

(2011) 08 DEL CK 0028

In the Delhi High Court

Case No : R.P. No. 439 of 2009 and CM No. 14148 of 2009 in WP (C) 10041 of 2005

Birender Mahto

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 337, 34, 341

Citation : (2011) 08 DEL CK 0028

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Dushyant Parashar, for the Appellant; Darpan Wadhwa and Vipin Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The writ petition was dismissed vide judgment and order dated 27.2.2009 by a Bench Coram: B.N. Chaturvedi, J. and S.L. Bhayana, J. Review sought vide R.P. No. 439/2009 has been left as an unfinished task and since both Hon'ble Judges have superannuated and the review petition remained pending, the present decision decides the said review petition as also CM No. 14148/2009.

2. Seeking review it is pleaded in Ground (a) that a factually wrong information has been observed by the Bench in para 10 of the judgment under review wherein it stands recorded that a criminal case was pending in which the Petitioner was an accused.

3. Vide CM No. 14148/2009 it is stated that said fact recorded is not at page 10 of the judgment but is in para 11 of the decision and thus it is prayed that the averments in the review petition be read as explained in the application.

4. Indeed, the assertions in the application are correct and thus we dispose of the application noting that the stated wrong fact noted by the Bench would be in

the paragraph referred to in the application.

5. In a nut shell, while seeking review, it has been pleaded that the Division Bench was wrongly influenced by the fact that a criminal case was still pending against the Petitioner whereas the fact of the matter was that pursuant to a compromise the Petitioner had been acquitted on 13.6.2001.

6. The Petitioner had approached this Court on the plea that while filling up the verification roll after he was offered employment as a Constable in CISF, pertaining to information sought vide serial No. 12 (b) and 12 (f) of the verification roll, he replied in the negative under a mistaken belief that the case being settled he could respond in the negative to the information sought. It be highlighted that information sought vide serial No. 12 (b) and 12 (f) of the verification roll was:

12 (b) Have you ever been prosecuted?

12 (f) Have you ever been convicted by Court of Law for any offence?

7. It is not in dispute that the Petitioner responded in the negative and thus was employed on probation pending character verification and during character verification it was revealed that the Petitioner was an accused in FIR No. 68/1993 for offences under Sections 447/341/323/324/337/34 Indian Penal Code, 1860 and that pursuant to a compromise he was acquitted, as were the others, on 13.6.2001.

8. When this information came to the knowledge of the department, a show cause notice was issued to the Petitioner on 5.11.2003 seeking his explanation as to why did he suppress the truth. To which he responded in the following words, on 19.11.2003:

I, Force No. 022440051 Constable Virendra Mahto, working under your control. The applicant has received the above mentioned letter from your office. In this connection I have to submit that there was a family dispute regarding division of land between my father and my uncles in the year 1993. In this dispute, they added my name also due to malafide intention though I was not involved in the same. This case was settled and therefore, it escaped my attention that I was implicated in the case. I therefore, filled up the information in col.12 inadvertently.

Sir, I have committed this mistake intentionally while filling the form. I therefore, urge upon your goodself to have a humane angle and keep in mind my future while taking a decision in the matter. I may be pardoned for this mistake. I shall not commit any such mistake in future. I request your honour to have a pity on my family consisting of my parents, younger sister and children. I may be given one opportunity. I shall ever remain grateful to you.

9. We highlight, that as in the reply aforesaid dated 19.11.2003, even in the writ petition it is pleaded that since Petitioner's name was added mala fide in the FIR

and as the case was settled, it escaped his attention, while filling up the verification roll, to state correctly that he was an accused for having committed an offence, but was acquitted.

10. The defence taken was that suppression of any information which has a bearing on character verification was a serious matter and thus the department was fully justified in terminating Petitioner's service while he was still on probation.

11. With reference to a decision of the Supreme Court reported as *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, the Division Bench held that the Petitioner had suppressed the relevant information. The writ petition was dismissed. Inadvertently the Division Bench noted that the Petitioner was still an accused and this information was suppressed and not that the Petitioner was an accused in the past, but had been acquitted on the basis of a compromise. However, we may note that in paragraph 12 the Division Bench has noted that the offence was compounded.

12. Seeking review, apart from pleading that the Division Bench appears to have been influenced as if the Petitioner was still an accused, a plea which we find to be incorrect inasmuch as the concluding paragraph of the judgment under review is para 12, where the Division Bench has correctly noted that the offence was compounded, the grounds on which review has been sought are as under:

(d) With greatest respect this Hon'ble High Court has failed to differentiate between the factual and material information because the non disclosure of the factual information does not tantamount to non disclosure of material information because the material information vis-a-vis Petitioner would be the conviction which is not the case of the Petitioner because the case had been close as compromised vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar, as the same was a family feud between the father and the uncle of the Petitioner.

(e) With greatest respect this Hon'ble High Court ought to have appreciated that at the time of filling the Attestation Form the case was already compromised vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar. It is relevant to mention here once a case has been compromised the Petitioner was right in that a boy of limited education will not be able to differentiate between the legal education will not be able to differentiate between the legal Terminology of the two questions reproduced herein for sake of brevity;

12(b) Have you ever been prosecuted?

(f) Have you ever been convicted by court of Law for any offence?

The first question 12(b) pertains to prosecution which will be called when the Petitioner would have been undergone Trial which was not the case here as the case of the Petitioner was compromised vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar, which naturally has not given any

bearing to the Petitioner to think about the same R.P. No. 439/2009 & CM No. 14148/2009 in W.P.(C) No. 10041/2005 Page 5 of 9 particularly.

The second question pertains to conviction which is completely absent in the case of the Petitioner because the matter has attained finality in terms of Compromise entered between the Petitioner's father and his uncle vide order dated 13.6.2001 passed by the Learned Magistrate, Chappra, Bihar.

(f) With greatest respect this Hon''ble High Court has failed to appreciate that the Petitioner cannot be held guilty for non disclosure of information in which the case between the Petitioner and Respondent has been compromised vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar, and also in which the Petitioner has been allegedly being made party in a criminal case which was a family feud between the brothers of the Petitioner's father, moreover the same does not amount to concealment because the Petitioner had already been acquitted by the Criminal Court in 2001, vide order dated 13.6.2001, where the Petitioner had been allegedly implicated, whereas the attestation form had been filled by the Petitioner in the year 2002 for the job in which the Petitioner had been selected to serve the country with Respondent No. 2 organization.

(g)....

(h)....

(i) With greatest respect this Hon''ble High Court has failed to appreciate that in column 12 (b) the information has been sought "have you ever been prosecuted" The Petitioner has written "No". In fact, a false case was registered against the family members of the Petitioner including the Petitioner by his relatives/uncles over a dispute of ancestral family property. The same was decided vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar, whereby the Petitioner was found innocent and acquitted discharged from the charges framed in criminal case No. 2633/1993 and trial No. 199/2001. It was also mentioned in the said order that the prosecution failed to prove the case against the Petitioner. Since the Petitioner was exonerated in the said false case, the Petitioner did not deem it fit to mention this fact in the Attestation Form without having any oblique motive as the case had already been closed by then.

13. It is all rolled over pleadings and with regret we must note that the tendency today is to keep on frolicking and draft pleadings in a roller coaster manner, with an eye to impress the client, and not to conform to the rules of pleadings which requires a concise statement of material facts to be pleaded and wherever necessary with material particulars and No. more.

14. We highlight that the Petitioner is now trying to sometimes say that since he was exonerated he did not deem it fit to mention this fact in the attestation form and sometimes is trying to plead that since the case was false he justifiably believed to respond in the negative and sometimes, as evident from ground (d)

urged in the review petition urges that "this Hon'ble High Court has failed to differentiate between the factual and material information because the non disclosure of the factual information does not tantamount to non disclosure of material information because the material information vis-a-vis Petitioner would be the conviction which is not the case of the Petitioner because the case had been close as compromised vide order dated 13.6.2001 of the Ld. Judicial Magistrate, Ist Class, Chappra, Bihar, as the same was a family feud between the father and the uncle of the Petitioner".

15. We do not understand what does the Petitioner mean by pleading that this Court failed to differentiate between the factual and material information because non disclosure of the factual information does not amount to non disclosure of material information. As we understand most humbly, a non disclosure of a factual information, disclosure whereof would be relevant, would be non disclosure of a material information.

16. We may note that the decision in Ram Rattan Yadav's case (supra) relied upon by the Predecessor Bench has been referred to in the latest decision reported as Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, wherein non disclosure of information of a relevant fact which has a bearing on character verification was held to be fatal. of course, on facts the decision was on favour of Kamal Nayan Mishra, but it is the ratio of law which is binding.

17. We may note that the language of the verification roll in Kamal Nayan Mishra's case and Ram Rattan Yadav's case were different than the instant case and we would highlight that in Kamal Nayan Mishra's case the Supreme Court highlighted that where the language of a question is confusing, benefit ought to be given to the candidate. In the instant case, information sought vide serial No. 12 (b) of the verification roll i.e.: "Have you ever been prosecuted" is plain and clear and admits of No. two meanings and we see No. scope for any confusion. We may highlight that the Petitioner became an accused in the year 1993 and pursuant to the offence being compounded earned an acquittal in the year 2001. If he filled up the attestation form on 14.2.2002. The date of the acquittal being 13.6.2001 it is impossible to believe that within 8 months of the acquittal, the Petitioner forgot that he was an accused for having committed an offence. Nobody can accept the argument that having earned an acquittal, the accused would think that he was never prosecuted.

18. We see No. merit in the application seeking review and thus dismiss the same but without any orders as to costs.