
(2010) 03 P&H CK 0370
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15090 of 2009

Arvind Kumar

APPELLANT

Vs

Kendriya Vidyalaya Sangathan and Others

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Himachal Pradesh Panchayati Raj Act, 1994 — Section 32
Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 406

Citation : (2010) 2 ILR (P&H) 587

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges order dated 27th August, 2009 (P-4) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, "the Tribunal") in OA No. 653/FIP/2007, dismissing the Original Application filed by the petitioner. The petitioner has approached the Tribunal for setting aside termination orders dated 2nd October 2008 and 10th October, 2008 (A-1 and A-2), terminating his services from the post of Trained Graduate Teacher (Maths).

2. Brief facts of the case are that pursuant to an advertisement dated 30th September, 2006 selection process for filling up various posts of Trained Graduate Teachers (TGT), including 230 posts of TGT (Maths) was initiated by the respondents. The petitioner being eligible, having qualified the written test and interview, was issued an offer of appointment to join the Kendriya Vidyalaya Sangathan as TGT (Maths),--vide memorandum dated 14th September 2007 (A-7). As per condition No. 7 of the letter of appointment, a period of two years has been prescribed as probation period, which was to commence from the date of appointment. As per condition No. 8, the services of the petitioner could be terminated during probation period. On 28th September, 2007, he joined as TGT

(Maths) at Kendriya Vidyalaya No. 2, Adampur. Before joining his duties, he submitted duly filled in Attestation Form regarding his character and antecedents on 20th/26th September, 2007. On 2nd October, 2008 (A-1), the Assistant Commissioner-respondent No. 2 passed an order terminating the services of the petitioner without assigning any reason. The said order was communicated to him,--vide another order dated 10th October, 2008 (A-2) passed by the Principal, K.V. No. 2, Adampur-respondent No. 3.

3. Feeling aggrieved, the petitioner challenged his termination orders dated 2nd October, 2008 and 10th October, 2008 before the Tribunal by filing OA No. 653/HP/2008 (P-1). In response to the notice issued by the Tribunal, the respondents filed their written statement and disclosed the reason for terminating the services of the petitioner. It was pointed out that the Attestation Form submitted by the petitioner was forwarded to the District Magistrate, District Kangra (H.P.) for varification,-- vide letter dated 18th February, 2008 (R-1). In the report sent by the quarter concerned it was stated that a criminal case FIR No. 147/2006, dated 12th July, 2006, u/s 341, 323 and 34 IPC, Police Station Dharamshala, was registered by the police against the petitioner which was still pending. On receipt of the said report the competent authority was satisfied that the petitioner has withheld the material information and accordingly reached to a conclusion that he was unfit for being an employee of KVS. His services were, thus, terminated in terms of condition No. 8 stipulated in the letter of appointment.

4. In the rejoinder to the written statement, the petitioner claimed that he has not concealed any information in the Attestation Form rather correctly answered each and every column. It has been submitted that at the time of filling up the proforma on 20th September, 2007, no case was pending against him in any court of law because he was already discharged/acquitted in the aforementioned FIR by the Gram Panchayat, Tangroti,--vide order dated 25th June, 2007 (A-9) and the case file was closed. Thereafter no proceedings were ever initiated in any Court of law. It has been further highlighted that after registration of the abovesaid FIR against the petitioner and his mother, the investigating agency sent the matter for consideration to the Gram Panchayat, Tangroti, for intervention, who took the decision dated 25th June, 2007, discharging the petitioner and his mother (A-9). In that regard, the petitioner has also placed on record the information sought from the police under the Right to Information Act (A-10).

5. The Tribunal, however, dismissed the OA filed by the petitioner and reached a conclusion that the petitioner has faced "prosecution" because an FIR was lodged and he was facing criminal case, which was however, later on dismissed for non-prosecution before submission of format by him. But he has not given this information. According to the Tribunal, had this information was given in the Attestation Form, then it was the discretion of the competent authority either to offer him appointment or reject his candidature. The Tribunal has returned a finding against the petitioner that he has suppressed the material information.

The Tribunal also found that there was no need to issue any notice to the petitioner before taking action against him because he was still under probation, therefore, principles of natural justice have not been violated.

6. Mr. H. S. Saini, learned counsel for the petitioner has argued that the Tribunal has adopted hyper technical approach, inasmuch as, it is influenced by non-disclosure of information sought in para 12(I)(B) and (I) of the Attestation Form. He has further submitted that the police has submitted wrong report dated 18th February, 2008 (R-I). According to the aforesaid report case FIR No. 147/06, dated 12th July, 2006, under Sections 341, 323 and 34 IPC was registered, which is pending. Mr. Saini has pointed out that the report is false because as per the decision of the Gtam Panchayat, Tangroti, dated 25th June, 2007 (A-9), the matter concerning the aforesaid FIR was filed for non-prosecution because the complainant absented herself on more than one occasion.

7. According to the learned counsel the view of the Tribunal with regard to clause (B) and (I) of Para 12(I) (wrongly mentioned by the Tribunal as "clauses (B) and (J) under para 11") is also not sustainable because no case was pending against the petitioner on the date of filling up the Attestation Form i.e. 20th September, 2007. In support of his submission, learned counsel has placed reliance on two Division Bench judgments of this Court rendered in the cases of Dinesh Kumar versus State of Haryana 2006 (4) SCT 429 and Dharmender Singh versus Director General of Police, Haryana 2006 (3) SLR 833. He has also relied upon the observation made by Hon'ble the Supreme Court in the case of Commissioner of Police, Delhi versus Dhaval Singh 1999 (4) S.C.T. 732. In order to substantiate his submission, learned counsel has brought to our notice Section 32 of the Himachal Pradesh Panchayati Raj Act, 1994 (Amended up to March, 2006) [for brevity, "the 1994 Act"], which provides for offences that could be prosecuted before the Gram Panchayat. According to the learned counsel, Section 32 in terms refers to Scheduled III. Items Nos. 18, 20 and 33 of Schedule-III deals with offences under Sections 323, 341 and 406 IPC and accordingly the Gram Panchayat, Tangroti, was a Court of competent jurisdiction to pass order dated 25th June, 2007 (A-9). The argument seems to be that there was clearly no necessity to disclose the aforesaid information because by the time Attestation Form was to be filled neither any prosecution was pending nor the petitioner has been ever arrested and his antecedents and character could not be faulted.

8. Mr. R. K. Sharma, learned counsel for respondent Nos. 1 to 3 has, however, argued that a duty is cast on the petitioner and information by clause (B) and (I) in para 12 of the Attestation Form was sought from him. The information required to be disclosed was whether he has ever been prosecuted to which he has incorrectly replied "No". According to clause 12(I) (I) the petitioner was asked to disclose whether there was any case pending against him in any Court of law at the time of filling up the Attestation Form to which he has also replied "No". Mr. Sharma placed reliance on a judgment of Hon'ble the Supreme Court

rendered in the case of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, . He has drawn our attention to the observations made in paras 6 to 8 of the judgment to emphasis that in case of teacher there is added responsibility to disclose every information concerning his antecedents and character, which is the basic object of obtaining completely filled up Attestation Form. Mr. Sharma has pointed out that in the decided case by Hon"ble the Supreme Court, the case pending before the criminal court was u/s 323, 341, 294, 506B read with Section 34 IPC, although in the present case the proceedings have been concluded without any punishment or indictment of the petitioner. He has, however, submitted that the information solicited from the petitioner was whether he has been ever prosecuted in past and he was bound to disclose the complaint which has been decided by the Gram Panchayat, Tangroti, vide order dated 25th June, 2007 (A-9) in the Attestation Form in para 12(I) (I).

9. Having heard learned counsel for the parties at a considerable length we are of the considered view that the instant petition deserves to be allowed. The first question which would arise for determination of this Court is whether the termination of a probationer like the petitioner can be questioned in the facts and circumstances of the case. The principles of law governing the status of probationer are well settled. A probationer does not enjoy the right to hold the post but still an order terminating the services of a probationer can be made subject matter of judicial review if such an order is arbitrary or punitive. In that regard reliance may be placed on the observations made by Hon"ble the Supreme Court in para 6 of the judgment rendered in the case of High Court of Judicature at 1998 (1) PLJR 77 (SC) , which reads thus:-

...The position of a probationer cannot be equated with that of an employee who has been substantively appointed on a post and has a right to hold that post. An order terminating the services of a probationer can be questioned only if it is shown that it has been passed arbitrarily or has been passed by way of punishment without complying with the requirements of Article 311(2) of the Constitution. Since a probationer has no right to hold the post on which he has been appointed on probation, he cannot claim a right to be heard before an order terminating his services is passed. The obligation to communicate the adverse material to a person before taking action against him on the basis of the said material is a facet of the principles of natural justice. But principles of natural justice have no application in the case of termination of the services of a probationer during the period of probation since he has not right to hold the post....

10. Similar observations have been made in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , where the whole case law concering the probationer has been reviewed by Hon"ble the Supreme Court.

11. Likewise, in the case of V.P. Ahuja Vs. State of Punjab and Others, , following observations have been made in para 7 :

7. Aprobationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural.

12. The question further is whether the order of termination dated 2nd October, 2008 and 10th October, 2008 (A-1 and A-2) are the result of arbitrary exercise of power or the orders could be considered as bona fide. It has come on record that the orders of termination were passed on the ground that the petitioner failed to disclose that he faced prosecution in case FIR No. 147/2006, dated 12th July, 2006, and that he was facing criminal case, which was, however, later on filed by the Gram Panchayat, Tangroti, for non-prosecution, vide order dated 25th June, 2007 (A-9). It may be true that the petitioner did not disclose information regarding registration of case FIR No. 147/2006, dated 12th July, 2006 and the order dated 25th June, 2007, passed by the Gram Panchayat, Tangroti shows filing of the complaint made against the petitioner and his mother for non-prosecution (A-9). The Attestation Form was filled by the petitioner on 20th September, 2007, which is much later. The information solicited in clauses (B) and (I) in para 12(I) of the Attestation Form are as under:-

12(I)(A) xxx

(B) Have you ever been prosecuted ? Yes/No

(C) to (H) xxx

(I) Is any case pending against you in any Court of Law at the time of filling up this attestation form Yes/No

(J) xxx

13. A perusal of clause 12(I) (B) of the Attestation Form would show that the petitioner was to disclose that if he has ever been prosecuted. The fact with regard to FIR No. 147/2006, dated 12th July, 2006 did not travel beyond summoning of the petitioner before the Gram Panchayat, Tangroti, in pursuance to the provisions of Section 32 of the 1994 Act. The Gram Panchayat, Tangroti, acting as a criminal court did not frame any charge whatsoever against the petitioner. It is well settled that no prosecution would commence unless challan is presented or in inquiry the charge sheet is served. In that regard reliance may be placed on the observations made by Hon'ble the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , which reads thus:

16...the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the

appellant-authorites that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy....

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/ criminal proceedings are pending against the employee. To deny the said benefit they must be at the relevant time pending at the stage when charge-memo/ charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

14. There is no dearth of judgments on this issue. Hon"ble the Supreme Court has reiterated, applied and further explained the principles laid down in K. V. Jankiraman's case (supra) in the subsequent judgments in the cases of Union of India versus Kewal Kumar (1999) 3 S.C.C. 204; Union of India (UOI) and Others Vs. Sangram Keshari Nayak, ; Coal India Ltd. and Others Vs. Saroj Kumar Mishra, ; and UCO Bank and Another Vs. Rajinder Lal Capoor, . Therefore, it has to be concluded that the petitioner did not suppress any information because he, in fact, was not prosecuted ever. As a matter of fact, he was discharged at the initial stage because the complainant preferred not to come forward. Likewise, the information in clause 12(I) (I) of the Attestation Form has been correctly disclosed by the petitioner because there was no case pending against him in any Court of law at the time of filling up of the Attestation Form.

15. Even otherwise, in cases where a person has been acquitted and the information has not been disclosed, the Division Bench of this Court has taken the view that non-disclosure of such an information would not amount to concealment of facts. In a case where a Constable was acquitted of criminal charge and the information was not revealed in the Attestation Form, this Court regarded it a hyper technical requirement and set aside the order, which was based on the allegation of concealment of fact. In the case of Subhash versus State of Haryana 1994 (4) SLR 525, this Court has observed as under:-

Having heard the learned counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly hyper-technical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case, petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose this fact to the respondents at the time of his submitting application for recruitment to the police service. In any case, the fact stands that there is nothing against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4th September, 1989 Annexure P-1. Therefore, the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner.

16. There is another aspect of the matter. It is not the case of the respondents that the work and conduct of the petitioner has ever been un-satisfactory. His results have been found to be up to the mark and his work and conduct, in fact, is satisfactory. It is further clear from the persual of the termination order dated 2nd October, 2008 (A-1) and 10th October, 2008 (A-2) that the termination of the petitioner has not been ordered on the basis of un-satisfactory work and conduct, which could constitute the basis for discharging a probationer. That being the factual position, the aforementioned orders of termination are arbitrary and liable to be set aside.

17. The case of the present petitioner is on better footing. It is conceded position on record that he had filled the Attestation Form on 20th September, 2007 and on that date no criminal proceedings were pending against him. The Gram Panchayat, Tangroti, had already filed the complaint against the petitioner due to non-prosecution,--vide order dated 25th June, 2007 (7-9). It is because of wrong report dated 18th February, 2008 (R-1), sent by the Superintendent of Police, Kangra, that the respondents have initiated action against the petitioner. Had the correct report been sent by the police the position would have been different.

18. We find no force in the argument raised by Mr. R. K. Sharma, learned counsel for the respondents. The judgment of Hon"ble the Supreme Court in the case of Rattan Yadav (supra) is totally distinguishable. Even as per own saying of Mr. Sharma, in the aforementioned case the criminal proceedings were still pending against the petitioner but in the present case, as explained in the preceding paras, no prosecution as such was initiated which makes this case altogether different. Therefore, we have no hesitation to reject the arguments raised by Mr. R. K Sharma.

19. As sequel to the above discussion, the instant petition is allowed. The impugned order dated 27th August, 2009 (P-4) passed by the Tribunal as well as orders of termination dated 2nd October, 2008 and 13th October, 2008 are quashed. The petitioner is ordered to be reinstated in service. However, he shall be entitled to all benefits except the arrears of salary from the date of

termination i.e. 13th October 2008 till the date of reinstatement. The petitioner shall report to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Government Hospital Road, Gandhi Nagar, Jammu-respondent No. 2 on or before 22nd March, 2010.

20. A copy of the order be given to the learned counsel for the parties on payment of usual charges.