

(2015) 07 TP CK 0017
In the Tripura High Court
Case No : Writ Petition (C) No. 583 of 2010

Partha Choudhury

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 46
Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 498(A)

Citation : (2015) LabIC 4554

Hon'ble Judges : Deepak Gupta, C.J; S.C. Das, J

Bench : Division Bench

Advocate : S. Lodh, for the Appellant; D.C. Nath, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—The petitioner was initially engaged as a Daily Rated Worker w.e.f 10.05.1984. Later on, he was appointed to the post of Work Assistant, Vide Memo dated 21.09.2006 (Annexure-3 to the writ petition) in the pay scale of Rs. 3300-7100/- under the respondent No. 3. The offer of appointment contained certain terms and conditions. As per that offer of appointment the petitioner was supposed to submit an attestation form duly filled in and a declaration form etc. Accordingly, he submitted the attestation form wherein there was specific column as to whether any case was pending against him in any Court of law at the time of filling up of attestation form to which he replied in negative, but in fact Agartala Women P.S Case No. 72 of 2006, U/S 498A of I.P.C was pending against him under investigation and he surrendered before the Court and got bail on 01.07.2006. The petitioner contended that by mistake he did not mention in the attestation form about the pendency of that case and that it was a bona fide mistake.

The complainant of that criminal case, Smt. Krishna Bhattacharji, wife of younger brother of the petitioner, namely, Sarathi Bhattacharji, submitted a written complaint before the Chief Engineer, P.W.D (respondent No. 3) alleging that the

petitioner suppressed the fact of the police case and a news also was published in the daily newspaper "Dainik Sambad" dated 11.07.2007 to that effect and, therefore, the petitioner voluntarily informed respondent No. 3 that because of bona fide mistake he did not mention about the pendency of the criminal case in the attestation form, by submitting a petition on 23.07.2007 and a copy of that petition is annexed as Annexure-4 to the writ petition.

The respondent thereafter, issued show cause notice to the petitioner as to why his services should not be terminated for suppression of material fact (Annexure-7 to the writ petition) and thereafter initiated a disciplinary proceeding against the petitioner vide Memorandum dated 01.11.2007 (Annexure-9 to the writ petition) on the following Article of charge :--

"ARTICLE OF CHARGE NO.1.

That Sri Partha Choudhury, (formerly D.R.W employee attached to the G.M., T.S.E.C.L, Tripura, Agartala) now Work Assistant, Office of the Executive Engineer, Store Division, PWD, A.D. Nagar, Agartala, Tripura has failed to maintain absolute integrity and devotion to the Government duties in that he has committed a gross misconduct by suppressing the fact of his involvement in a criminal case being No. GR-644/06 pending in the Hon'ble Court of Judicial Magistrate, 1st Class (Court No. 5), Agartala, West Tripura at the time of submission of Attestation Form duly filled in supplied with the offer of appointment by the Appointing Authority i.e. the Chief Engineer, PWD(R&B), Tripura, Agartala which is most un-becoming on the part of a Government Servant.

Therefore, the aforesaid activities of Sri Partha Choudhury,(formerly D.R.W employee) now Work Assistant, attract the provision of Rule-3(1) of TCS(Conduct) Rules, 1988 which is a good and sufficient reason within the meaning of Rule-11 of the CCS(CC&A), Rules, 1965 for proceeding against him under Rule-14 of the said Rules."

2. An inquiry was conducted under rule 14 of CCS(CCA) Rules, 1965 on the above charge and the inquiry officer submitted report against the petitioner(Annexure-11 to the writ petition) on 22.08.2008 holding that the charge framed against the petitioner that he suppressed material fact has been proved. Thereafter by issuing Memorandum dated 17.10.2008 (Annexure-12 to the writ petition) the disciplinary authority i.e., respondent Nos. 3, asked the petitioner to submit his representation in respect of the finding of the inquiring authority and accordingly, the petitioner submitted his reply (Annexure-13 to the writ petition) on 03.12.2008 contending that because of inadvertence he failed to mention in the attestation form that a criminal case was pending against him and he further stated that it was a bona fide mistake on his part and after considering that reply the disciplinary authority by order dated 17.01.2009 (Annexure-14 to the writ petition) inflicted punishment of removal from service. The petitioner preferred an appeal before the Principal Secretary to the

Government of Tripura and the appeal was also dismissed by the appellate authority by order dated 01.07.2009(Annexure-16 to the writ petition).

3. By filing the present writ petition the petitioner challenged the order of removal from service passed by the disciplinary authority dated 17.01.2009 (Annexure-14 to the writ petition) and also appellate order dated 01.07.2009 (Annexure-16 to the writ petition) passed by the appellate authority and prayed for reinstatement in service with all service benefits.

4. The respondents contended that the petitioner suppressed the material facts and has made false statement in the attestation form and thereby committed gross misconduct, which was admitted by the petitioner. The disciplinary authority initiated proceeding for such suppression of material fact and there is no procedural deficiency or infirmity in the disciplinary proceeding and the disciplinary authority thought it proper that the person, who suppressed such material fact, cannot be suitable for public service and, therefore, removed him from service and since the orders of removal from service do not suffer from any infirmity, the writ court may not interfere in the order.

5. Heard learned counsel, Mr. S. Lodh for the petitioner and learned counsel, Mr. D.C. Nath for the respondents.

6. It is an admitted position that pursuant to the memorandum dated 21.09.2006 i.e., the offer of appointment (Annexure-3 to the writ petition) the petitioner was required to submit attestation form as well as declaration form etc. and accordingly, the petitioner submitted attestation form with declaration that the information/contents of the attestation form were correct. Learned state counsel produced before this court the records of the disciplinary proceeding wherein copy of attestation form was placed and was exhibited. Column 12 of the attestation form with various clauses, which is filled up by petitioner, reads as follows:--

NOTE: (i) Please also see the "Warning" at the top of this Attestation Form.

(ii) Specific answers to each of the questions should be given by striking out "Yes" or "No" as the case may be."

7. The attestation form also consists a certificate given by the petitioner at the end, which reads as follows :--

"I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness or employment under Government."

8. It is evident from the above column No. 12 of attestation form that the petitioner has deleted the word "yes" and kept the word "No" in answer to all the queries, meaning thereby he was never arrested, never prosecuted, never kept in detention and no case was pending against him at the time when attestation form was filled in.

9. It is the case of the petitioner that wife of his younger brother, Smt. Krishna Bhattacharji initiated the criminal proceeding against him and others and she wrote a letter to respondent No. 3 informing that he suppressed the material fact of pendency of the criminal case and copy of that letter dated 11.06.2007 has been annexed as Annexure-5 to the writ petition. A news item also was published in the newspaper dated 11.07.2007 (Annexure- 6 to the writ petition) and thereafter, the petitioner voluntarily wrote letter dated 23.07.2007(Annexure-4 to the writ petition) to respondent No. 3 wherein he stated thus :--

"Before submitting my joining report, I submitted my attestation form but in the said attestation form a mistake has crept in. The mistake was bonafide. In the attestation form I made a declaration that no criminal case is pending against me. Unfortunately, the said statement was not correct. A false case was lodged by my sister-in-law(younger brother's wife) Smti. Krishna Bhattacharjee(Choudhury) against my younger brother, myself my wife and my old mother complaining an offence under Section 498(A)/34 of the Indian Penal Code was allegedly committed against her. The said allegations are absolutely untrue. However till date the charge sheet has been submitted and the case was posted for evidence from 25.06.2007 to 28.06.2007. But on none of the dates the said Smti. Krishna Bhattacharjee(Choudhury) appeared in the court to give any evidence. No evidence has been laid in support of the allegations. She all through absented herself in the said criminal case before the Learned Judicial Magistrate, 1st Class, Court No. 5(Smti. Sampa Nath).

Be that as it may, I feel that I ought to have made a mention of the pendency of the criminal case but I was under bonafide mistake that since the case was pending and no decision was rendered in the case, because of inadvertence and lack of legal knowledge, I did not make the disclosure about the pendency of the criminal case as I understood that the disclosure required to be mentioned only if there was a decision given by a criminal court.

I am sorry because of the bonafide mistake in not making the disclosure. As I have been subsequently been apprised of by my lawyer, I am making the submission disclosing the fact which may be treated as a part of my declaration of attestation."

10. In the writ petition also the petitioner took the stand that it was a mistake committed bona fide and because of the mistake he did not mention about the pendency of the criminal case in the attestation form.

11. Learned counsel, Mr. Lodh appearing for the petitioner argued that the petitioner was never arrested by police. After the criminal case was initiated he voluntarily surrendered before the Judicial Magistrate and got bail. So, technically neither he was arrested nor detained in judicial custody and so, as a layman he mentioned in the attestation form that he was not arrested or prosecuted and that no criminal case was pending against him in any court of law. It was a bona fide stand taken by the petitioner for which removal of him from service was not

justified and, therefore, the order passed by the disciplinary authority and affirmed by the appellate authority are liable to be quashed. In support of his contention he relied the case of State of Haryana and Others Vs. Dinesh Kumar, AIR 2008 SC 1083 : (2009) 238 ELT 545 : (2008) 1 JT 390 : (2008) 1 SCALE 268 : (2008) 3 SCC 222 : (2008) AIRSCW 696 : (2008) 1 Supreme 296 .

12. On the other hand, learned counsel, Mr. D.C. Nath appearing for the respondents submitted that the attestation form was enclosed with the offer of appointment requiring the petitioner to fill in the attestation form mentioning the correct information and he deliberately suppressed the information that a criminal case was pending against him and that he surrendered before Court and got bail in the criminal case. The surrender amounts to arrest and custody till he was granted bail by the Court. So, the petitioner intentionally and deliberately suppressed the fact with a view to secure the job and such suppression amounts to moral turpitude and is a gross mis-conduct for which disciplinary proceeding was drawn against the petitioner and he could not come out with any reasonable explanation to the satisfaction of the disciplinary authority and hence, disciplinary authority found it fit not to continue him in the job and accordingly, removed him, which do not deserve interference.

In support of his contention he relied on the decisions of the Apex court in (1) Daya Shankar Yadav Vs. Union of India (UOI) and Others, (2011) 128 FLR 168 : (2010) 12 SCALE 477 : (2010) AIRSCW 6928 : (2011) AIRSCW 396 , (2) Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others, (2012) 134 FLR 1054 : (2012) 7 JT 307 : (2012) 7 SCALE 22 : (2012) 8 SCC 748 : (2012) 3 SLJ 289 : (2012) AIRSCW 4347 : (2012) 5 Supreme 215 , (3) Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, AIR 2003 SC 1709 : (2003) 97 FLR 117 : (2003) 2 JT 256 : (2003) 2 LLJ 523 : (2003) 2 SCALE 444 : (2003) 3 SCC 437 : (2003) SCC(L&S) 306 : (2003) 2 SCR 361 : (2003) 2 SLJ 370 : (2003) AIRSCW 1126 : (2003) 2 Supreme 219 , and (4) Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, (2005) 2 ESC 170 : (2005) 104 FLR 1063 : (2005) 2 JT 358 : (2005) 2 SCC 746 : (2005) SCC(L&S) 323 : (2005) 2 SCR 1147 : (2005) 2 SLJ 233 .

13. It is an admitted position that a criminal case, i.e., Agartala Women P.S. Case No. 72 of 2006 U/S 498A of IPC, was pending against the petitioner at the time when he filled in the attestation form and he surrendered before the Magistrate and got bail on 01.07.2006. The attestation form admittedly was submitted by the petitioner on 04.10.2006. It is also an admitted position that the petitioner did not mention in the attestation form in column 12 about that criminal case and also did not mention that he surrendered before the court and got bail.

14. In the writ petition the petitioner took the stand that it was a mistake that he did not mention in the attestation form the pendency of that case. Learned counsel, Mr. Lodh has submitted that since the petitioner was not arrested by police and was not detained in judicial custody or police custody, as a layman he thought that he should answer the queries in negative since he was not arrested

or prosecuted and the criminal case was not charge-sheeted at the relevant point of time.

15. On the other hand, Mr. Nath learned counsel for the State-respondents submitted that he was supposed to give correct information in the attestation form about the pendency of the criminal case and about his release on bail and suppression of that fact amounts to misconduct.

16. In the case of Dinesh Kumar (supra) the Supreme Court has considered the meaning of "arrest" and "detention" in the context. Under that reported judgment the Supreme Court disposed of two Civil Appeals, one filled by State of Haryana and others against Dinesh Kumar (for short "D") and the other filed by Lalit Kumar and Bhupinder Kumar (in short "L" and "B") against the State and others. Two Coordinate Bench of the same High Court took divergent views in the case of "D" and in the case of "L" and "B". In both the cases "D" and "L" and "B" in their applications for job as against particular column mentioned that they were not arrested or detained, whereas on verification it was found that in criminal cases they surrendered before the Magistrate and got bail and that information was suppressed. In the case of "D" the High court has held that he was not arrested or detained and, therefore, directed the authority to issue him offer of appointment. In the case of "L" and "B" the High Court directed that the petitioners suppressed material information in the application form and so, were not entitled to the relief sought in the writ petition.

The Supreme Court very meticulously took into consideration the relevant provision of Cr.P.C as prescribed in Section 46 and Section 439 and arrived at a conclusion that in the event they surrendered before the Magistrate and prayed for bail, they entered into the custody of the Court and so, the decision of High Court in the case of "D" that he was not arrested or detained was not correct and the decision of the High Court in the case of "L" and "B" that it amounts to arrest and custody was correct. While holding that the "D" as well as "L" and "B" had suppressed the material fact, but considering the stand taken by those writ petitioners that they were laymen and they construed the fact that their surrender was not arrest and since they got bail, they were not taken to custody, the apex Court liberally construed the facts and circumstances and hence, the decision taken by the High court in the case of "D" was not disturbed and similar direction was given in the case of "L" and "B" also.

17. The ratio of Dinesh Kumar(supra) cannot help the petitioner in this case since the petitioner has taken a stand that out of mistake he did not mention the pendency of the criminal case and his surrender and bail from the court. There is no case of the petitioner pleaded in the writ petition that he bona fide understood as a lay man that he was not arrested by police and, therefore, he mentioned in negative and since he was not detained in custody, therefore, he mentioned in negative. In absence of any such plea taken by the petitioner in the writ petition, we are of considered opinion that the ratio of the decision of Dinesh Kumar(supra) cannot be applied in the case of the petitioner and the argument

advanced by learned counsel, Mr. Lodh, is not acceptable.

18. In the case of Kendriya Vidyalaya Sangathan (*supra*) the respondents, similarly, in the attestation form did not mention about the pendency of the criminal case and the attestation form consists almost similar question as that of the case of the petitioner herein and in that case the Supreme court in Para 11 and 12 of the judgment has held thus:--

"11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

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 the 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 antecedents 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 columns 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."

The ratio of this decision is fairly applicable in the case of the petitioner and this court in exercise of the power of judicial review is not required to interfere in the decision of the disciplinary authority in respect of punishment imposed in the admitted position of suppression of the material fact of pendency of the criminal case.

19. In the case of Daya Shankar Yadav(Supra), the Supreme court considered the consequences of making a false statement or suppressing material information in verification forms and relying on earlier decisions of the Court specially relying on the decision of Kendriyala Vidyalaya Sanghatan(Supra) the Supreme Court has held that the suppression of pendency of the criminal case was a false statement suppressing material information and, therefore, the appeal of the petitioner was dismissed.

20. In the case of Jainendra Singh(supra), the Division Bench of the Supreme Court took into consideration several other Supreme Court decisions including that of decision referred to above and since the Division Bench of the Supreme Court found conflict of views, it was proposed to refer to a larger Bench.

21. In the case at hand, the petitioner admittedly suppressed the fact of pendency of a criminal case. Para 12(i)(a)(b) clearly inquired about whether he

was arrested or prosecuted and he consciously replied "No". Para 12(i)(i) clearly inquired whether there was any case pending against him in any Court of Law at the time of filling up of the attestation form, he clearly mentioned "No". He admitted in the disciplinary proceeding that by mistake he did not mention it. He has not taken any stand that in the given facts and circumstances he understood that he was not arrested or detained and, therefore, he answered the queries in negative. In the absence of any such plea, the ratio of the decision in the case of Dinesh Kumar(supra) cannot be applied in the case of the petitioner. Since it is an admitted position that he made false statement in the attestation form suppressing the material fact, the inquiring authority rightly held the charge proved against him and since the disciplinary authority has decided that a person who makes such false statement suppressing material fact should not be retained in service, we are of considered opinion that in exercise of the power of judicial review we should not interfere in the decision of the disciplinary authority and accordingly, the writ petition stands dismissed.

Parties to bear their own costs.