
(1985) 11 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 2765 of 1984

Jai Gopal Choubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Citation : (1986) J LJ 15

Hon'ble Judges : G.C. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.C. Gupta, J.—The petitioner, having applied for appointment as a sub-Inspector, successfully competed with others in the selection test and was selected for training and appointment. Normally a selected sub-Inspector, like the petitioner, should have been sent for training but he was not so sent whereas others who were selected with him and were junior in the select list were sent for training. The petitioner is alleged to have made enquiries and learnt that he was not being sent for training because he belonged to Bhartiya Janta Party and was detained in connection with the movement launched by the said political party in the year 1982. The petitioner has, therefore, approached this Court for necessary direction in the matter by filing this petition under Article 226 of the Constitution.

2. The respondents have filed their return and have admitted that the petitioner was selected for appointment as a sub-Inspector and should normally have been sent for training. It is, however, submitted that on verification of petitioner's character by police authoritative, it was found that he has suffered imprisonment and had been prosecuted for criminal offences. Because of the imprisonment and criminal cases it was held that the petitioner was not suitable for employment and hence he has not been sent for training. It is further submitted that the petitioner is also guilty of giving false information in col. 26 of the application form. It is, therefore, submitted that the petitioner is not entitled to any relief from this Court.

3. India is a democratic republic whose citizens enjoy all basic liberties and fundamental freedoms. Its written Constitution ensures that it is subjected to the "rule of laws" and not the "rule of men". Equality before the laws and equal protection of law are basic to this democracy for in the absence of this right all other rights may become illusory. Equality as a democratic promise, stems from political equality of all citizens. That is perhaps why democracy tolerates, nay encourages, opposition and indeed thrives on it. A political democracy which prohibits political freedom, including the freedom of belief and ideas, ceases to be a democracy and loses its claim to popular support. We have not reached this stage so far and if indications be our guide, we may never reach such a stage in India. Presumably, these basic postulates prompted Mr. Justice Chinappa Reddy of our Supreme Court in *State of M.P. v. Ramashankar Raghuwanshi* (AIR 1983 SC 3470), to observe that India is not a Police State. India is a democratic republic, "where the right to freedom of speech and expression, the right to form associations and unions, the right to assemble peacefully and without arms, the right to equality before the law and the equal protection of laws, the right to equality of opportunity in matters of public employment or appointment to any office under the State are declared fundamental rights." Considered in the context of these fundamental rights, the whole idea of seeking a police report on the political faith and the past political activity of a candidate for public employment appears to our mind, to cut at the very root of the fundamental rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association. The final verdict of the Court is expressed in the following passage;-

We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in democratic republic dedicated to the ideals set forth in the preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Arts. 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce "MocCarthyism" into India. "MocCarthyism" is obnoxious to the whole philosophy of our Constitution. We do not want it.

This Court in *A.M. Rode v. Principal, Govt. Degree College* (AIR 1973 MPLJ 666), considered a similar question in the context of termination of employment of an employee and held that termination based on alleged association with R. S. S attaches stigma and violates Art. 311 of the Constitution. In *Shashikant Thakre v. State of M.P.* (M.P. No. 3073 of 1984, Decided on 8-10-1985) it was held that termination of employment of the petitioner because of his association with a political party in the past was arbitrary and violated Constitutional guarantee of "Equality" contained in Arts. 14 and 16. These decisions should sufficiently demonstrate that denial of employment to a person on the ground of his past

political association is indeed the denial of his fundamental rights under Articles 14, 16 and 19(1) (c) of the Constitution and is repugnant to basic democratic norms. We may, therefore, examine the facts of this case to ascertain the correctness of the petitioners submissions.

4. A perusal of col. 26 of the application (Annexure R-2) indicates that the petitioner has stated that he was not actually arrested but was required to give a bond. He has also stated that he was neither fined nor found guilty. At the end, he has stated that charges against the petitioner were dropped because of a settlement with his party. Clearly, therefore, it is not a case where the petitioner had suppressed information about his past political activity and the criminal case. From the return, it appears that the petitioner had taken part in BHARAT BUND ANDOLAN in the Year 1980 and was apprehended in that connection. It further appears that in the Year 1982 he had taken part in public demonstration against increase in bus fare by staging a "DHARNA" before the authorities in Bhopal City. Though in the return it is stated that the petitioner has been found to be a member of the recognized political party, there is nothing whatsoever to indicate that he is continuing in any of his political activities. It is not stated in the return that the petitioner was sentenced in any case or actually arrested in connection with any criminal case. Apparently, therefore, the information given by the petitioner in his application form is neither incorrect nor false. Under the circumstances, the petitioner could not be refused employment on the alleged suppression of information regarding his past character and conduct. Indeed, the secret file of the case indicates that even the Police Officials were of this opinion in the beginning, but later on started doubting the correctness of this conclusion and decided to seek the opinion of the respondent-State Government.

5. The question, however, is whether the petitioner could be legally refused employment only because he was or is a member of Bhartiya Janta Party ? It is not the case of the respondents that this party is legally banned or its membership, in law, causes scare disadvantage to the member concerned. Fortunately, the respondents do not claim that membership of this party, in itself, is a disqualification. Their claim appears to be that while a member of this party, the petitioner indulged in illegal activities and has thereby rendered himself unsuitable for employment. Indeed, freedom of association is one of the fundamental rights guaranteed under Art. 19 (1)(c) of the Constitution and is really central to any conception of Constitutional democracy. It carries with in itself a guarantee of faith and belief which are necessary for proper and full development of personality. It is also the recognition of the fact that in modern times the individual cannot really develop his personality and cannot enjoy freedom unless he is free to associate himself with others without hindrance. The decision of the USA Supreme Court in Brown v. Board of Education of Topeka, (347 US 483) discarding the old concept of "separate but equal" and asserting that "separate can never be equal" is perhaps the most illustrious illustration of this thinking. It is common experience that most of us find much of our identity income form of group activity- economic, political, social, professional or the like.

It should, therefore, be accepted that our Democratic Republic is mandated to maintain "hands off" attitude towards this valuable right and permit the individual to develop himself in an association of his liking. Since freedom of political faith is fundamental to democracy, its importance and purpose was emphasised by our Supreme Court in *Raghuvanshi's case* (supra) with full force and enthusiasm. Now, if past political activities and affinity of the petitioner were really an exercise of his Constitutionally guaranteed fundamental right, it would be unthinkable that this exercise would attach any stigma and prejudice him in any manner- Any such prejudice would in substance, amount to negation of this fundamental right. In *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, the Supreme Court declared ultra-vires a rule which prohibited a government servant from participating in any demonstration. In *O.K. Ghosh and Another Vs. E.X. Joseph*, it was held that to deny an individual the freedom to become a member of an association not recognized by the Government would amount to an infringement of freedom of association guaranteed under Art. 19 (1) (c). These decisions only illustrate the enthusiasm with which our Supreme Court has protected the fundamental freedom. Now if the petitioner could not suffer for staging a peaceful demonstration or for becoming a member of a lawful association while in employment of the respondents, why should he suffer for these very things at the cost of his career? We know that association of government employees are politically affiliated and their membership has never been accepted as attaching any disqualification for public employment. Under the circumstances, it is not possible for this Court to accept that petitioner's past political affinity permits denial of employment to him.

6. The next question is whether the petitioner's so called arrest in criminal case makes him unsuitable for any such employment. It cannot be disputed that it is the jurisdiction of the Appointing Authority to consider whether political affinities or affiliation of any member is likely to effect his integrity and efficiency and thereby make him unsuitable for public employment. If the finding on consideration of relevant material be against the applicant, the authority may justifiably deny him the employment. In such a case, the denial would not offend Articles 14 and 16 of the Constitution. In the instant case, no such order has been passed and nothing appears to have been communicated to the petitioner. Even in the confidential file produced for examination of this Court, the authority has not found that the petitioner's "integrity" or "efficiency" has become doubtful. Indeed, the decision of the respondent State Government declaring the petitioner "unsuitable" for public employment, contains no reasons and must therefore be characterised as arbitrary, in view of the Full Bench decision of this Court in *Samru Das v. State of M.P.* (1985 J.L.J. 460 : 1985 M.P.L.J. 361). His participation in an agitation against increase in bus fare or protest against the Government must, therefore, be accepted as bonafides exercise of his fundamental rights conferred upon him by the Constitution and cannot, without anything more, be accepted as sufficient for denying his right of employment.

7. In this view of the matter, it is not possible to sustain the impugned order. The

petition succeeds and is allowed. The respondents are directed by a writ of mandamus to send the petitioner for training and thereafter deal with him in accordance with law. No orders as to costs. The outstanding amount of security deposit, if any, shall be refunded.