(2023) 01 KL CK 0175

In the High Court Of Kerala

Case No : Writ Appeal No. 126 Of 2020

Aswin.S.R	APPELLANT
Vs	
State Bank Of India	RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 294(b), 308, 323, 324, 326, 341

Citation : (2023) 01 KL CK 0175

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : Elvin Peter P.J., K.R.Ganesh, N.R.Reesha, T.S.Likhitha, P Ramakrishnan, Preethi Ramakrishnan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P.J.,

1. The unsuccessful writ petitioner is the appellant herein. He had sought for a direction to the respondent Bank to reinstate him in service as his services were terminated on the ground that he suppressed the material fact of not mentioning the pendency of the criminal case in the relevant forms at the time of entering into service as a Peon at the Bank.

2. The short facts leading to the Writ Appeal are as follows:

The appellant was appointed as a Peon in the State Bank of Travancore. Earlier, a criminal case was registered against him which was suppressed by him while submitting his bio-data prior to the appointment. On this ground, the petitioner was served with a show cause notice to which the petitioner took a stand that the questions were only whether the appellant had been convicted for an offence and whether any case which was pending against him involved moral turpitude and the negative answers given by him were justified as correct, therefore, the proposal for termination of his services was bad. When an order of termination was passed, he challenged the said order in Writ Petition No. 36568 of 2015 wherein by Ext. P10 judgment dated 16th March 2017, this Court directed a reconsideration by the bank in the light of the parameters laid down in paragraph 38 of the judgment reported in Avtar Singh v. Union of India and Others [(2016) 8 SCC 471].

3. The bank again considered the matter pursuant to the judgment and after a personal hearing, passed Ext. P11 communication dated 28-7-2017 finding that the action of the petitioner in not revealing the pendency of the criminal case against him amounts to deliberate suppression of a vital aspect and that a person guilty of such conduct cannot be appointed as an employee of the Bank and accordingly, the request made by the petitioner for re-instatement was rejected. Challenging Ext. P11, the Writ Petition was filed.

4. On behalf of the petitioner, it was argued before the learned Single Judge that the petitioner was only 18 years old as on the date of registration of the crime following an attempt to assault the petitioner's father which was resisted by him resulting in a case and counter case. The case against the petitioner had ended in discharge and there was no ulterior motive for the petitioner in not disclosing the existence of a criminal case. It was also argued that in view of the specific questions asked in the bio-data form the answers given by the petitioner were in order and there was no suppression of the existence of a criminal case which involved any moral turpitude and the issue is covered in favour of the petitioner by the judgment of the Apex Court in Avtar Singh (supra) and also by the judgment in Writ Appeal No. 2072 of 2016, dated 22nd November 2016, produced as Ext. P8 in the Writ Petition. It was pointed out that a criminal Case, S.C. No. 244 of 2014 before the Assistant Sessions Court, Nedumangad arising from Crime No. 809 of 2012 of the Aryanad Police Station in which the appellant was the accused, was amicably settled between the parties and the final report and all proceedings were quashed as per Ext. P7 judgment in Criminal M.C. No. 266 of 2016 dated 25-01-2016.

5. The learned Counsel for the Bank relied on a decision of the Apex Court in Devendra Kumar v. State of Uttaranchal and Others [(2013) 9 SCC 363] to contend that the suppression of involvement in a criminal case is material and even if a case is minor in nature and does not involve moral turpitude, the very fact that the pendency of the case has been deliberately suppressed by the petitioner is material and an employment obtained by committing such fraud ought to result in termination of the employment. The Bank became aware of the pendency of the criminal case only when the District Collector informed them of the same after an enquiry conducted through the District Police Chief. The report of the District Police Chief revealed that the petitioner was not suitable for the post and and it was on the basis of the said communication, the action for termination was issued against the petitioner.

6. The learned Single Judge found that the petitioner had knowingly suppressed the pendency of the criminal case against him and, therefore, the subsequent

questioning of the proceedings would not be relevant and the petitioner who was seeking an appointment in the banking institution was not expected to suppress the existence of a pendency of a criminal case against him. It was held that respondent bank cannot be faulted for issuing orders of dismissal and accordingly dismissed the writ petition.

7. Before us, the learned counsel for the appellant Sri. Elvin Peter.P.J. and Ganesh K.R argued that in the year 2012, some miscreants trespassed into the appellant's house and attacked his father and when the appellant tried to stop them, he was also attacked and injuries were inflicted on him. The police had registered Ext. P3 F.I.R and as a counter blast of the registering of the above FIR, the accused persons submitted Ext. P4 FIR alleging offence against the appellant as Crime No. 809 of 2012. Later, there was an amicable settlement and as stated above, the cases were quashed. This ought to have been taken note of by the learned Single Judge and the principles in Avtar Singh (supra) followed which held that the non-mentioning of the offence is not fatal in as much as it did not have a bearing on the proposal to appoint a person for employment. It is also argued that the appellant was of tender age at the time of the registration of the FIR and that the appellant was appointed only to the post of Peon in the Bank, whereas, in all the decided cases by the Apex Court the posts were much higher than that of Peon and the persons involved in those cases were highly educated where as the appellant was only having basic education. In such circumstances, a lenient view ought to have been taken by the learned Single Judge, is the submission

8. The learned counsel for the respondent Sri. Ramakrishnan and Smt. Preethy Ramakrishnan argued that the petitioner had deliberately suppressed the mentioning of the criminal case in which he was involved and a banking institution cannot afford to treat the said suppression as a trivial one and offer employment to the appellant. The subsequent quashing of the case after amicable settlement is not relevant as petitioner was dishonest while filling up the application form at more than two places and thus there was a clear attempt to suppress a vital fact. The respondent had considered every aspect as directed by this Court while passing Ext. P11 order indicating sufficient reasons for terminating the services of the appellant. The learned counsel also argued that no interference at all is warranted in the facts of the case. The learned counsel for the respondent cited 2013 KHC 4597 Devendra Kumar v. State of Uttaranchal and Others for the proposition that withholding such material information or making falls information itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

9. Having considered the rival submissions, we are not in a position to accept the argument on behalf of the appellant for more reasons than one. It is not disputed and it cannot be disputed that the appellant was shown as an accused in Ext. P3 FIR registered on 20-08-2012 alleging offences under Sections 143, 147, 148, 149, 294 (b), 341, 323, 324, 326 and 308 of IPC, three years before the

selection process started. The cases were quashed following the settlement only by Ext. P7 judgment dated 22-11-2016 long after the petitioner joined the bank on 20-4-2015 and after the order dated 17-10-2015 was issued by the Bank alleging suppression. The petitioner's defence to the above suppression is that the question by the bank in the application form was whether he was involved in any criminal case involving moral turpitude and that the petitioner was only obliged to furnish the details of the conviction as against him or the cases involving moral turpitude and according to him, the criminal case registered against him does not involve moral turpitude and, therefore,he was not wrong in not mentioning the same.

10. We are not prepared to accept the said contention and we reject the the same outright. The petitioner was involved in a criminal case alleging serious offences including under Section 308 of IPC and what was relevant was the suppression of the said vital information from the Bank. The appellant was thoroughly dishonest in doing so and no explanation on the side of the appellant is worth considering or worthy of acceptance.

11. The second argument on behalf of the learned counsel is on the basis of the judgment in Avtar Singh Supra) particularly, in paragraph 38 wherein it is stated that the crime has been registered when the appellant was of a young age for a petty offence and, therefore, the suppression of a solitary case against him should have been considered in that background in a lenient manner and a harsh punishment of termination from service is not warranted.

12. We hold that the information sought for by the bank was specific to which there could have been only one answer and the appellant had dishonestly suppressed the same. The Bank while passing Ext. P11 order has taken into account all the relevant factors and the excuse put forth by the appellant for not having revealed the pendency of the case was rightly taken note of seriously by the Bank, as it was a suppression of a very material fact. The appellant had filled up all the forms and declarations fully knowing the conditions and consequences of furnishing false information.

That apart, the character and antecedence of the appellant furnished by the police also mentions that he is not suitable for the post . The power/discretion when it insisted that a person to be employed in any position in the bank, whether higher or lower is expected to maintain utmost integrity as working in bank itself is based on the trust of its employees and it would not employ a person in whom they have no trust. If the appellant had given true and correct information to the Bank, the bank could have made necessary inquiries and evaluated the antecedents but the act of suppression/furnishing virtually prevented the bank from making any such enquiry. In such circumstances, there is no option for the bank but to terminate the service of the appellant. The learned Single Judge had considered all these aspects while dismissing the Writ petition and we do not think that the said judgment calls for any interference. The decisions relied on by the learned Single Judge as stated above are in no way helpful to the case of the appellant. The decision of the Supreme Court in Devendra Kumar (supra) applies on all fours to the facts of the case.

Writ Appeal fails and is dismissed.