life. The court also observed that there cannot be automatic disqualification of employment merely because a candidate does not mention he is involved in a criminal case, probably out of fear. A more lenient view should be taken in the matter.

32. In the present case, the State is responsible for going overboard while seeking to comply with the decision of the tribunal in Original Application No. 1222 of 2010. Had the State merely intimated to the petitioner that he was not found fit for appointment, the court could not have questioned the wisdom of the employer. However, having recorded that it was because of the petitioner's character and antecedents that he was being denied employment as he was embroiled in a criminal case, the reason was open for judicial review.

33. On perusal of the decision of the tribunal, we are unable to appreciate the reason for the tribunal directing the petitioner to collect material under the Right to Information Act and to challenge the same before the tribunal, if necessary.

34. The petitioner has been informed by the Commissioner of Police that he was being denied employment on account of his police verification which obviously meant because of a flaw in his character and antecedents. This order has been challenged before the tribunal and it was necessary for the tribunal to consider whether the order was justified and whether the petitioner could be denied appointment.

35. We have considered the nature of the offence alleged against the petitioner. We do not find that it is so grave as to deny him employment as a "sweeper".

36. In our opinion, the petitioner is entitled to the relief claimed.

37. The petition is, therefore, allowed. The order of the tribunal is set aside. The respondents shall appoint the petitioner as a "sweeper" as and when a vacancy arises.

38. We make no order as to costs.

Subhro Kamal Mukherjee, J.

I agree.