
(2012) 07 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 650 of 2011

Dharamveer

APPELLANT

Vs

The Director General of Police and Another

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)
Penal Code, 1860 (IPC) — Section 294, 323, 324, 34

Citation : (2012) ILR (MP) 2322 : (2012) 3 JLJ 58 : (2012) 4 MPLJ 393 : (2013) 3 SCT 335

Hon'ble Judges : Brij Kishore Dube, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : D.P. Singh, for the Appellant; Varun Kaushik, for the Respondent

Judgement

Shrivastava, J.—This appeal u/s 2(1) of the Madhya Pradesh Uchcha Nayayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 has been filed against an order dated 27.10.2010 passed by learned writ Court in Writ Petition No. 810/10(s) whereby writ petition of the appellant has been dismissed. The fact necessary for the disposal of this appeal He in a narrow compass. The appellant was appointed on the post of Jal Wahak in June, 2008 under the employment of the respondents. His services were temporary in nature and were governed by Central Civil Services (Temporary Service) Rules, 1965 (in short CCS (Temporary Service) Rules. At the time of appointment, the appellant was directed to fill up the verification form in Form No. 25 in which it was specifically directed to submit information as to whether he was ever prosecuted or any criminal case was registered against him. It would be relevant to quote the information which was sought from the appellant, which reads thus :

(a) Have you ever been arrested, prosecuted, keep under detention or bound down/fined, convicted by a Court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections or debarred from taking any examination/rusticated by any University or any

other education authority/institution?

(b) Is any case pending against you in any Court of law, University or any other education authority/institution at the time of filling up this verification roll? If answer to (a) or (b) is "Yes" then give details of prosecution detention fine conviction and punishment etc. and state about the case pending with the Court/ University/education authority at the time of filling this form.

In answer to the aforesaid queries and information, the appellant specifically denied the fact by writing "No". Thereafter, since the services of the appellant were temporary in nature, pursuant to sub-rule (1) of rule 5 of the CCS (Temporary Service) Rules, his services were terminated w.e.f. 21.12.2009. In this regard, the termination order dated 21.12.2009 was placed as Annexure P-3 in the writ Court. After the services of the appellant were terminated, vide Annexure P-4 he submitted a representation to Commandant, 65th Battalion, CRPF Raipur (C.G.), that although his services have been terminated on 21.12.2009 without disclosing any ground that why his services have been terminated, but on being inquired, it came into his knowledge that because, some criminal case was pending against him when he was appointed on the post of Jal Wahak, hence his services have been terminated. The stand of the appellant is that he was not at all aware that any criminal case was pending against him and for this reason he answered in negative in Form No. 25. Further, it has been stated in the representation that on receiving the information about the case, after taking leave, he went to his village and now the matter has been compromised in the said criminal case on 29.10.2009. In this representation, it has been mentioned that when he was serving in a private concern far away from his village, in a false case his name was implicated, and hence, it was prayed that by allowing the representation, he be taken back in services. But, when nothing was done by the respondents, he filed the writ petition before this Court.

2. When the respondents were served with the notice of writ petition; return was filed by them and the stand of the respondents in the return is that the services of the appellant were terminated under rule 5(1) of the CCS (Temporary Service) Rules. The further stand of the respondents is that appellant himself submitted information that on being inquired by him, he came to know that some criminal case is pending against him which was not in his knowledge earlier, but the said information which he supplied was incorrect and totally false. The further stand which has been taken in para 3 of the return by the respondents is that on being inquired from the Superintendent of Police Morena, it was informed that a criminal case is pending against the appellant under sections 323, 294, 324, 506B and 34 of IPC. The criminal case was registered against the appellant by his alias name Bunti because his popular name is Bunti in the village. On the aforesaid premised stand taken by the respondents, it was stated in the return that because deliberately the appellant submitted incorrect information in regard to pendency of the criminal case, therefore, his services have been rightly

terminated.

3. The learned writ Court by the impugned order dismissed the writ petition. In this manner, this writ appeal has been filed assailing the impugned order passed by the learned writ Court.

4. It has been put forth by Shri D.P. Singh, learned counsel for the appellant, that the appellant was prosecuted by his alias name Bunti although his name is Dharmveer and he was not at all aware that any criminal case was registered against him and any charge-sheet has been filed against him and he was ever prosecuted. Hence, the informations required in Form No. 25 were correctly given by him. Further it has been contended by learned counsel that even if it is held that the appellant did not supply correct information in Form No. 25, since the matter was already compromised between the parties on 22.10.2009, therefore, in the light of the decisions of the Supreme Court *Ram Kumar v. State of U.P.* [2011 AIR SCW 4807]; *Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, Commissioner of Police and others v. Sandeep Kumar* [2011 AIR SCW 3601], and Division Bench decision of this Court *Union of India (UOI) and Others Vs. Hariom*, , straightway termination was not contemplated, and therefore, since the matter has already been compounded on 22.10.2009, therefore, the termination order be quashed and the appellant be taken back in the service.

5. On the other hand, Shri Varun Kaushik, learned counsel appearing on behalf of the respondents argued in support of the impugned order and submitted that it is factually incorrect to say that appellant was not aware about the pendency of the criminal case. Indeed, he was fully aware that he was arrested and was bailed out in the police station itself because all the offences were bailable. It has also been put forth by him that because the appellant was serving in the State of Chhattisgarh and further because he was unable to attend the dates before the Magistrate at Morena, therefore, on his behalf on each date applications were being filed by his counsel for condoning his absence and ultimately the matter was also compounded on one date in his presence. Hence, on the date of filing of verification form, it was well known to the appellant that a criminal case is pending against him. It has been further put forth by him that learned writ Court has taken into account all the aspects of the matter, and therefore, this appeal be dismissed. In support of his contention, learned counsel has placed reliance upon *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, , and *R. Radhakrishnan v. Director General of Police and others* [(2008)1 SCC 660].

6. Having heard learned counsel for the parties, we are of the considered view that this appeal deserves to be dismissed.

7. On bare perusal of the order-sheet dated 22.10.2009 passed by learned CJM, Morena, in Criminal Case No. 1383/05 (*State of M.P. v. Tika @ Tikaram and seven others*), it is gathered that a case under sections 323, 294, 324, 506(B) and 34 of IPC was registered by Police Station Civil Lines, Morena. On perusing

the case number, one can infer that the case is of the year 2005, because the case number is 1383/05. According to us, the charge-sheet must have been filed in the year 2005, and therefore, the number of the case is 1383 of the year 2005. In this criminal case, the appellant stood as accused No. 6 and he was prosecuted by the name of Bunti alias Dharamveer. When the matter was pending before this Court in appeal, on 10.2.2012 it was specifically directed to the appellant to produce the evidence as to whether he knew about the factum of registration of criminal case against him at the time of entering in service and also for the period from his appointment till passing of the order of termination. For ready reference, it would be condign to quote the entire order-sheet dated 10.2.2012 passed in this appeal which reads thus :

Appellant by Shri D.P. Singh, Advocate.

Respondents/UOI by Shri Ankur Mody, Assistant Solicitor General.

The impugned order has upheld the termination of the appellant-petitioner from service on account of existence of criminal antecedents (registration of an offence punishable under sections 323, 294, 323 and 506B /34 of IPC) by holding that the appellant-petitioner has knowledge of fact of criminal case registered against him.

There is specific averment in that regard in the writ petition in paragraph 5.4 and denial by the employer also on this particular aspect.

There is no finding in regard to factum as to whether the appellant-petitioner at the time of entering in service had knowledge of the fact of the registration of the criminal case against him.

In this view of the matter, the counsel for the appellant is directed to produce evidence as to whether he knew about the factum of registration of criminal case against him at the time of entering in service and also for the period from his appointment till passing of the order of termination. In this regard, counsel for the appellant-petitioner may place before this Court the order-sheets of the criminal case pending before the Court at Morena.

Let the same be done within 15 days. List this matter on 24.2.2012." Very cleverly the appellant filed the order-sheets w.e.f. 1.3.2009 only and not earlier to it although the case was pending against him before CJM Morena since 2005 (looking to its number 1383/2005). Since all the offences under which the case was registered were bailable, naturally the appellant must have been bailed out in the police station, and therefore, we do not have any scintilla of doubt in holding that the appellant was not aware about the pendency of criminal case against him. Indeed, it is apparent that not only a case was registered but he was also prosecuted. Apart from this, on bare perusal of the order-sheets of CJM which are filed pursuant to the aforesaid order passed by this Court in this appeal, it is gathered that all through applications were being submitted on behalf of the appellant for condoning his absence which were being allowed by

the said Court and ultimately on 22.10.2009 before termination of services of the appellant, the matter was compounded. Thus, we are of the firm view that deliberately it was concealed by the appellant at the time of submitting Form No. 25 that he was never arrested or prosecuted. Indeed he was fully aware that not only he was arrested, but was being also prosecuted.

8. The stand taken by the appellant is that he was being prosecuted by his alias name "Bunti" although his name is Dharmveer, therefore, he was not at all aware about the registration of any criminal case against him. However, this argument is also not useful for the appellant for the simple reason that because on perusal of the order dated 22.10.2009 (Annexure P-5) by which the learned CJM compounded the offence and acquitted the appellant, it is gathered that he was being prosecuted by the name Bunti alias Dharmveer s/o Dataram. Apart from this, since the charge-sheet was filed in the Court in the year 2005 looking to the number of the case, certainly the case must have been registered earlier to it and the appellant must have been formally arrested in the police station and must have been bailed out, and therefore, not even for hair breadth scape, it can be thought that appellant was not at all aware about the pendency of any criminal case. Indeed, there is overwhelming material to hold that the case was pending against him since 2005. In all fairness, the appellant ought to have submitted the order-sheets w.e.f. 1.3.2009 and not earlier to it. The earlier order-sheets have not been filed with the uttermost object that it would come on the record that the appellant was having full knowledge about his arrest as well as pendency of the criminal case before the CJM.

9. All the decisions of the Supreme Court placed reliance by learned counsel for the appellant are distinguishable on facts for the simple reason that in all those decisions the offences, were either compounded or the accused, who was given appointment, was acquitted before filling up the incorrect information in the requisite format, but in the present case, the appellant was appointed in June, 2008 and in the Form No. 25, which he filled later on, he deliberately gave false information that he was never arrested and prosecuted and no criminal case is pending against him. The Division Bench decision of this Court in Hariom (supra), is also not applicable because the information which was sought was altogether different and on bare perusal of para 8 of the said decision it is gathered that the information which was sought from the petitioner of that case was that "Have you ever been convicted by Court of offence? If the answer "Yes" the full particulars of the conviction and the sentence should be given". However, the information which has been sought in the present case is altogether different and in the present case the information which has been sought is whether appellant was ever arrested, prosecuted, kept under detention etc. including conviction by Court of law for any offence. Thus, the informations which were sought from the appellant in the aforesaid Form No. 25 were in broader spectrum including arrest and prosecution. In the instant case, both these conditions are present, and therefore, the Division Bench decision of this Court is also not applicable in the present case.

10. Shri Varun Kaushik, learned counsel for the respondents, has rightly placed reliance on two decisions of the Supreme Court *Kendriya Vidyalaya Sangathan* and *R. Radhakrishnan* (supra). We would like to apt to quote para 10 of the judgment delivered in *R. Radhakrishnan* (supra), by Justice S.B. Sinha speaking for the Bench, which reads thus :

10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute. that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

11. We have gone through the reasonings assigned by the learned writ Court and we find that the reasonings are quite cogent and do not require any interference looking to the limited scope of this Court in this intra-Court appeal. Resultantly, this appeal fails and is hereby dismissed with no order as to costs.