

(2013) 09 DEL CK 0545

In the Delhi High Court

Case No : Writ Petition (C) No. 7457 of 2012

Ms. Nidhi Kaushik

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Contract Act, 1872 — Section 17, 18, 19

Penal Code, 1860 (IPC) — Section 147, 292, 323, 325, 34

Citation : (2014) 2 AD 340 : (2013) 203 DLT 722

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sachin Chauhan, for the Appellant; Archana Gaur, Advocate for Respondent No. 1 and Mr. J.C. Seth, Advocate for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner seeks relief of setting aside of the order dated 9.10.2012 passed by the respondent No. 2/BHEL. By the impugned order, the offer of appointment given to the petitioner for the post of Supervisor Trainee (HR) was recalled on the ground that the petitioner had concealed material facts at the time of seeking employment. This letter dated 9.10.2012 reads as under:-

Ref. No. PA: HRM: 101-05

Dated: 09.10.2012

Ms. Nidhi Kaushik

C-2/38A

Yamuna Vihar,

Delhi, Pin-110053

Sub: Provisional Offer of Appointment-Cancellation

This has reference to Provisional Offer of Appointment dated 3rd September, 2012, for the post of Supervisor Trainee (HR).

You submitted the attestation form on 24th Sept., 2012, in which you have indicated that there is case pending against you under Domestic Violence Act. It is noticed that you had suppressed this material fact in the Bio-data form, which you filled on 18th June, 2012 at the time of interview.

In this connection your attention is invited to the clause published on the Web site for recruitment which provides:

In case it is detected at any stage of recruitment process that the candidate has suppressed any material fact(s), the candidature of such candidates is liable to be rejected.

Accordingly your candidature is rejected and the Provisional Offer of Appointment is hereby withdrawn and cancelled.

Yours faithfully,

For & on behalf of BHEL

(Radhika Jain)

Manager (HR)

Counsel for the petitioner argues before me the following aspects:-

(i) Reply given in para 12 of the Bio data form was not incorrect because no criminal case was pending against the petitioner and against the petitioner only summons were issued by the Metropolitan Magistrate in a complaint case filed under the Domestic Violence Act, 2005 and therefore it cannot be said that a criminal case was pending.

(ii) Petitioner cannot be said to be guilty of concealment of facts inasmuch as even assuming there may have been concealment in the Bio-data form para 12, however when subsequently an attestation form was given, the case was disclosed by the petitioner.

2. In my opinion, the distinction which is sought to be drawn by the petitioner that because disclosure was made before actual appointment, the same is sufficient and it cannot be said that an earlier aspect of nondisclosure in terms of para 12 of the Bio-data would be relevant, is an argument which does not have substance. As stated by the respondents in their counter-affidavit, as per the general instructions issued in Clause 7 of the general instruction in the advertisement it was clearly stated that the candidate must give all particulars correctly and if subsequently it is found that the candidate has furnished incorrect/false statements, the candidature of the candidate is liable to be rejected. It is further clarified in the advertisement that if any of the

shortcomings are detected even after the appointment the candidate's services are liable for suitable action including termination and prosecution. The respondent Nos. 2 to 4 in their counter-affidavit have rightly referred to Clauses 20 and 21 of the terms and conditions of the provisional offer of appointment in which it was stated that in case any wrong or incomplete or false information is being furnished and there has been suppression of facts, the services of the candidate will be terminated. The entire chain of documents being the advertisement and the terms and conditions given therein and the relevant conditions applicable for grant of appointment have necessarily to be read together and simply because there may be difference of dates cannot mean that those terms and conditions have to be read separately. In reality, all terms and conditions right till employment is given, forms part of the offer of contract of employment to be entered into and once there is found concealment of facts, such a contract having been entered into with misrepresentation or fraud, can be rescinded by the aggrieved party.

3. I have had an occasion to consider the same issue in the recent judgment in the case of Arun Vs. District & Sessions Judge in W.P. (C) No. 5880/2012 decided on 26.7.2013. Relevant paras of the said judgment read as under:-

2. Therefore, the issue is not of confirmation of the petitioner after completing probation in the post but of invalidity of appointment because if the appointment is obtained by misrepresenting a fact, then, the contract of employment was voidable at the option of the respondent. Section 17 of the Contract Act, 1872 defines fraud and Section 18 defines misrepresentation. Concealment of a fact falls under both. Once the contract of employment is obtained by fraud or misrepresentation, then, as per Section 19 of the Contract Act, the contract is voidable at the option of the party against whom fraud or misrepresentation is committed. Respondent/District & Sessions Judge was thus entitled to and hence rescinded the contract thereby terminating the employment of the petitioner.

xxxx

5. In Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, Supreme Court held that issue was not of a person being guilty of a criminal act but the issue was of giving information to the employer to judge the suitability of employment of a person. Para 12 of the judgment reads as under:-

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case

ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief: if he could not understand the contents of column Nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.

6. In *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, Supreme Court held that a person who obtains employment by suppression of fact does not deserve public employment. Para 7 of the said judgment reads as under:-

7. We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was

inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan (supra) and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

7. Merely because the issue of concealment having effect on employment is referred to a larger bench of the Supreme Court in a case (details of case not given by the petitioner) will not mean that the existing judgments will not hold the field till they are set aside.

8. In view of the above, the original appointment itself of the petitioner has been found invalid, and therefore, the petitioner was accordingly rightly terminated from services. Issue of honesty of purpose is very important for employment in Courts with the respondent.

4. In the aforesaid judgment in the case of Arun (supra) I have referred to the judgments of the Supreme Court which state that persons taking public employment on concealment of facts do not deserve public employment. I may note that an appeal filed against the judgment in the case of Arun (supra) has been dismissed by the Division Bench in LPA No. 582/2013 decided on 19.8.2013 and which order reads as under:-

CM No. 12307/2013

Allowed subject to just exceptions.

LPA No. 582/2013

1. Having heard learned counsel for the parties we see no case made out to interfere with the impugned order dated July 26, 2013 dismissing the writ petition filed by the appellant challenging his service being discontinued while still on probation.

2. The law declared by the Supreme Court in the decision reported as Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, frowns upon appointment being given to those who deliberately suppress relevant information having a bearing on their character and antecedents verification. Those who deliberately, as against innocently, falsely write in the application form that they were not ever an accused in any criminal Court and do not claim to be mislead by the question seeking information in the enrolment/application form have not to be granted public employment if it is found that in the past they were accused of having committed an offence. It matter not whether the person was ultimately acquitted.

3. In the instant case, the petitioner was admittedly an accused in an FIR for an offence punishable u/s 323/325 IPC. He was acquitted but upon witnesses turning substantially hostile, in that, they stood by the incident but refused to identify the assailant.

4. Not only did the petitioner not disclose said fact in his application form but when he was selected for the job in the office of the Districts and Sessions Judge, Delhi, pending verification of his antecedents when he was called upon to furnish an affidavit disclosing his past, the petitioner did not divulge the information that he was an accused at a criminal trial.

5. It is trite that a truthful information pertaining to ones past is required to be given when a person seeks employment even if one is acquitted by a criminal court for the reason the employer has a right to satisfy himself regarding the manner in which or the reason for which the person was acquitted; particularly more in India when witnesses being suborned has become the way of life.

6. As explained by the Supreme Court in Kamal Nayan Mishra's case (Supra), suppressing relevant information pertaining to an issue concerning ones character verification is a wrong by itself justifying denial of a public job.

7. The contention urged that recourse could not be had to Rule 5 of the CCS (Temporary Service) Rules 1965 for the reason the appellant was on probation for a period of two years and his services were terminated in the third year is neither here nor there for the reason it is not in dispute that the service of the appellant was not made permanent. It is trite that unless the rule pertaining to probation mandates that upon probation period being over there would be a deemed confirmation, the status of confirmation is not attained unless there is a specific order of confirmation.

8. As regards the reason why it took the Department three years to take the action impugned, the same is that while filling up the application form the petitioner did not disclose his being an accused. Since working hands were needed in the office of the District and Sessions Judge, Delhi, obtaining affidavits from all, including the appellants, temporary employment was granted on probation pending verification of the past of the persons appointed. Since the petitioner had withheld a relevant information, the police authorities took time and the verification revealed that the petitioner was an accused in an FIR.

9. The appeal is dismissed without costs.

CM No. 12308/2013

Dismissed as infructuous.

5. Also, I cannot agree with the argument urged on behalf of the petitioner that on a summons being issued in a Domestic Violence Act, it cannot be said that a criminal case is not pending and that unless cognizance is taken by the Metropolitan Magistrate, a criminal case cannot be said to have come into

existence. This argument is an unnecessarily strict reading of the requirement of para 12 of the Bio-data form because the expression "criminal case" used in that paragraph is basically to ascertain any form of criminal case including any summons being issued in a complaint case against the candidate. Therefore, I am unable to agree with the argument that there is no requirement to furnish any details of a criminal complaint case and the requirement to submit such information would only have been after cognizance was taken by the Metropolitan Magistrate.

6. Learned counsel for the petitioner also sought to rely upon a judgment of Division Bench of this Court in a bunch of cases with lead case being W.P. (C) No. 2057/2012 decided on 13.4.2012 being Govt. of NCT of Delhi and Ors. Vs. Rajesh Kumar, however, I note that in all the cases decided by the Division Bench the criminal case against the petitioners therein had come to an end much before the applications were filed seeking employment. This becomes clear from paras 3 to 5 of the said judgment and which read as under:-

3. Insofar as the respondent Rajesh Kumar is concerned, he was allegedly involved in FIR No. 138/95 which was registered under Sections 325/323/341 IPC. The said Rajesh Kumar had applied for the post of Constable (Executive) on 22.11.2009 and had submitted the attestation form on 03.05.2010. In neither of these, the said Rajesh Kumar had disclosed that he had been involved in the said FIR. However, it must be noted that prior to the submission of the application form and attestation form, the said Rajesh Kumar had been acquitted, consequent upon the offences having been compounded, by an order dated 14.10.1995.

4. Insofar as the respondent Dherender Kumar is concerned, there was an FIR 96/01 under Sections 147/323/504/506 IPC in which he was allegedly involved. However, he stood trial and was acquitted by an order dated 20.07.2009. It is subsequent to this order of acquittal that he applied for the post of Constable (Executive) on 21.11.2009 and submitted the attestation form on 03.05.2010. As in the case of Rajesh Kumar, Dherender Kumar also did not disclose in the application form/attestation form about his previous involvements.

5. The respondent Raja Ram was also allegedly involved in FIR 333/07 under Sections 292/323/452/506/34 IPC. However, he had been acquitted on 02.06.2008. It is only thereafter that he had applied for the post of Constable (Executive) with the Delhi Police and had also submitted his attestation form.

7. In view of the above, I find that there is no reason to grant relief to the petitioner by quashing the letter dated 9.10.2012 and give the petitioner employment as prayed. Writ petition is therefore dismissed, leaving the parties to bear their own costs.