(2016) 12 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Writ (CW) No. 14815 of 2013

Ashok Gurjar APPELLANT

Vs

Punjab and Sind Bank RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLCRajUC 82

Hon'ble Judges : Mr. Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. Rakesh Arora, Advocate, for the Petitioner; Mr. Anil Bissa, AGC and Mr. Rameshwar Chouhan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Sandeep Mehta, J.—By way of this writ petition, the petitioner Ashok Gurjar has approached this Court seeking to assail the order Annex.2 dated 18.11.2013 whereby, he was terminated from services of the respondent Punjab & Sind Bank with immediate effect.

2. Facts in brief are that the petitioner herein after faced a process of selection, succeeded therein and was appointed as a Probationary Officer in the respondent Punjab & Sind Bank and was posted at Branch Office, Mandal, District Bhilwara vide order dated 2.5.2013. The petitioner has claimed that to his utter surprise and out of the blue and without any prior notice or intimation, he received a cryptic unreasoned order dated 18.11.2013 (Annex.2) communicating that his services had been terminated with immediate effect. The petitioner approached the Bank authorities seeking explanation for his termination from the bank''s services but no written response was given to his queries. He was orally informed that since he had been implicated in a Criminal Case, being FIR No. 29/2006 registered at P.S. Jawahar Nagar, Jaipur for the offences under Sections 143, 148, 149, 341 and 323 IPC and as the factum of registration of said criminal case was concealed at the time of filling up the application for selection, the Bank

authorities had taken the decision to terminate the petitioner''s services.

3. Thereupon, the petitioner filed the instant writ petition annexing therewith all relevant documents of the said criminal case. The application form of the petitioner has also been filed along with the writ petition as Annex.3. At clause no.12 of the application form, the petitioner was required to furnish the following information :-

"12. Have you ever been arrested, or kept under detention or bound down/fined/ convicted by a Court of Law for any offence, or debarred/disqualified by the Public Service Commission from appearing at its examination selections or debarred from taking any examination or restricted by authority/institution? If answer is "yes", full particulars of the case detention, fine, conviction, sentence etc. should be given."

4. The petitioner answered to the said query in negative. An endeavour has been made by the petitioner with reference to the documents of the criminal case, to establish that neither was he named in the FIR nor was he arrested in that case. Though his name finds place in the charge-sheet but the trial Court did not take cognizance against the petitioner. Six accused who faced trial pleaded guilty and thereupon, the trial Court, by judgment dated 20.6.2013 released them on probation. The petitioner has thus tried to demonstrate that the termination order is totally without foundation. A prayer is made in the writ petition that the impugned order be quashed and set aside and the petitioner be ordered to be reinstated with full back wages and consequential benefits.

5. In reply to the writ petition filed on behalf of the respondent no.3 - S.H.O., P.S. Jawahar Nagar, Jaipur, it is stated that though no accused was named in the FIR but during investigation, name of the petitioner also cropped up as an accused. Bail bonds were also executed by the petitioner. However, by inadvertence, the petitioner''s name could not be included in the array of charge-sheeted accused.

6. In reply filed on behalf of the respondent Bank, it is asserted that services of the petitioner were terminated on account of pendency of the above stated criminal case. Factum of registration of the criminal case was deliberately concealed by the petitioner while filling the application form. The petitioner was running in the probation period and thus, there was no requirement to hold any enquiry before terminating his services. At para 5 of the reply, it is clearly mentioned that no adverse comments were communicated by the concerned police official during verification proceedings as regards the petitioner''s character. However, the documents of the criminal case submitted by the petitioner clearly reveal his involvement therein. Referring to the petitioner''s involvement in the criminal case, the Bank has taken a stand that he is not entitled to continue in its service. On these grounds, the petitioner''s termination order has been strenuously defended.

7. Mr. Rakesh Arora, learned counsel for the petitioner vehemently urged that the

petitioner was neither named as an accused in the FIR nor was he charge-sheeted by the police. Thus, he had no means to know about pendency of the criminal case when he submitted the disputed application form for selection. This fact came to light only during verification proceedings and therein also, it was conveyed that the petitioner was not arrayed as an accused in the final report form. That is why, the police authorities gave a verification report favourable to the petitioner. Thus, as per Shri Arora, the petitioner did not provide any misinformation regarding the criminal case to the employer while filling up the application form.

8. Relying upon the following judgments :-

(1) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors. reported in (2013) 10 SCC 324.

(2) Pradip Kumar v. Union of India (UOI) and Ors. reported in (2012) 13 SCC 182.

(3) Gurpal Singh v. High Court of Judicature for Rajasthan reported in (2012) 11 JT 557.

he urged that the impugned order being arbitrary, illegal and perverse and having been passed in gross violation of the principles of natural justice, deserves to be struck down and the respondent Bank be directed to reinstate the petitioner in service with full back wages and all consequential benefits.

9. Per contra, learned counsel Mr. Rameshwar Chouhan representing the respondent Bank and Mr. Anil Bissa representing the respondent no.3 S.H.O., P.S. Jawahar Nagar, Jaipur opposed the submissions advanced by the petitioner''s counsel. They contended that as the petitioner had furnished bail bonds during investigation of the above mentioned FIR, he can very well be imputed knowledge about pendency of the criminal case registered against him. Thus, as per them, it was imperative for the petitioner to have mentioned about registration of the said criminal case while filling the application form seeking appointment. He concealed this fact thereby committing fraud and is not entitled to challenge the impugned order. However, both the learned counsel could not deny the glaring fact that neither was the petitioner named in the FIR nor was he charge-sheeted by the police upon concluding investigation. Shri Chauhan learned counsel representing the employer Bank could not dispute the fact that the impugned order is totally laconic and no reason whatsoever was assigned therein so as to discern the cause for the petitioner''s termination from the bank''s service. Further he also did not dispute the fact that it is not a case of termination simpliciter or of discontinuance of petitioner''s probationary services.

10. I have considered the arguments advanced at the Bar and have perused the material available on record.

11. The fact that the petitioner''s services were terminated by a laconic, non-speaking order issued without any opportunity of showing cause to the petitioner,

is writ large on the face of record. The impugned order Annex.2 dated 18.11.2013 does not reflect any reason for termination whatsoever. The purported reason behind the termination of the petitioner''s services as set up in the bank''s reply appears to be the pendency of the above mentioned criminal case. Thus, the order dated 18.11.2013 cannot be construed as a termination simpliciter or a decision to discontinue the petitioner''s probationary services. The impugned order is definitely punitive in nature. FIR of the criminal case has been placed on record of the writ petition as Annex.4. No accused was named therein. Charge-sheet/F.R. has been placed on record as Annex.5 as per which six accused other than the petitioner were charge-sheeted by the police.

12. May be that during course of investigation, a suspicion was cast on the petitioner and he might even have been asked to furnish bail bonds but the undisputed fact remains that neither was he named in the FIR nor was he charge-sheeted after investigation. The trial Court did not summon him to face trial. Therefore, it can safely be deduced that the petitioner was not arraigned as an accused in the said criminal case and there was no occasion for him to have mentioned this fact in the recruitment application form. Moreover, looking to the ambiguous language of Clause 12 of the application form, which has been reproduced herein above, there was no occasion for the petitioner to mention about the registration of the case even if he was having knowledge thereof. The petitioner had not been arrested, charge-sheeted or convicted by the Court of law for any offence and thus, there was no occasion for the petitioner to reply in affirmative. Thus, this Court has no hesitation in holding that the petitioner, by answering in negative to the query made at clause 12 of the recruitment application, did not give any mis-information to the employer.

13. The Hon''ble Apex Court in the case of Avtar Singh v. Union of India and others reported in (2016) 8 SCC 471 examined in detail the issue regarding concealment of registration of a criminal case while filing an application for appointment and held as below :-

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or 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 mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(3) In case there is suppression or false information of involvement in a criminal

case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(4) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) 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.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

14. Viewed in light of the above judgment and even otherwise, there was no justification in the action of respondents in terminating the petitioner''s service as a probationary officer in the Bank by the impugned order Annex.2 dated 18.11.2013.

15. Thus, I am of the firm opinion that the impugned order of termination Annex.2 is grossly illegal, arbitrary and perverse and was also issued without providing any opportunity of hearing to the petitioner the same does not stand to scrutiny and deserves to be struck down.

16. In wake of the discussion made herein above, the writ petition deserves to be and is hereby allowed. The impugned order Annex.2 dated 18.11.2013 is hereby quashed and struck down. The petitioner shall forthwith be reinstated in service of the respondent Bank with full back wages and other consequential benefits.

17. Stay petition also stands disposed of.

18. No order as to cost.