

(2011) 07 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12311 of 2009

Amrit Lal Meena

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 304

Citation : (2013) 1 RLW 528

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Advocate : Abdul Kalam Khan, for the Appellant;

Final Decision : Dismissed

Judgement

Munishwar Nath Bhandari, J.—Petitioner is aggrieved by the order of dismissal dated 22.6.2005 and the order dated 7.12.2005 passed in the appeal. It is submitted that petitioner was appointed on the post of Constable (GD) on 29.5.2003. After appointment, petitioner's case was sent to the District Magistrate, Karauli for verification of his character and antecedents before his posting on completion of training. It was found that a criminal case bearing No. 388/99 for offence under Sections 147, 148, 149, 323, 324 of the Indian Penal Code (for short the IPC) was registered against the petitioner and therein charge sheet was also filed on 16.11.1999. Thus, case was pending before the competent court. The petitioner suppressed aforesaid information while filling up column No. 12 of the verification roll by mentioning that no criminal case is pending against him. After holding the inquiry and submission of the report thereupon, order of dismissal was passed. The petitioner thereupon preferred an appeal, however, same was also dismissed.

2. Learned counsel submits that criminal case was registered at the instance of the villagers having enmity with the petitioner, thus the order of dismissal cannot be said to be proper. The petitioner was not given proper opportunity of hearing and otherwise petitioner did not deliberately suppress fact regarding pendency of

the criminal case. Thus, for all the aforesaid reasons, order of dismissal so as the order passed on appeal deserve to be quashed and set aside.

3. Learned counsel placed reliance on the judgment of the Hon''ble Apex Court in the case of Commr. of Police and Others Vs. Sandeep Kumar, .

4. I have considered submissions made and perused the record of the case carefully and also judgment cited at Bar.

5. Perusal of the impugned order and even the appeal preferred thereupon shows that pendency of the criminal case at the time of seeking appointment has not been disputed. The only justification given for suppression of information of criminal case is that it was lodged at the instance of the villagers having enmity. The petitioner, thus, could not given proper explanation for suppression of required information. In the light of the aforesaid, issue now remains as to whether aforesaid default of the petitioner can be condoned or he is liable to suffer consequences in the shape of an order of dismissal.

6. Learned counsel has placed reliance on the judgment of the Hon''ble Apex Court in the case of Sandeep Kumar (supra), thus it would be relevant to refer the aforesaid judgment. In the aforesaid case, Sandeep Kumar applied for the post of Constable in the year 1999 and while filling Column No. 12(a), he submitted no information about the criminal case. In fact, a criminal case bearing FIR No. 362 under Sections 325/34 of IPC was registered against him, but on compromise between the parties, Sandeep Kumar and his family members were acquitted on 18.1.1998 i.e., much prior to submission of the application for appointment on the post of Constable as application for selection was made on 24.2.1999 i.e., almost after one year of acquittal in the criminal case. Looking to the aforesaid, the Hon''ble Apex Court directed to condone the lapse as youth people often commit indiscretions. If the facts of this case are looked into, then it is quite distinguishable than the facts of the case referred to above. In the present case, a criminal case was admittedly pending against the petitioner at the time of submission of the verification roll. He suppressed the information about pendency of the criminal case and could not attach justification for it.

7. Legal position in regard to the consequences of suppression/concealment of the information as mentioned above is settled. In a catena of judgments, the Hon''ble Apex held that suppression/concealment can result in cancellation of the recruitment and even discontinuance of the service. The Hon''ble Apex Court in the case of Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, considered the same issue. Therein, a candidate was sent for training after his recruitment. His services were terminated during the period of probation on the ground of suppression/concealment of the criminal case though candidate therein was subsequently discharged in the criminal case but Hon''ble Apex Court held it to be of no consequence. Therein, termination was made without an inquiry but same was upheld by the Hon''ble Apex Court by reversing the judgment of the High Court. Paras 7 to 11 of the said judgment are quoted hereunder thus for

ready reference:-

7. It has also been pleaded that though the respondent had been exonerated in both the prosecutions, but the misconduct alleged was of the incorrect filling of the attestation form and not of being involved in a criminal case and as such, the mere fact that he had been exonerated would have no effect on the merits of the controversy. The learned counsel has accordingly placed reliance on Rules 57 and 67 of the Railway Protection Force Rules, 1987 (hereinafter called "the Rules") as also several judgment of this Court, namely, *Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav*, *A.P. Public Service Commission vs. Konete Venkateswarulu* and *State of Haryana vs. Satyender Singh Rathore*. The learned counsel for the respondent has however supported the judgments of the courts below and has pointed out that as the appellants had not put the copy of the attestation form on record, it was not possible to verify the correct facts and that in any case, the impugned order dated 15.7.1995 being stigmatic, could not be sustained.

8. We have heard the learned counsel for the parties and gone through the record. Rule 57 of the Rules provides for a probation period of 2 years from the date of appointment subject to extension. Rule 67 provides that a direct recruit selected for appointment as an enrolled member of the Force is liable to be discharged at any stage if the Chief Security Officer, for reasons to be recorded in writing, deems it fit to do so in the interest of the Force till such time as the recruit is not formally appointed to the Force. A reading of these two rules would reveal that till a recruit is formally enrolled to the Force his appointment is extremely tenuous.

9. It is the admitted case that the respondent was still under probation at the time his services had been terminated. It is also apparent from the record that the respondent had been given appointment on probation subject to verification of the facts given in the attestation form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the appellant was at liberty to dispense with the services of the respondent as the question of any stigma and penal consequences at this stage would not arise.

10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes a higher level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated.

8. In reference to the paras quoted above and earlier judgments, the appeal preferred by the Union of India therein was allowed and the judgment of the High Court was set aside. The same view was earlier taken by the Hon'ble Apex Court in the case of *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, . Therein order of dismissal was passed on account of suppression of

information in attestation form. Therein also the candidate suppressed the fact regarding pendency of the criminal case. The plea taken by the candidate therein was that he failed to understand meaning of words "prosecution" and "conviction" as he was a student with Hindi Medium. The plea aforesaid was not accepted by the Hon"ble Apex Court and it was held that dismissal on account of concealment or suppression of such information is wholly justified. Therein also the judgment of the High court setting aside the order of dismissal was reversed. Paras 11 and 12 of the said judgment are also quoted thus:-

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against column Nos. 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand column Nos. 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column Nos. 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of respondent was Hindi, he could not understand the contents of column nos. 12 and 13. It is not the case that column nos. 12 and 13 are left blank. The respondent could not have said "no" as against column nos. 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling column nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service, A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per Columns 12 and 13 was not to find out other the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to Judge

the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.

9. In a subsequent judgment in the case of A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, , same view was taken by the Hon'ble Apex Court holding that if person indulges in suppressio veri and suggestio falsi then he does not deserve public employment. Therein the candidate concerned failed to make a declaration regarding previous employment and the candidate's plea of inadvertence was not accepted by the Hon'ble Apex Court. Para 7 of the said judgment is relevant, thus is quoted hereunder for ready reference:

7. We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11, Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point

of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan (supra) and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

10. In the case of R. Radhakrishnan Vs. The Director General of Police and Others, , same view was reiterated by the Hon'ble Apex Court wherein appointment was denied on account of suppression of the information regarding pendency of the criminal case though candidate therein was acquitted. This was after considering earlier judgment in the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, . Paras 11 to 13 are quoted hereunder for ready reference:-

11. The question came up for consideration before this Court in Delhi Administration through its Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, wherein it was categorically held:

3. ...The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable u/s 304 IPC, u/s 324 read with Section 34 IPC and u/s 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.

12. Mr. Prabhakar has relied upon a decision of this Court in T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre . The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise.

11. Perusal of the paras quoted above shows that judgment in the case of T.S.

Vasudavan Nair vs. Director of Vikram Sarabhai Space Centre reported in 1988 Supp. SCC 795 was not relied as it was held to be applicable on the special facts and circumstances of the said case only.

12. In the light of the judgments referred to above, it cannot be said that order of dismissal is improper. This is more so when admittedly a criminal case was pending against the petitioner at the time of submission of verification roll. A candidate, who indulges in suppressio veri and suggestio falsi does not deserve public employment i.e. a candidate who suppressed material information or given false information is not entitled to continue in the public employment or to seek recruitment. This is more so when a person is engaged in the services of the Central Reserve Protection Force.

13. In the light of the judgments referred to aforesaid, the judgment in the case of Commissioner of Police and others vs. Sandeep Kumar (supra) cannot be applied to this case as earlier judgments of the Hon'ble Apex Court were not considered therein and otherwise even on facts, it is distinguishable. In the light of the aforesaid, I do not find any illegality in the order of dismissal and order passed on appeal, hence, writ petition fails and is accordingly dismissed.