

(2000) 02 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2499, 2532, 2843, 2966, 2992, 3537, 4175 of 1998 and 5739 of 1996

Khama Ram Vishnoi and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Citation : (2000) 02 RAJ CK 0075

Hon'ble Judges : Shiv Kumar Sharma, J.

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—Since identical questions of fact and law are involved in all these writ petitions, they are being disposed of by a common order.

2. In all these writ petitions, the grievance expressed by the petitioners is that the respondents have not properly appreciated Rules 13 and 15 of the Rajasthan Police Subordinate Service Rules, 1989 (in short the Rules 1989).

3. Before dealing with the facts of each case, I deem it necessary to consider the relevant statutory provisions. Rule 13 of Rules 1989 provides:

13. Character. The Character of a candidate for direct recruitment must be such as to qualify him for employment in service. He must produce a certificate of good character from the Principal Academic Officer of the University or College or School in which he was last educated and two such certificate written nor more than six months prior to the date of application, from two responsible persons not connected with his School or College or University and not related to him.

Notes (1). A conviction by a Court of Law need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement, which has its object to overthrow by violent means a Government as established by law, the mere conviction need not be regarded as a disqualification.

(2)...

4. Rule 15 of Rules 1989 provides thus:

15. Employment of Irregular or Improper Means: A candidate who is or has been declared by the Recruitment Board/Commission or the Appointing Authority guilty of impersonation or of submitting fabricated documents, which have been tempered with or suppressing material information or of using or attempting to use unfair means in the examination or interview or otherwise resorting to any other irregular or improper means for obtaining admission to the examination or interview may, in addition to rendering himself liable to criminal prosecution be debarred either permanently or for a specified period:

(a) by the Recruitment Board/Commissions or the Appointing Authority for admission to any examination or appearance at any interview to be held under the provisions of these Rules, and

(b) by Government from employment under the Government.

5. With a view to recruit persons with upright and sterling character in the Police Service, the Director General of Police issued a memorandum on April 29, 1995 explaining Rule 13 of Rules 1989, which provides thus-

3. In the application form for the recruitment of Constables and other ranks in the Police hence information is sought specifically whether the applicant had been involved in any criminal act, or had been ever arrested/released on bail, or had been convicted by any court. It has been found that often candidates suppress such information by not filling these columns, or give vague or wrong answers.

4. If a candidate/applicant is guilty of or involved in any act of moral turpitude or crime of violence he is not suitable or fit to be taken in the Police Service.

Moral Turpitude

Any act which indicates malafide mental conduct such as theft, or criminal misconduct towards a woman, or forgery or wilful suppression of information (particularly adverse information) about the candidate etc., would be covered under moral turpitude. Cases involving atrocities on Scheduled Caste/Tribe, and women (dowry cases) would also fall under this category.

Violence

Crime of violence include assault (Sections 323, 325, 326 etc. IPC) rioting (Sections 147, 148 etc. IPC) and more serious offences like Sections 307, 302 etc. Hence a candidate/applicant involved in any such case is not eligible for Police Service.

5. A point is raised as to what should be done where a criminal case has been registered against a candidate or challaned in a court but judgment has not been given. In such cases also the candidates cannot be taken into Police. But if after

the trial the candidate is acquitted honourably then the candidate may be considered for recruitment into Police by taking the approval of the next higher officer or to the appointing authority, But as candidates who are very aged are not suitable for induction in the Police the department need not wait indefinitely. If the honourable acquittal is produced within 3 years of the date of application, such a candidate may be so considered.

6. As per Govt. Order of D.O.P. (Personnel) (Ka-2) Circular No. F. 7(1) DOP/Ka-2/77 dated 31.8.1977 and No. F. 2 (22) Personnel/Ka-2/87 dated 11.10.1989 only those persons whose Character Certificates have been found to be in order should be considered for appointment. These instructions should be kept in mind and strictly complied with. All such cases may be decided in the light of these clarifications.

6. Now I proceed to consider facts of each individual case.

Writ Petition No. 2843/98

7. The petitioner Khama Ram Vishnoi was selected on the post of Constable Driver in pursuance to the advertisement dated October 14, 1997 but he was not given appointment and the persons lower in the merit list were appointed on March 30, 1998. The petitioner met the authorities concerned and was informed that as punishment of fine was imposed on him a criminal trial he was not appointed. Admittedly the Additional Chief Judicial Magistrate Karauli vide its judgment dated October 1, 1996 convicted the petitioner under Section 279 read with Section 337 IPC and imposed fine in the sum of Rs. 500 and Rs. 300/- respectively. The respondents submitted reply with the averments that the petitioner Khama Ram Vishnoi suppressed this information in the application form and did not mention that he was involved in a criminal case.

Writ Petition No. 2966/1998

8. Petitioner Bajrang Lal was selected as Constable and found place in the merit list at S. No. 9 but his appointment letter was not issued by the respondents. The petitioner met the respondent No. 2 who informed the petitioner that he was not given appointment on the ground that a criminal case was pending against him. The petitioner submitted representation before the Deputy Inspector General of Police Kota seeking appointment stating therein that when first information was lodged against the petitioner he was a minor and was not at all involved in the offence. It was also requested that the petitioner was ready to file undertaking that in case he is convicted in the criminal case he would leave him claim. In the reply, the respondents averred that in the application form submitted by the petitioner he was required to state information in Col. 17 as to whether he was/is involved in any criminal case or was arrested? But the petitioner made false and wrong information regarding involvement in criminal cases. In the said column the petitioner wrote "NIL" against that column No. 17. The petitioner suppressed information regarding pendency of the criminal cases No. 66/93 under Sections 147, 148, 149, 452 and 302 IPC and under Section 3 of SC/ST Act and case No.

294/95 under Sections 451, 323 and 341 IPC. and also his arrest in the said cases.

Writ Petition No. 2992/98

9. Petitioner Babulal Meena was selected on the post of Constable Driver. When appointment letter was not issued to him he approached the concerned authorities but no specific reason for denial of appointment was assigned. The petitioner thereafter submitted application to the respondents for giving him appointment of the said post and also served a legal notice. In response to said letter the petitioner received communication wherein it was stated that as the petitioner was involved in a criminal case and did not mention this fact in the application form therefore in pursuance to the Notification dated April 29, 1995 the petitioner was not found suitable for appointment. Admittedly FIR was registered against the petitioner under Sections 3/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 was registered against the petitioner and in the said case the petitioner was given benefit of Section 4(1) of the Probation of Offenders Act, 1958. In another criminal case No. 135/1995 a compromise was entered between the parties on March 6, 1995 and the petitioner was acquitted for the offence under Section 337 IPC but under Section 279 IPC the petitioner was punished with a fine of Rs. 300/-. In criminal case No. 270/1995, the petitioner was left on probation under Section 3 of the Probation of Offenders Act, 1958.

Writ Petition No. 2499/1998

10. The petitioner Rajveer Singh was selected on the post of Constable. But the appointment letter was not issued to him. He met the concerned authorities and came to know that in the Police Verification it was found that a criminal case under Sections 147, 148, 323 and 326 IPC was registered against the petitioner in the year 1994. As this fact was concealed by the petitioner in the application form he was not given appointment. The petitioner averred in the writ petition that he was acquitted on Feb. 22, 1997 much earlier to the date of advertisement. So as per for bonafide impression that he was already acquitted in the criminal case it was not necessary to mention this fact in the application form. On April 4, 1998, the petitioner served notice for demand of justice on the respondents.

Writ Petition No. 5739/1996

11. The petitioner Govind Singh was selected on the post of Constable and he Joined his duties on September 17, 1993. He was appointed on probation of two years. When the matter of the petitioner was referred for verification to the Superintendent of Police Bharatpur, it was found that a case under Sections 341 and 352 IPC was registered on October 13, 1989 vide FIR No. 181/89 at Police Station Bhusawar against the petitioner of which a challan was filed on October 31, 1989 and the matter was compromised on December 1, 1993 and the petitioner was acquitted. On March 15, 1995 the petitioner was discharged from

service on the ground that he has concealed the fact of criminal case from the authorities. The petitioner made representation to reconsider his case but it was rejected. A review petition was filed before the Governor but it was also rejected.

Writ Petition No. 4175/98

12. The petitioner Bhagchand Meena was selected on the post of Constable but he was not given appointment and the candidates having less merit were selected and on being enquired no reason was assigned to the petitioner. It is averred in the writ petition that a criminal case Was registered at Police Station Bandikui under Sections 353 and 189 IPC and vide order dated April 7, 1998 the petitioner was discharged by the Judicial Magistrate Bandikui. The petitioner sent a notice for demand of justice on May 8, 1998.

Writ Petition No. 2532/1998

13. Petitioner Ramveer Singh was selected to the post of Constable and his name was shown at S. No. 8 in the select list but the appointment letter was not given to him. The petitioner met the respondent No. 3 and he was informed that he is facing trial in F.I.R. No. 595/96. The petitioner was acquitted in the above case on March 21, 1998 by the Additional Chief Judicial Magistrate No. 1 Bharatpur. The petitioner has mentioned wrong facts in the verification roll column wherein he has stated that he was/is not involved in any criminal case.

Writ Petition No. 3537/1998

14. The petitioner Radhey Lal was selected on the post of Constable and on verification it was found that the petitioner was involved in criminal cases registered against him. The respondents in the reply submitted that the petitioner made false and wrong statement regarding involvement of criminal case, arrest and conviction in columns 17A to 17C. The petitioner has written NIL in all the column. Thus the petitioner suppressed the information regarding pendency of criminal case No. 195/95 under Sections 323, 321, 324, 325, 326 and 307 IPC, which is pending as yet.

15. All the petitioners admittedly in column No. 17 of the application form suppressed this information that they had even been implicated in a criminal case. The petitioners were required to furnish information in the said column in respect of implication, pendency and conviction in a criminal case but the answer of each of the petitioners was in negative.

16. This court had occasion to consider such a situation many a times. In State of Rajasthan v. Khalid Ahmed (D.B. Civil Special Appeal (Writ) No. 726/97 decided on May 18, 1998) the Division Bench of this Court indicated that "In the instant case, Khalid Ahmed respondent did not mention the fact about aforementioned two criminal cases wherein he was facing trial in his application form (Annexure R/5) and in the verification form (Annexure R/6) but since none of these offences involve any moral turpitude, non-mentioning of these facts, in our considered opinion, is not fatal and the same does not disqualify the

respondent for his appointment to the post of constable."

17. Placing reliance on Khalid Ahmed's case (supra) again the Division Bench of this Court in State of Rajasthan v. Rajendra Singh (D.B. Civil Special Appeal (Writ) No. 310/1997 decided on July 2, 1998) observed thus-

We are of the view that the non submission of the information in columns 17 and 18 of the application form by the petitioner does not amount to suppression of the material facts. We are fortified in our view by the Division Bench of this court in D.B. Civil Special Appeal (Writ) No. 726/1997 (State of Rajasthan v. Khalid) Decided on May 18, 1998. 18. In Suresh Chand Saini v. State of Rajasthan (S.B. Civil Writ Petition No. 6707/1997 decided on August 28, 1998), Single Bench of this Court was considering a case where information in respect of pendency of criminal case under Sections 336 and 337 IPC was suppressed in column No. 17 of the application form. It was held that-"Be that as it may as the petitioner was acquitted before even asked to join the service, detailed examination of the facts in respect of pendency of criminal case is not necessary. The petitioner therefore could not have been prevented from joining the service on the post of Constable. Pendency of criminal case on the date of submission form, thus, cannot be regarded as disqualification in view of Note (1) of Rule 13 of the Rules of 1989."

Against this order the State of Rajasthan after unsuccessful in D.B. Special Appeal, preferred Petition for Special Leave to Appeal No. CC 2155/99 before the Hon"ble Supreme Court but it was dismissed on May 5, 1999.

19. In Brijendra Singh Meena v. State of Rajasthan 1998 WLC (Raj.) 456 this court while interpreting Rule 13 of Rules 1989 observed that Rule 13 which relates to the character of a candidate, nowhere provides that pendency of a criminal case against a candidate shall disqualify him entry into service. The reason for this is obvious. Pendency of a criminal case cannot lead to the conclusion of committing the offence by the accused. Presumption is otherwise. No person is presumed to be guilty of an offence unless convicted by a competent court after trial.

20. In Babulal v. State of Rajasthan (S.B. Civil Writ Petition No. 1121/1997 decided on Feb. 3, 1998) Babulal was sentenced to pay fine in two criminal cases on plea of admission of guilt. In one case his Jeep struck a Fiat Car resulting in a little damage and in another case under Sections 123/177 and 39/192 of the Motor Vehicles Act. Both the cases were of 1992. It was held by this court that, Taking into consideration all the facts and circumstances, I am satisfied that the factum of not mentioning of his conviction, which had taken place more than five years ago was not an intentional suppression of the information. I am also convinced that the said conviction cannot debar the petitioner from getting appointment:

21. In Matadeen Garg v. State of Rajasthan (Civil Appeal No. 2719/91 arising out of SLP (Civil) No. 15234 of 1988 decided by the Hon"ble Supreme Court on July 12, 1991) appellant Matadeen Garg was selected for the post of Rajasthan

Higher Judicial Service but his recommendations were withdrawn on the ground that he had concealed the facts in his application form that he was involved in a criminal case for the offence under the Essential Commodities Act for contravention of the provisions of Rajasthan Foodgrain (Prevention of Hoarding) Order, 1973 wherein he was acquitted. He was required to state that whether he was at any time figured as an accused or complainant. Their lordships of the Supreme Court indicated in such a case it will have to be examined that there was intentional concealment of information or it was only by inadvertence. In the facts and circumstances of that case it was held that there was no intentional suppression of the information and Mata Deen Garg's appeal was allowed.

22. Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, was a case where Sushil Kumar was provisionally selected for the post of Constable subject to verification of character and antecedents. In such circumstances although he was found to have been discharged or acquitted of the offences under Sections 304, 324/34 and 324 IPC but denial of appointment to him on the ground of undesirability was held proper by the Hon"ble Supreme Court.

23. In Commissioner of Police, Delhi and Another Vs. Dhaval Singh, Dhaval Singh who was a candidate for appointment as constable, put a cross-mark in the column in which he was required to give information about pendency of criminal case, if any against him. He submitted the form in August 1995 but on November 15, 1995 he voluntarily informed the authority concerned about the criminal case against him. His candidature was cancelled on November 20, 1995. He was acquitted in criminal case on December 8, 1995. Under those circumstances it was held that "it was obligatory on the part of the appellant (Commissioner of Police) to have considered the application and apply its mind to the stand of the respondent (Dhaval Singh) that he had made an inadvertent mistake before passing the order." That however was not done. It is not as if information was given by respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court-it was much before that. It is also obvious that the information was conveyed voluntarily...The cancellation of the candidature under these circumstances was without any proper application of mind and without taking into consideration all relevant material."

Distinguishing the case of Delhi Administration v. Sushil Kumar (supra) their Lordships observed thus-

On the first blush, that judgment seems to support the case of the appellants but there is a material difference between the two cases. Where as in the instant case, the respondent has conveyed to the appellant that an inadvertent mistake had been committed in not giving the information against the relevant column in the form much before the cancellation of his candidature, in Sushil Kumar case no such correction was made at any stage by the respondent. That judgment is therefore clearly distinguishable on facts. 24. Division Bench of this court in

Yogendra Singh v. State of Rajasthan (D.B. Civil Special Appeal (Writ) No. 425/98 decided on Sept. 14, 1999) while dismissing the special appeal of Yogendra Singh at the admission stage observed that in view of the law laid down by Hon"ble the Supreme Court in Delhi Administration v. Sushil Kumar 1997 (5) SCC 159 wherein it has been held that concealment of the fact of conviction is a good ground for not offering the post of Constable irrespective of the fact whether such conviction or acquittal amounts to moral turpitude or not."

Yogendra Singh was convicted under Section 171 IPC and was punished with a fine of Rs. 200/-. He was released on probation but he concealed this fact in application form. Single Bench of this Court dismissed his writ petition, therefore he preferred special appeal which was dismissed by the Division Bench.

25. In Girdhari Singh v. Inspector General of Police (S.B. Civil Writ Petition No. 1495/98) decided on July 27, 1998) Single Bench of this Court held that in view of circular dated April 29, 1995 suppressing the material information of pendency of the trial at the time of filling up the form itself amounts to moral turpitude.

26. In Sita Ram Meena v. State of Rajasthan (S.B. Civil Writ Petition No. 6977/97 decided on May 12, 1999, Single Bench of this court observed thus-

Had the petitioner filled the forms properly and if not called for interview etc. only because of the reason of pendency of criminal cases, he would have just cause for challenging the same. It cannot be said that the concealment was not deliberate and thus if the competent authority on verification found later on that the petitioner was involved as an accused or complainant in a criminal case, but had failed to mention the fact in the application form in the column providing for such information, no illegality is committed by the competent authority for not appointing him on the ground of concealment of a material fact. The police officer is to act fairly and truthfully. The case of the petitioner is of such a nature that it cannot be termed under clause of "stale incidents. 27. The legal position that emerges from the above discussion may be deduced thus-

(i) Concealment of fact in the application form that the candidate was involved in a criminal case, if not intentional and only by inadvertence, should not come in the way of appointment (Hon"ble Supreme Court in Matadeen Garg's case).

(ii) Suppression of pendency of criminal case under Section 336/337 IPC in the application form cannot be regarded as disqualification in view of Note (1) of Rule 13 of the Rules of 1989. (View expressed by this Court approved by the Hon"ble Supreme Court in State of Rajasthan v. Suresh Chand Saini).

(iii) If candidate volunteers that concealment of fact in respect of pendency of criminal case in the application form was by inadvertent mistake such explanation should be considered objectively before rejection of his candidature (Hon"ble Supreme Court in Dhaval Singh's case).

(iv) If after provisional selection of a candidate, it is found that he was involved in a criminal case under Sections 304/324 IPC he may be denied appointment on

the ground of undesirability. (Hon"ble Supreme Court in Sushil Kumar's case).

28. It is thus evident that if "material information" is suppressed by a candidate deliberately in the application form, he is not entitled to appointment. Now it has to be considered as to what is the "material information" in view of Rules 13 and 15 of the Rules of 1989. Rule 15 provides that if a candidate is guilty of suppressing material information may in addition to rendering himself to criminal prosecution be debarred either permanently or for a specified period for admission to any examination or appearance at interview and from employment under the Government. Rule 13 says that character of a candidate for direct recruitment must be such as to qualify him for employment in the service. He must produce two certificates of good character, written not more than six months prior to the date of application, from two responsible persons not related to him. Note (1) appended to Rule 13 provides that a conviction by a court of law need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement, which has its object to overthrow by violent means a Government as established by law, the mere conviction need not be regarded as a disqualification.

29. A combined look at Rules 13 and 15 demonstrates that conviction of a candidate in a case involving moral turpitude and violence has a material bearing with his appointment in the police service and if the candidate is found guilty of suppressing such material information he may in addition to rendering liable himself to criminal prosecution may be debarred from employment under the Government. In view of Note (1) of Rule 13 information which relates to the conviction of a candidate can be termed as "material information". Information relating to involvement in a criminal case or pendency of criminal case at the date of the application in my considered opinion is hardly relevant. If such information is suppressed it does not amount to suppression of "material information". There is no provision in the Rules of 1989 which debars the candidates who was involved in a criminal case or against whom a criminal case is pending, from the employment in police service. Circular issued by the Director General of Police on April 29, 1995 is relevant only to the extent in so far as it explains "moral turpitude" and "violence" and not beyond that.

30. Suppression of information by a candidate may be deliberate or by an inadvertent mistake. If it is found that a particular information is suppressed by a candidate, it cannot be judged from the face of the application form, that the candidates did it deliberately or by an inadvertent mistake. It is only after the explanation of a candidate, a judgment can be arrived at that suppression was deliberate or inadvertent. Therefore it will be in the interest of justice to provide an opportunity to a candidate who is found to have suppressed the information to explain as to under what circumstances he did not fill column Nos. 17 and 18 properly and after receiving his explanation, a final decision in respect of his character may be arrived at in view of Note (1) of Rule 13 of the Rules of 1989.

31. The golden rule of statutory construction is that the words and phrases or sentences should be constructed according to the intent of Legislature that passed the Act. All the provisions should be read together. If the words of the statutes are in themselves precise and unambiguous, the words or phrases or sentences themselves alone do, then no more can be necessary than to expound those words or phrases or sentences in their natural and ordinary sense. In Craies Statute Law (7th Edition Chapter 5 at page 64) it is stated that where the words of an Act are clear there is no need for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute, the safe and more correct course of dealing with the question of construction is to take the words themselves and arrive, if possible, at their meaning without in the first places referring to cases. Where an ambiguity arises to supposed intention of the Legislature, one of the statutory constitution is the doctrine of reading down. Lord Reid in *Federal Steam Navigation Co. v. Department of Trade and Industry* 1974 (2) All England Reporter 97 observed thus-

...the Judge may read in words which he considers to be necessarily implied by words where are already in the statute and he has a limited power to add, to alter or ignore statutory words in order to prevent a provision from being unintelligible, abused or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute. 32. Intention of framers of the Rules of 1989 may be inferred from bare reading of Rules 13 and 25 and the statutory words used in the said rules cannot be ignored. According to Rule 13 conviction of a candidate in a criminal case involving moral turpitude, violence or with a movement to overthrow a Government, shall come in the way of his appointment. If such information is suppressed it does amount to suppression of material information. As per Rule 15 if material information is suppressed by a candidate it will be fatal to his employment. No where in the Rules of 1989 it has been stated that the involvement in a criminal case shall affect the employment of a candidate.

33. In all the cases before me (except the case of petitioner Govind Singh, Writ Petition No. 5739/1996) the respondents do not issue letter of rejection of candidature as yet. Some of the petitioners in the notice for demand of justice have explained that by inadvertent mistake they could not have supplied proper information in the application form. Petitioner Govind Singh who joined his duties on the post of Constable on September 17, 1993 was discharged on March 15, 1995 on the ground that he concealed his involvement in a criminal case. Admittedly in the application form the petitioner Govind Singh did not state that criminal case under Section 341/352 IPC was pending against him. The petitioner Govind Singh after joining the service was acquitted in the said case on December 1, 1993. The petitioner Govind Singh made a representation to reconsider his case but it was rejected. In my considered opinion, the respondents did not properly read the provisions contained in Rules 13 and 15 of the Rules of 1989.

34. In view of what I have discussed herein above, I dispose of all the writ petitions in the followings terms-

(i) The petitioners may submit representations explaining the circumstances under which they did not supply the required information in the application form.

(ii) The respondents shall objectively consider the explanation in view of Rules 13 and 15 of the Rules of 1989 to find out whether the concealment was deliberate or by inadvertent mistake.

(iii) If any of the petitioners is found to have been convicted in a criminal case involving moral turpitude or violence or with a movement to overthrow a Government, he shall not be considered for employment and his candidature shall be rejected.

(iv) Mere involvement of the petitioner in a criminal case does not affect his right to seek employment. It is only conviction that is relevant in view of Rule 13 of the Rules of 1989.

(v) The decision over the explanation shall be taken by the respondents within two months from the date of its receipt

(vi) If the petitioners are found suitable for employment, appointment letter shall be issued to them and in that event the petitioners shall be entitled to the salary and other perks from the date of their joining the service.

(vii) In the facts and circumstances, the parties shall bear their own costs.