

(2014) 11 SC CK 0096

In the Supreme Court Of India

Case No : Civil Appeal No. 10288 of 2014 (Arising out of S.L.P.(C) No. 28956 of 2012)

Manjunatha

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 10, 20, 5, 5(7)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 302, 307

Citation : (2015) 1 SCT 507

Hon'ble Judges : V. Gopala Gowda, J; C. Nagappan, J

Bench : Division Bench

Advocate : B.P. Patil, Sr. Advocate, Darpan K.M. and Hetu Arora Sethi,
Advocates for the Appellant; V.N. Raghupathy, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

1. Delay condoned.

Leave granted.

This appeal is directed against the judgment and order dated 24.03.2011 passed by the Division Bench of the High Court of Karnataka, Bangalore in Writ Petition No. 40809 of 2010 (S-KAT) wherein the High Court after adverting to certain factual aspects and rival legal contentions and following the decision of this Court in the case of Commissioner of Police, Delhi and Another Vs. Dhaval Singh, , the impugned order, passed by the Karnataka Administrative Tribunal, Bangalore (hereinafter referred to as "the Tribunal"), insofar as the Appellant herein is concerned, was interfered with by allowing the writ petition filed by the Respondents herein and the same is under challenge by raising certain substantial questions of law and urging various grounds in support of the same.

2. Briefly stated, the facts giving rise to the case are as follows. The Selection

Authority published a Notification dated 7.06.2004 for vacancies to the post of Police Sub Inspector (Civil). Pursuant to the said notification, the Appellant herein submitted an application for selection to the post of Police Sub Inspector (Civil) claiming SC/ST, Rural and Kannada medium reservation. In the selection process, the Appellant secured 102.57 marks and as such his candidature was considered for the selection to the said post under general merit quota. However, the appointment order could not be issued since on police verification the Appellant herein was found as an accused in Crime No. 239/98 for the offence punishable Under Sections 143, 147, 148, 323, 324, 307, 302 of the Indian Penal Code. When the matter was committed to the Sessions Court, Bangalore Rural District, which was assigned to the Fast Track Court-I for trial, due to paucity of evidence inasmuch as most of the witnesses turned hostile and some of the witnesses did not turn up to depose along with the other accused, he was acquitted vide Order dated 23.04.2005 in S.C. No. 47/1999 passed by the Fast Track Court-I, Bangalore Rural District, Bangalore. The relevant aspect which is noticed by the Division Bench is when the application was submitted by the Appellant, he had information in respect of Column Nos. 12 and 13 of the Application Form which would relate to whether the applicant-Appellant is involved in any criminal case or any case has been registered against him. The relevant Column Nos. 12 and 13 read thus:

"12. Have you ever been arrested in any criminal cases: Yes.....; No....., if yes, furnish details.

13. Are you facing any trial for any criminal cases?

Yes.....; No.....

If yes, furnish details."

3. Further, on the date of the application submitted to the post of Police Sub Inspector (Civil), undoubtedly, a criminal case was registered against him along with others, therefore, his selection was found to be bad in law. However, he had obtained bail in anticipation of his arrest, which would necessarily mean that he was in the judicial custody. Column No. 12 of the application provides for seeking information whether the applicant has ever been arrested in any criminal case and if so required to furnish the details. The Appellant herein probably was of the view that since he was not taken into custody, he can furnish an information that he was not arrested. An identical question fell for consideration before this Court in the case of State of Haryana and Ors. v. Dinesh Kumar reported in 2008 (1) R.C.R. (Criminal) 725 : 2008 (2) SLR 331, wherein this Court, in the facts of that case has given the benefit of a mistaken impression, rather than that of deliberate and willful misrepresentation and concealment of facts from the Selection and Appointing Authorities to get public employment.

4. Non furnishing of the information as required under column Nos. 12 and 13 of the Application Form is neither intentional nor deliberate and it is not with a view to misrepresent and mislead the Respondent to get public employment. The

learned senior Counsel submitted that omission to furnish the particulars must be viewed from the social background of the Appellant as he was in orphanage and his social background in upbringing him and to get educated himself in great adverse circumstances is a satisfactory explanation given by the Appellant in not furnishing the information at the time of submitting the application.

5. Further, omission to furnish the details by the Appellant as sought for under columns Nos. 12 and 13 in the Application Form does not amount to his ineligibility to apply for the post as he was not disqualified Under Sub-rule (7) of Rule 5 of the Karnataka Civil Services (General Recruitment) Rules, 1977 (hereinafter referred to as the "General Recruitment Rules" in short) as he has not been convicted in the criminal case involving moral turpitude. Even if the information regarding the arrest of Appellant in a criminal case or he was facing any trial for any criminal cases was furnished, the selection authority could not have rejected his application as he had not suffered disqualification to apply to the post merely because the criminal case was pending against him on the date of filing the application. This relevant fact was required to be ascertained by the Respondents after the selection process was over as to whether the Appellant was convicted for moral turpitude in a criminal case or he has good conduct and character to appoint him to the post to which he was selected. In the aforesaid factual and legal position as per Sub-rule (7) of Rule 5 of the General Recruitment Rules read with Rule 10 of the Rules, neither the Appellant suffered disqualification nor he had the bad conduct and character. He has not committed any misconduct or found guilty of impersonation for submitting fabricated document or documents which have been tampered as provided Under Rule 20 of the General Recruitment Rules. Therefore, the reasons assigned by the High Court in the impugned judgment and order in setting aside the findings and the reasons by the Tribunal to quash the endorsement is vitiated on account of the erroneous reasoning and error in law.

6. The Appellant herein approached the Tribunal by filing an application Under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act" in short) for quashing the Endorsement dated 20.02.2007 issued by the Deputy Inspector General of Police and Member-Secretary, Police Sub-Inspectors Recruitment Committee and to further direct the Respondents to appoint the applicant-Appellant to the post of Police Sub-Inspector. Similar applications were filed by the other similarly placed persons namely, C. Ananthswamy, Yahyakhan M.R., Baliram, K.S. Shiva Kumar, T. Hanumanthappa, Gangadhar P. Nashi, Jagadish, Annappa K.B., Bhimappa, Bapu Gowda, H.P. Parashivappa and Abhishek. The Tribunal after considering the relevant facts and recording rival legal contentions and advertent to Rule 10 of the General Recruitment Rules, the judgments of this Court, referred to supra, accepted the case of the Appellant and quashed the impugned endorsement rejecting the candidature of the Appellant along with other applicants or deleting their names from the select list, and further directed the Respondents herein to appoint the Appellant along with others involved in application No. 1590/2007, 959/2003 and 4520/2005 against

the posts which have been kept vacant by passing interim order at the time of preliminary hearing of the Applications by the Tribunal.

7. The order of the Tribunal was challenged by the Respondents before the High Court by filing a writ petition for setting aside the same, urging various legal contentions. The High Court relying on similarly placed persons case where Writ Petition No. 26160 of 2010 State of Karnataka v. C. Ananthaswamy and Ors., who was one of the applicants in application No. 959/2005 in which case also the endorsement cancelling the selection of the said candidate was quashed by the Tribunal by common Order dated 31.03.2010 along with application No. 1590/2007 filed by the Appellant herein, dismissed the writ petition of the Respondents vide Order dated 24.03.2011. The said writ petition is followed in another writ petition filed by the State of Karnataka in the case of Jagadish, who is also one of the applicants in application No. 2509/2008. The High Court of Karnataka, Circuit Bench at Gulbarga vide its judgment and order dated 19.06.2013 dismissed writ petition No. 83661 of 2011 etc. filed by the State of Karnataka against the applicants after adverting to the Order dated 24.03.2011 passed in Writ Petition No. 26160 of 2010 titled "State of Karnataka v. C. Ananthaswamy and Ors." As in the said writ petition vide Order dated 19.06.2013 the Respondents-applicants were also similarly placed in that of the Appellant in non furnishing the information to be furnished in the Application Form against the relevant column "other criminal cases pending against them".

8. Strong reliance is placed by learned senior Counsel, Mr. Basava Prabhu Patil, for the Appellant upon the aforesaid unreported decision of the High Court of Karnataka, Circuit Bench at Gulbarga at the time of hearing. We directed the learned Counsel for the Respondents, Mr. V.N. Raghupathy, to secure the information from the Office of the Deputy Inspector General of Police, Training and Recruitment, Bengaluru. He has produced a copy of Letter No. 16/Rect/2003-04/1590 dated 11.11.2014 addressed by the said office to Sri Ramanathan, Legal Cell, Karnataka Bhawan, New Delhi, with regard to compliance of the order passed in respect of the candidates, namely, Sriyuth C. Ananthaswamy and Ravindra Ramappa wherein it is stated that the writ petition filed by the State Government challenging the order dated 31.03.2010 passed by the Tribunal was rejected by the High Court vide Order dated 24.03.2011. Accordingly the candidature of C. Ananthaswamy was considered by the Commissioner of Police, Mysore. With regard to considering the candidature of Sri Ravindra Ramappa, the order passed on application No. 4462 of 2005 filed by him directing the Respondents herein vide Order dated 18.09.2006 that "the Appointing Authority shall take into consideration the orders passed by this Tribunal as well as the High Court of Karnataka and pass appropriate orders in accordance with law". In order to comply with the said direction of the Tribunal, clarification sought for from the Government by the selection authority. The Government of Karnataka issued letter dated 6.12.2007 and directed to take necessary action as per the directions of the Tribunal and the Karnataka High Court and accordingly candidature of Sri Ravindra Ramappa was considered.

While advertent to the case of the Sri Manjunath, the Appellant herein, it is stated that he had suppressed the information of being involved in a criminal case and also even during the process of recruitment he had not conveyed the information about the criminal case, therefore, the order of the Tribunal dated 31.03.2010 was challenged before the High Court in Writ Petition No. 40809 of 2010. The High Court by Order dated 24.03.2011 held that the applicants are required to furnish all the necessary information which is required for the purpose of they being selected, necessarily be it is the discipline forte but any other discipline. Further, any withholding of information in respect of the criminal case as against the applicants would certainly warrant rejection of the application at the inception. The said order is challenged before this Court by filing a special leave petition inter alia praying for dismissal of the same on the ground in the case of C. Ananthaswamy and Ravindra Ramappa including Jagdish, Baliram, Bapur Gowda, Abhishek, who were similarly placed persons. C. Ananthaswamy (supra) case has been the directions issued by the Tribunal are implemented, therefore, on this ground itself the order impugned is liable to be set aside.

9. Further, apart from the said contentions, learned senior Counsel for the Appellant submits that the non furnishing of the information sought for under Column Nos. 12 and 13 in the Application Form at the time of submitting the same to the post of Police Sub Inspector is not a disqualification Under Rule 5 of the General Recruitment Rules. Sub-rule (7) of Rule 5 provides that if a candidate is convicted for an offence involving moral turpitude or he has been temporarily debarred or disqualified from applying, therefore, the pendency of a criminal case is not a disqualification for submitting an application. Non furnishing of the information sought for in the Application Form under Column Nos. 12 and 13 cannot be treated as disqualification for submitting the application if the applicant is convicted for the offence of moral turpitude alone is disqualified and the candidate does not possess good character, which is the requirement as provided Under Rule 10 of the General Recruitment Rules for appointing the selected candidate. Rule 10 of the General Recruitment Rules stipulates conditions relating to suitability and certificates of good character. It provides that no person shall be appointed to any service or post unless the Appointing Authority is satisfied that he is of good character and is in all respects suitable for appointment to the Government service.

10. Upon a careful reading of the said Rule, the same confers duty upon the Appointing Authority to decide about the good character and suitability of a candidate before his appointment. After the selection it may not be referable to the non furnishing of information sought for under Column Nos. 12 and 13, namely, whether the applicant has ever been arrested in any criminal case or facing any trial for any criminal cases. Non furnishing of such information may be omission on the part of the applicant. If the applicant is arrested or facing any trial, it may not be a disqualification as provided Under Rule 5 of the General Recruitment Rules. The disqualification is only Under Rule 5(7) of the General Recruitment Rules i.e. conviction of the applicant for the offence involving moral

turpitude. That is not the case of the Appellant herein. Therefore, withholding of relevant information from furnishing as sought for by the Appellant under the aforesaid column Nos. 12 and 13 does not disentitle him to be appointed to the post to which he was selected from the General Merit. The question of rejection of application or cancellation of the name from the selection list Under Rule 20 of the General Recruitment Rules for the reason of non furnishing the information under Column Nos. 12 and 13 in the Application Form is totally impermissible in law.

11. Learned senior Counsel for the Appellant further submits that insofar as good character and suitability are concerned, he had placed reliance upon the verification report, which has been adverted to by the Tribunal in its order wherein the Sub-Inspector of Hebbagudi Police Station, who has submitted the report in relation to the Appellant, has stated that he has enquired from the villagers about the antecedents of the Appellant/applicant and the villagers have stated that the character of the Appellant/applicant is good. The Sub-Inspector, who submitted the verification report to the Respondents, has stated that the applicant-Appellant is eligible for recruitment to the post. In the very same Report, the Circle Inspector Police, Attibele Circle, also stated that the Appellant is eligible for recruitment to the post of Sub-Inspector of Police. As no appeal against his acquittal in a criminal case was filed by the State Government, therefore, as on the date of verification, neither a criminal case is pending nor suffered disqualification by passing an order of conviction for the offence of moral turpitude. Therefore, the exercise of power Under Rule 20 of the General Recruitment Rules by the State Government to cancel the name of the Appellant from the select list and not issuing the appointment order is an error of law. Rule 20 of the General Recruitment Rules reads as under:

"Rule 20 - Misconduct - A candidate found guilty of impersonation or of submitting fabricated documents or documents which have been tampered with or of making statements which are incorrect or false or of suppressing material information or of using or attempting to use unfair means in an examination conducted for purposes of recruitment or otherwise resorting to any other irregular or improper means in connection with his recruitment may, in addition to rendering himself liable to a criminal prosecution and to disciplinary action, be debarred either permanently or for a specified period-

(a) by the Commission or other recruiting or examining authority from admission to any examination or appearing for any interview for selection of candidates; and

(b) by the Government from employment under it."

Rule 20 empowers the selection authority, namely, the examining authority, to debar a candidate on the basis of any misconduct on his part in connection with examination or of submitting fabricated documents or documents which have been tampered with or making statements which are incorrect or false or of suppressing material information etc. etc. The said rule also empowers the

Government to debar a candidate on the basis of such misconduct, from employment under the Government. Undisputedly, the Tribunal has recorded a finding of fact on the basis of record and pleadings of the parties that proceeding against the Appellant was not instituted Under Rule 20 either by the selection committee or by the Government for cancellation of his selection on the ground that he had not disclosed the material information in his application. The show cause notice was issued in exercise of the power Under Rule 10 of the General Recruitment Rules. The final order shows that in exercise of that power, the Appointing Authority held that the Appellant was not suitable for appointment on the ground that he had suffered a conviction before submitting the application form and he had failed to disclose the same in his application form which, fact, as stated in the order, is factually incorrect. Therefore, the Tribunal has rightly set aside the endorsement. Further, the Tribunal placing reliance upon the judgment of this Court in a similar case in Commissioner of Police v. Dhaval Singh (supra) in which the candidature of Dhaval Singh was cancelled on the ground that he concealed from mentioning in the application form against the relevant columns about pendency of criminal case against him. After advertng to the facts of that case, at paragraphs 5 and 6, certain observations are made, which are extracted herein:

"5. That there was an omission on the part of the Respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The Respondent, however, voluntarily conveyed it on 15.11.1995 to the Appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the Respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20.11.1995 shows that the information conveyed by the Respondent on 15.11.1995 was not taken note of. It was obligatory on the part of the Appellant to have considered that application and apply its mind to the stand of the Respondent 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 the 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. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the Respondent on 15.11.1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal,

though for slightly different reasons, as mentioned above.

6. Learned Counsel for the Appellants has drawn our attention to a judgment rendered by a bench of this Court on 4.10.1996 in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, . On the first blush, that judgment seems to support the case of the Appellants but there is a material difference between the two cases. Whereas in the instant case, the Respondent had conveyed to the Appellant that an inadvertent mistake and 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."

12. In the light of the aforesaid finding and reasoning, we are of the considered view that the High Court erred in interfering with the Judgment and Order of the Tribunal impugned in the writ petition and setting aside the same without proper application of mind to Rules 10, 5(7) and 20 of the General Recruitment Rules and reasons mentioned in the Endorsement and also the finding and reasoning recorded by the Tribunal that withholding information by not furnishing necessary information under Column Nos. 12 and 13 in the Application Form disentitles the Appellant for appointment is erroneous in law and also in view of the judgment rendered in Writ Petition No. 26160 of 2010 titled "State of Karnataka v. C. Ananthaswamy and Ors." decided on 24.03.2011, disposed of Writ Petition Nos. 83661/2011 etc. filed by the Respondents herein in the like terms as in the above case rendered by the High Court of Karnataka, Circuit Bench at Gulbarga vide its Order dated 19.06.2013 in the cases of Bapur Gowda, Jagdish, Sri Abhishek, and Baliram, which are similarly placed persons as that of the Appellant herein.

13. It is stated at the Bar on behalf of the Respondents, on written instructions, the order of the Tribunal, which is affirmed by the Karnataka High Court in the abovesaid writ petitions, has been implemented by the Respondents, therefore, there is no justification for them to oppose the prayer made in the case on hand.

14. We are of the view that the finding and reasons recorded in setting aside the endorsement issued in exercise of power Under Rule 10 of the General Recruitment Rules for cancellation of the candidature of the Appellant from the selection list is rightly held to be bad in law and the power Under Rule 10 of the General Recruitment Rules ought not to be exercised. The same cannot be exercised for the reason that the Appellant had already been acquitted in the criminal case and the good character certificate given by the Sub Inspector of Police, in his report at the time of verification, is rightly accepted by the Tribunal, therefore, there is no basic disqualification suffered by the Appellant for appointment for withholding the information required to be furnished under Column Nos. 12 and 13 in the Application Form. The same cannot be found fault with by the High Court in its order. It is contrary to the judgment of the Supreme Court referred to supra upon which the learned senior Counsel for the Appellant

has placed reliance. Since the Respondents herein have complied with the Judgment and Order of the Tribunal and the Karnataka High Court in respect of the similarly placed persons, for this reason also it is necessary for this Court to allow this appeal by setting aside the impugned order of the High Court of Karnataka passed in Writ Petition No. 40809 of 2010 (S-KAT).

15. Accordingly, we set aside the impugned Judgment and Order and the appeal is allowed. Some posts are kept vacant by virtue of interim order passed by the Tribunal. Since the Appellant has been selected in the general merit, therefore, we direct the Respondents to comply with the direction issued in the order dated 31.03.2010 of the Tribunal passed in Application No. 1590 of 2007 along with other similarly placed applicants, within eight weeks from the receipt/production of a copy of this order. The Appellant is entitled to the benefit of fixation of notional pay as per rules and also placing him in the seniority in his proper seniority rank among the selected candidates in the select list, who have been appointed as per Selection List, as per the seniority rules and in accordance with law. There shall be no order as to costs.