
(1983) 10 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 195 of 1983

Dalbir Singh Tokas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-1983

Acts Referred:

Citation : (1984) 6 DRJ 62 : (1984) LabIC 986 : (1984) RLR 26

Hon'ble Judges : Rajinder Sachar, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : Arun Jaitley, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This petition has been filed seeking a mandamus and makes a grievance that the petitioner who took the Delhi Administration Examination, 1981, being combined competitive examination held every year by the Staff Selection Commission for the selection and direct recruitment of the candidates for the post of Sub Inspector (Executive) in Delhi Police and who was selected for the same is being denied the appointment.

(2) The petitioner took the examination on 13th and 14th of January 1981. Thereafter, the petitioner passed through the various physical test, medical test etc. It is common case that after conducting the personality test the Staff Selection Commission recommended the names of 116 candidates including the petitioner for the appointment for the post of Sub Inspector (Executive). The petitioner naturally expected that he would be called and given the appointment along with the others in 1981. But that was not to be. The petitioner would have been put in great financial straits and almost driven to starvation but for the fortunate fact that the petitioner is employed as Lower Division Clerk in the Armed Forces Head Quarters, Ministry of defense, Govt. of India, since February 1979 in regular appointment.

(3) The petitioner went on desperately asking the Delhi Administration ever since

as for the reasons for not selecting him and finding no alternative the petitioner has filed the present writ petition.

(4) In the counter-affidavit filed it is admitted that the petitioner was recommended by the Staff Selection Commission. It is also admitted that the petitioner passed through the various tests. The justification for not giving him the appointment stated to be is that on checking the attestation form, it has transpired that the petitioner's record was not unblemished and he had criminal history and that he was also detained in Misa and DIR. In support of this plea six instances are mentioned, where the petitioner was arrested on offences allegedly under Sections 108/151 Cr.P.C., 147/148 Indian Penal Code ., 110 Cr. P.C. and also arrested u/s 9 of Misa dated 9-9-1975 and also u/s 43(33) under DIR. In the same breath, however, it is immediately conceded that the petitioner was acquitted by the court in all the criminal cases and that the order of detention, under Misa, Dir was also revoked by the Administration. But yet it is still insisted with dengue in cheek and one fails to understand with what logic that notwithstanding the acquittals but keeping in view the past criminal history of the petitioner the offer of appointment was withheld in view of the fact that the police department is a sensitive department. The matter is said to have been referred to Delhi Administration on 19-8-1981, which apparently must have found itself incompetent to take any decision because it has in its term referred the same to Government of India, by letter dated 26-2-1982, the latter apparently not deeming to urgent enough has still not taken any decision. That in short is the justification for denying petitioner's fundamental right of a public employment guaranteed under Article 16 of the Constitution of India. In the rejoinder filed by the petitioner a categorical stand has been taken that the cases listed at item Nos. (i) and (iv) under Sections 108/151 and 110 Criminal Procedure Code . never took place. No material has been placed before us by respondent to show that this assertion by the petitioner is wrong. As regards the other cases the respondent has already admitted that they were either withdrawn by the public prosecutor and even detention order was revoked on 26-3-1976.

(5) Mr. Jaitley, the learned counsel for the petitioner, makes a grievance that it is unfair to have made only a reference to the F.I.R. without bringing before this Court the police report and the F.I.R. because according to him had that been done, it would have shown that at the most these cases related to the usual harmless activities of the petitioner in student activities and the normal harmless exuberance of young public life in college etc and to convert these activities into penal offences by the usual technique was wholly uncalled for. Be that as it may, the fact remains that all the cases resulted in acquittal or were withdrawn by the state itself as far back as 1976-77 Thus when in 1981, the petitioner was selected there was nothing in his career which could be called violent or criminal involvement. The petitioner's state was clean. Not only that but there were positive, laudable commendatory attributes and certificates of good character in the petitioner's favour . As already mentioned the petitioner is employed in Army

Headquarters, Govt. of India since 1979. His work has been greatly appreciated as is clear from the letters written by his superiors to the police authorities and the Home Ministry, Government of India recommending him strongly for the post of Sub Inspector (Executive). To give an instance, an Assistant Director (Personnel) in the Ministry of defense by his letter of 16-3-1982, annexure "P-6" while writing to the Deputy Commissioner, Police Head Quarters has clearly stated that the petitioner is one of the very loyal, honest and bright clerk of his department and that he has handled sensitive subjects with discretion and that he can personally vouch for his character, qualities and further that the petitioner is a thoroughly reliable young man who would prove an asset to any organisation. Similarly another letter of 22-9-1982 written by Brig. Bhist to Mr. Pillai, the Joint Secretary to the Government of India, Ministry of Home Affairs states that he has had occasion to watch the work of the petitioner for the last three years and that he has found him to be a willing hard working dedicated and loyal person and strongly recommends him for the post of Sub Inspector (Executive) in Police Force for which he is very well suited Surely this assessment of loyalty and dedications for duty given by responsible army officials cannot be just ignored by the police department and insistence of the respondents to call the petitioner's antecedents as violent and criminal is nothing but sheer arbitrariness completely repugnant to any fair play.

(6) The activities of the petitioner are not such as make him unsuitable for public employment. No political activity in the past disentitles the petitioner for the post. As it is our Constitution does not permit an embargo for public employment because of political beliefs and even activities. It is true that Government Conduct Rules may forbid political activity. But that bar cannot negate the right of a person to enter the portal of Government service on the completely untenable plea of his political activities before he joins the Government service. Ours is a multi party, multi dimensional vibrant democracy and any effort at denying public employment in Government service by measuring it to a single inflexible ideology, platform or party would be anathema and impermissible as being vocative of the Constitutional mandate of equality of opportunity for public employment guaranteed by Articles 14 and 16 of the Constitution. This Country and the people residing in it are too much freedom loving and self-respecting to allow themselves to be stockade like cattle. Diversity of views and activities is the hall mark of a free nation and no instrumentality of the state can be allowed to usurp the trust of public employment and convert it as the private domain of a few. Openness of our governmental function ill benefits the suspicious, rumour fed working of some of the bureaucracy. High precedents support our view that activities of the petitioner do not fall in any groove so as to deny him the post to which he has been selected on merits. In *Hardit Singh v The State of Punjab* and *Another* 1977 (2) S.L.R. 749 two teachers were thrown out of employment on the ground that their political activities and propensities did not make them suitable for employment in government service. Chinnappa Reddy, J. (as his Lordship then was) found that no facts supported the conclusion which was

given. No violent activities were established against time. What was, however, said was that they were in politics. This conclusion was said to be too vague and unacceptable because as was said by Hegde, J. in *State of Punjab v. Bakhtawar Singh* 1972 S.L.R. 82 :-

".....The finding of the Minister that Shri Bakhtawar Singh was a taking part in politics is a vague finding. Politics is a word of wide import. By merely saying that he was taking part in politics nothing concrete is conveyed or established".

Chinnappa Reddy, J. referred to the earlier decision in *P. Kodandaramayya v. State of Andhra Pradesh* 1974 A.P. 237 and made observations which need recapitulation:

".....Government service is no heaven that only angels should seek entry into it. Persons convicted of crime are given, fresh chances to redeem themselves and make themselves un useful citizens. Laws have been made which prevent any stigma being attached to certain convictions, vide the Probation of Offenders Act. Why, then should youngmen who in the past got emotionally involved and participated in some agitation be denied the opportunity of public service which they seek ? I have dealt at such length on this matter because if employment is to be denied on such grounds and on the basis of such flimsy police reports, a whole generation of active young men may have to be overlooked in the matter of public employment. This is a serious matterI think it is offensive to the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his political beliefs or because of his past political affinities unless such beliefs and affinities are considered likely to affect the integrity and the efficiency of the individual"s service....."

These warnings of illegal denial of public employment were again reiterated in *State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another*, :-

"To seek a police report on the political faith or past political association and activity ..neither illegal nor subversive of any incumbent to government service violates Articles 14, 16, 19(1)(a)and 19(1)(b) and is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideas set forth in the Preamble of the Constitution. McCarthyism is obnoxious to the philosophy of our Constitution. Only if such past affinities are considered likely to affect the integrity and efficiency of the individual"s service can the incumbent be denied employment." Here, in the present case as already stated there is no allegation of any political activity having been indulged in by the petitioner. The only mention of some of the cases alleged against the petitioner resulting in acquittal or withdrawal by the authorities themselves. Mere ipse dixit of the respondent that the petitioner"s antecedents did not make him suitable for employment can hardly be taken as basis for denying the employment in public service to the petitioner. Not only that as mentioned before; the various testimonials and character certificate given to the petitioner by his present employer in the Army Headquarter give full

testimony to the petitioner's fitness in public employment. We have Therefore no doubt that the petitioner has been denied appointment to the post to which he has been properly selected for no valid reason at all. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, Therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. (Vide E.P. Royappa Vs. State of Tamil Nadu and Another,). We would, Therefore, allow the writ petition and issue the mandamus directing the respondent to immediately issue the appointment letter to the petitioner to which he has been entitled for so many years. Mr. Jaitley points out that subsequent to the petitioner's batch some further persons have been selected. As the non-joining of the petitioner was not his fault, we take it that the petitioner will necessarily be fitted in the same batch of 1981 wherein he was selected. We so direct. His seniority will necessarily have to be counted and fixed on merits in the same batch in which he was selected. The result will be that the petitioner will be given seniority according to the merits in the batch in which he was selected. Of course as the petitioner was not working in that post, he will not get the arrears of salary. However, his pay will be fixed by giving him increments which have since accrued to the persons who were selected with him in that batch.

(7) The petition is, Therefore, allowed with costs. Counsel's fee Rs. 500.00 .