
(2019) 10 MP CK 0031
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16900 Of 2019

Apoorva Pathak

APPELLANT

Vs

Hon'ble High Court Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 289
Constitution Of India, 1950 — Article 226

Citation : (2019) 4 JLJ 280 : (2020) LabIC 471 : (2019) 4 MPLJ 400

Hon'ble Judges : R.S. Jha, J;Vijay Kumar Shukla , J

Bench : Division Bench

Advocate : Shashank Verma, Jagat Singh

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J

1. The petitioner has invoked the writ jurisdiction under Article 226 of the Constitution of India, seeking quashment of the order dated 25-5-2019, Annexure-P/3 whereby her candidature for the post of Civil Judge Class-II (Entry Level) 2017 has been rejected and her name has been directed to be deleted from the merit list, as she has been found ineligible for appointment on the ground of concealment of material facts regarding registration of crime, arrest and execution of personal bond.

2. The learned counsel for the petitioner submitted that the impugned order and the decision of the respondents cancelling her selection on the ground of suppression of the pendency of criminal case are arbitrary, as there was no suppression of facts on the part of the petitioner while submitting her application form after the Main Examination as the petitioner was not aware of registration of any criminal case against her.

3. It is strenuously urged by the learned counsel appearing for the petitioner that after gathering knowledge of registration of the criminal case, she herself

submitted a representation to the respondents, which shows her bonafide conduct and, therefore, her conduct does not fall within the purview of "deliberate suppression". In support of his submissions the learned counsel for the petitioner referred to the judgments passed by the Apex Court in the cases of Commissioner of Police, Delhi and another vs. Dhaval Singh, (1999) 1 SCC 246; Commissioner of Police and others vs. Sandeep Kumar, (2011) 4 SCC 644; and Avatar Singh vs. Union of India, (2016) 8 SCC 471.

4. Shorn of unnecessary details : On 2-8-2017 an advertisement was issued by the respondent No.1 inviting applications for Madhya Pradesh Judicial Examination for the post of Civil Judge Class-II (Entry Level). As per the advertisement the examination was conducted in three stages, namely, Online Preliminary Examination; Main Examination; and Interview.

5. In pursuant to the said advertisement the petitioner submitted her application form. She appeared in the Preliminary Examination and was declared qualified for the next examination. The petitioner also appeared in the Main Examination and was declared qualified in the said examination also. Finally she was selected for the post of Civil Judge, Class-II (Entry Level). On 18-4-2018 the petitioner submitted her attestation form along with requisite documents and an affidavit. In the attestation form and the affidavit, the petitioner had not disclosed about the pendency of a criminal case or registration of the FIR.

6. At the time of appointment, on verification of the documents submitted by the petitioner, it was noted that the petitioner had suppressed the information regarding registration of criminal case and execution of personal bond in the attestation form which was submitted on 18-4-2018. The condition No.14 of the attestation form, being relevant, is reproduced hereunder :

"14. (क) क्या आप कभी गिरफ्तार किये गये है? क्या आप पर कभी अभियोजन चलाया गया है? क्या आप कभी निरुद्ध किए गए हैं या आपसे मुचलका लिया गया है/ आप पर जुर्माना किया गया है? क्या आप किसी अपराध के लिए न्यायालय द्वारा दोषी ठहराये गये हैं या आपको किसी भी लोक सेवा आयोग और उच्च न्यायालय द्वारा उनके द्वारा संचालित परीक्षाओं/किये जाने वाले चयनों में सम्मिलित होने से वर्जित किया गया है/उसके लिए अनहर्ति ठहराया गया है या क्या आप को किसी भी विश्वविद्यालय या किसी भी अन्य शैक्षणिक प्राधिकरण/संस्था द्वारा किसी भी परीक्षा में बैठने से वर्जित/निष्काशित किया गया है?

अप्रयोज्य"

English translation of the said clause reads :

"14(a). Have you ever been arrested ? Have you ever been prosecuted ? Have you ever been kept under detention or have you ever furnished bond/have you ever been fined ? Have you ever been convicted by a Court of Law for any offence ? Or have you ever been debarred/disqualified from appearing in any examination/selection conducted by any Public Service Commission or High Court ? Or have you ever been debarred/disqualified from appearing in any examination/selection conducted by any University or any other educational authority/institution ?"

(Not applicable)

7. In the said column the petitioner had written "not-applicable". The attestation form was submitted on 18-4-2018, whereas the petitioner had already executed the personal bond on 17-3-2018 as regards the case registered at the Police Station, Misroud, District Bhopal, vide Crime No.121/2018 for the offence punishable under Section 289 of the Indian Penal Code. Even in the affidavit sworn by her on 19-4-2018 furnished to the respondents, she did not disclose registration of the aforesaid crime, arrest, and execution of personal bond by her.

8. From the aforesaid, it is evident that the petitioner had knowingly suppressed requisite facts in column No.14 of the attestation form submitted by her. Therefore, we do not find any error in the decision taken by the respondents cancelling selection of the petitioner on the post of Civil Judge, Class-II (Entry Level).

9. So far as the issue of obtaining appointment by misrepresentation is concerned, has been considered by the Apex Court in number of cases. In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, AIR 2003 SC 1709; and *A.P. Public Service Commission v. Koneti Venkateswarulu*, AIR 2005 SC 4292, the Apex Court dealt with similar issue wherein employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could not understand what information was sought. The Apex Court ruled that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. It was further observed that the requirement of filling column Nos. 12 and 13 of the Attestation Form was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service.

10. In *R. Radhakrishnan v. Director General of Police & Ors.*, (2008)1 SCC 660, the Supreme Court held that furnishing wrong information by the candidate while seeking appointment, makes him unsuitable for appointment and liable for removal/termination, if he furnished wrong information when the said information is specifically sought by the appointing authority.

11. In the case of *Ram Chandra Singh v. Savitri Devi & Ors.*, (2003)8 SCC 319, the Apex Court ruled that misrepresentation itself amounts to fraud and further held that a fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. The said judgment was re-

considered and approved by the Supreme Court in Vice-Chairman, Kendriya Vidyalaya Sangathan & anr. v. Girdharilal Yadav, (2004) 6 SCC 325.

12. The ratio laid down by the Apex Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have defrauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India & Ors. v. M. Bhaskaran, AIR 1996 SC 686, the Supreme Court after placing reliance upon and approving its earlier judgment in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:-

"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer."

13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors., AIR 1994 SC 853. In Lazarus Estate Ltd. v. Besalay, 1956 All E.R. 349, the Court observed without equivocation that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

14. In the case of A.P. State Financial Corporation v. M/s. GAR Re- Rolling Mills & anr., AIR 1994 SC 2151 and State of Maharashtra & Ors. v. Prabhu, (1994) 2 SCC 481, the Apex Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.

15. In Smt. Shrisht Dhawan v. M/s. Shaw Bros., AIR 1992 SC 1555, it has been held that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

16. In Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, (1996) 11 SCC 605, the Apex Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under: (SCC p.606, para 3)

"3....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. The

Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."

(Emphasis added)

17. In *United India Insurance Company Ltd. v. Rajendra Singh & Ors.*, AIR 2000 SC 1165, the Apex Court observed that "fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by the Supreme Court in *M.P. Mittal v. State of Haryana & Ors.*, AIR 1984 SC 1888.

18. The ratio laid down in *Ram Ratan Yadav* (*supra*) was followed by a Co-ordinate Bench of this Court in the case of *Narayan Singh Yadav vs. State of M.P. & ors.*, 2008(4) MPLJ 379 and also in the cases of *Canara Bank and others vs. Pradeep Soni* (W.A. No.3/2006, decided on 25-6-2007) and *Union of India vs. Siya Ram Singh Gurjar* (W.A. No.577/2006, decided on 23-7-2007).

19. The Apex Court in the case of *Devendra Kumar vs. State of Uttaranchal and others*, (2013) 9 SCC 363 examined the issue of obtaining appointment by misrepresentation in extenso and held :

".... So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged."

The Apex Court taking serious note of conduct a candidate of suppression or misrepresentation of information in the attestation form, held that the suppression itself amounts to moral turpitude.

20. Relying on the judgement passed in *Devendra Kumar* (*supra*) a Division Bench of this Court in the case of *Vinod Kumar Tomar vs. Union of India and others*, 2015(4) MPLJ 648 while dealing with a case of termination of a Constable of the Central Industrial Security Force on the ground of suppression in the attestation form, held that suppression of information in regard to criminal

antecedents in the attestation form makes him liable to be terminated on account of loss of faith and confidence by the employer which reflects moral character and antecedents of such employee. The said judgement was followed by a Single Bench in the case *Anar Meena vs. Union of India and ors.* (W.P. No.9284/2012, decided on 22-3-2016).

21. In view of the obtaining factual matrix of the present case and the law laid down by the Supreme Court, the authorities relied upon by the learned counsel for the petitioner would not render any assistance to the petitioner. The judgments relied upon by the petitioner in the cases of Sandeep Kumar (supra) and Dhawal Singh (supra) were considered by the Constitution Bench of the Supreme Court in the case of Avtar Singh (supra) and after considering various decisions, the larger Bench in a reference made to it has observed that the information given to the employer by a candidate as to conviction, acquittal, arrest or pendency of a criminal case whether before or after entering into service must be true and there should be no suppression or false supply of the requisite information. It has also observed that in a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

22. A Full Bench of this Court in the case of *Ashutosh Pawar vs. High Court of M.P. and another*, 2018 (2) MPLJ 419 (FB) wherein the decision of another Division Bench of this Court granting relief and benefit to a petitioner who had been acquitted on the basis of a compromise has been set aside. In the case of *Union Territory, Chandigarh Administration vs. Pradeep Kumar*, (2018) 1 SCC 797 the Apex Court held that mere acquittal in a criminal case does not confer any right on an individual to claim employment and in spite of such acquittal the employer has a right to take into consideration all aspects and reject the claim of the applicant on this ground.

23. The Supreme Court in the case of *Pradeep Kumar* (supra), while taking consideration and analysing the law on the subject specifically the previous decisions of the Supreme Court in the cases of *Joginder Singh vs. Union Territory of Chandigarh*, (2015) 2 SCC 377, *Deputy Inspector General of Police vs. S. Samuthiram*, (2013) 1 SCC 598, *Commissioner of Police, New Delhi vs. Mehar Singh*, (2013) 7 SCC 685, *State of M.P. vs. Parvez Khan*, 2015 (3) MPLJ 485 (SC) : (2015) 2 SCC 591 as well as a three-Judge Bench decision of the Supreme Court in the case of *Avtar Singh* (supra) has held in paragraphs 13 and 17 as under:

" 13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* and *Parvej Khan* cases, it is clear that a candidate to be recruited to the police service

must be of impeccable character and integrity. A person having having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee also must be taken as final unless it is shown to be mala fide . The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost care.

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17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

24. In the case of Sandeep Raikwar vs. High Court of Madhya Pradesh (W.P. No.3828/2019, decided on 26-03-2019) a Division Bench of this Court after referring to the judgments of the Apex Court on the point of suppression in the attestation form and its consequences, held that acquittal in criminal cases is not a certificate of good conduct and acquittal does not automatically entitle a candidate for appointment to the post.

25. In the light of the aforesaid facts and enunciation of law, in the present case the employer has taken into consideration the specific language of clause 14 of the attestation form and the fact that the said attestation form was submitted on 18-4-2018 after execution of personal bond on 17-03-2018, but the said fact was not disclosed in the form. Further, the petitioner submitted an affidavit on 19-4-2018 before the respondents, but in the said affidavit also she did not disclose the aforesaid registration of crime, arrest and execution of personal bond by her. The employer has taken into consideration the conduct of the petitioner of non-disclosure and suppression in the attestation form, irrespective of the nature of allegations against the candidate which may be of petty nature. The conduct of a candidate of suppression or misrepresentation of information in the attestation form itself amounts to moral turpitude. The petitioner was a candidate to be recruited to judicial service and in such appointment, a candidate must be of impeccable character and integrity.

26. We do not find any illegality in the decision taken by the respondents cancelling the selection of the petitioner on the post of Civil Judge, Class-II (Entry Level) warranting any interference in writ jurisdiction.

27. Accordingly, the writ petition is dismissed. There shall be no order as to costs.