

(2015) 08 CAL CK 0011
In the Calcutta High Court
Case No : Writ Petition S.T. 106 of 2010

Partha Sarathi Sinha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Constitution of India, 1950 — Article 164(1), 32, 75(1)
Penal Code, 1860 (IPC) — Section 120 B, 170, 304, 306, 324

Citation : (2015) 4 CALLT 542 : (2015) 3 ESC 1848

Hon'ble Judges : Nishita Mhatre, J; Asha Arora, J

Bench : Division Bench

Advocate : Kallol Bose and Subal Banerjee, for the Appellant; Joytosh Majumder and Pinaki Dhole, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Asha Arora, J—The petitioner applied for the post of Sergeant in Calcutta Police in the year 1998. He passed the written test as well as the interview and was provisionally selected to the said post in the year 2000 after being found physically fit. The petitioner's selection was subject to verification of his character and antecedents by the local police. The Verification Roll submitted by the petitioner revealed that he was involved in a criminal case being Bowbazar P.S. Case No. 108 dated 06/4/2000 under Sections 120 B/420/170/415 of the I.P.C. He was therefore not given appointment. On 06/12/2003 the petitioner was acquitted of the offences in the aforesaid criminal case being G.R. No. 1183 of 2000 whereafter he submitted a representation before the Deputy Commissioner of Police (Head Quarters) Kolkata for considering his appointment. In compliance with the order dated 09/6/2004 of the State Administrative Tribunal in O.A. No. 989 of 2001 the Deputy Commissioner of Police, Kolkata gave a personal hearing to the petitioner regarding his representation which was rejected by an order dated 26/8/2004 the operative part of which is as follows:

"After careful consideration of the facts, circumstances and merit of the case,

and also after due application of mind as well as taking all aspects of natural justice, in view of the Hon''ble Tribunal''s order in the instant matter. I find no scope to consider his case for appointment to the post of Sergeant in Kolkata Police at this stage. Hence, his prayer is considered and rejected."

2. The petitioner challenged the aforesaid order of the Deputy Commissioner of Police (Head Quarters) Kolkata (respondent No. 3) before the State Administrative Tribunal in O.A. No. 1353 of 2006 which was dismissed vide order dated 14/1/2010 the concluding part of which is quoted hereunder:

"Following the submissions of the learned Advocates of both sides and in view of the clear observation of the Hon''ble Supreme Court as indicated above, we find that the answer to this application would be in the negative. The application accordingly stands dismissed."

3. Aggrieved, the petitioner approached this Court against the order dated 14/1/2010 of the Tribunal.

4. Assailing the impugned order, Mr. Kallol Bose, the learned Counsel for the petitioner strenuously argued that at the time of selection process there was no criminal case against the petitioner. The charge brought against the petitioner subsequently, which could not be proved, cannot take away his claim for appointment. Referring to the decision of the Division Bench of this Court in the case of Swapan Kumar Maity versus South Eastern Railways and others reported in 2007 (4) CHN 616, the learned Counsel for the petitioner submitted that denial of appointment to the petitioner in view of pendency of criminal case against him was erroneous. Mr. Bose sought to impress upon us that the petitioner himself had mentioned in the verification roll about the pending criminal case and there was no suppression of this fact by him. Further submission on behalf of the petitioner is that since the criminal case ended in acquittal, his appointment ought to have been considered. In support of his argument the learned Counsel for the petitioner relied upon the decision reported in AIR 1999 Supreme Court 2326 in the case of Commissioner of Police, Delhi and another versus Dhaval Singh. Reference has also been made to the decisions of the Apex Court in Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 in Union of India versus K.V. Jankiraman and to the case of Manoj Narula Vs. Union of India (UOI), (2014) AIRSCW 5287 : (2014) 9 SCALE 600 : (2014) 9 SCC 77 .

5. Mr. Joytosh Majumdar appearing for the respondents countered that a person having criminal antecedents even if acquitted in the criminal case cannot be appointed to a post in the police force which is a disciplined force. It has further been argued that the conduct or character of the person to be appointed is relevant and not the actual result thereof. In our instant case the petitioner was found to be unsuitable for appointment in view of his antecedent record. To buttress his submissions Mr. Majumder relied upon the decision reported in Delhi

Administration through its Chief Secretary and Others Vs. Sushil Kumar, (1996) 8 AD 669 : (1997) 75 FLR 42 : (1996) 10 JT 34 : (1996) 8 SCALE 11 : (1996) 11 SCC 605 : (1996) 7 SCR 199 Supp : (1997) 1 UJ 159 . Reference has also been made to Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 . The decisions reported in Union of India (UOI) and Others Vs. Tilak Raj Gandhi, AIR 2014 SC 1216 : (2014) AIRSCW 980 : (2014) LabIC 1315 : (2014) 1 SCALE 337 : (2014) 3 SCC 145 : (2014) 1 SCC(L&S) 481 in the case of State of M.P. Vs. Parvez Khan, (2014) 4 ESC 708 : (2015) 1 SCJ 283 : (2015) 1 SLJ 257 in the case of State of Madhya Pradesh and others versus Parvez Khan have also been cited on behalf of the respondents.

6. In Swapan Kumar Maity Vs. South Eastern Railways and Others, (2007) 4 CHN 616 (referred on behalf of the petitioner) the writ petitioner was selected and appointed commission agent by the Railway Authority but his appointment was subsequently cancelled on the ground that he was an accused in a case under Sections 498A and 306 of the I.P.C. and the authority appointed another person. The Division Bench held that so long a person is not found guilty by the competent Court of law, he should be presumed to be innocent. Therefore the Railway Authority cannot terminate or withdraw the appointment of an otherwise selected person simply because at that point of time he is involved in a criminal proceeding.

7. We are afraid that the judgment relied upon is of no help to the petitioner as there is material difference between the two cases. In our case in hand, the petitioner was a candidate to be appointed in the police service whereas in the decision cited the writ petitioner was appointed as Commission agent in the Railway. In Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 (cited on behalf of the respondents) the Apex Court held that a candidate to be recruited to police service must be worthy of confidence, of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents would not fit into the said category. Persons likely to erode credibility of police ought not to enter police force. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. In this context we may pertinently refer to the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, (1996) 8 AD 669 : (1997) 75 FLR 42 : (1996) 10 JT 34 : (1996) 8 SCALE 11 : (1996) 11 SCC 605 : (1996) 7 SCR 199 Supp : (1997) 1 UJ 159 wherein the respondent had appeared for recruitment as a constable in Delhi Police Services. He was selected provisionally, but, his selection was subject to verification of character and antecedents by the local

police. On verification, it was found that his antecedents were such that his appointment to the post of constable was not found desirable. Accordingly, his name was rejected. He approached the Tribunal. The Tribunal allowed the application on the ground that since the respondent had been acquitted of the offences punishable under Sections 304, 324 read with Section 34 of the I.P.C., he cannot be denied appointment. The Hon'ble Supreme Court disapproved of the Tribunal's view and observed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable for the post under the State. The Apex Court further observed that though the candidate was provisionally selected, the appointing authority found it not desirable to appoint him on account of his antecedent record and this view taken by the appointing authority in the background of the case cannot be said to be unwarranted, whether the respondent was discharged or acquitted of the criminal offences, the same has nothing to do with the question as to whether he should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. Therefore the judgment cited on behalf of the petitioner is clearly distinguishable on facts from our case in hand.

8. Reliance placed by the petitioner on Commissioner of Police, Delhi and Another Vs. Dhaval Singh, AIR 1999 SC 2326 : (1999) 9 JT 429 : (1999) 1 SCC 246 : (1999) AIRSCW 2407 is also of no avail. In the said case the respondent Dhaval Singh had not mentioned the fact that a criminal case was pending against him in the application form submitted by him seeking the post of a constable. He was provisionally selected and was interviewed pending verification of his character. Before any order of appointment could be issued in his favour, he realised his mistake and wrote a letter to the Deputy Commissioner of Police that a criminal case was pending against him and that he had inadvertently not mentioned this fact in the application form. The candidature of the respondent was cancelled on the ground that he had concealed a material fact. After his acquittal from the criminal case he submitted a representation before the Commissioner of Police which was turned down. He then approached the Tribunal. The Tribunal set aside the cancellation of candidature of the respondent and the rejection of his representation. The Apex Court upheld the Tribunal's order on the ground that the information furnished by the respondent had not been taken note of by the competent authority and that there was no observation by the Authority relating to the information conveyed and whether it could be treated as curing defect in the application form. The Apex Court held that the cancellation of candidature was without any proper application of mind and without taking into consideration all relevant material. In our instant case there was no such omission or inadvertent mistake on the part of the petitioner in furnishing information regarding the pendency of criminal case or no such correction was made by him at any stage. Evidently, in our case in hand the question of non-application of mind by the concerned authority regarding cancellation of candidature of the petitioner does not arise. This decision is therefore not applicable to the present

case.

9. Reference to the decision reported in 2008 Supreme Court 1083 in State of Haryana and others versus Dinesh Kumar on behalf of the petitioner is also of no assistance. In this case the appellant alleged that the respondent Dinesh Kumar had concealed the fact of his arrest and that of his family members in connection with a criminal case from the Selection Committee and had not correctly furnished the information in Columns 13(A) and 14 of the application form submitted by him for recruitment to the post in question. According to the appellants, appointment was denied to the respondent since he failed to disclose the said fact. Before the High Court it was contended by the respondent that in the criminal case he had been granted bail without having been arrested and the case against him ended in acquittal. So it must be deemed that no case had ever been filed against him and hence, he had not suppressed any information. Taking the view that the respondent had not suppressed any material while filling up the said columns 13(A) and 14, the High Court quashed the order of rejection of the Director General of Police, Haryana and directed the appellants to issue an appointment letter to the respondent subject to fulfillment of other conditions by him. Affirming the view taken by the High Court, Supreme Court held that it was not a case of willful misrepresentation and concealment of facts. In our instant case the facts are entirely different. Therefore the judgment referred finds no application to the present case.

10. The facts in K.V. Jankiraman's case (AIR 1991 Supreme Court 2010) referred on behalf of petitioner are in no way similar to our case in hand. In the judgment referred the Apex Court held that promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Being distinguishable on facts this decision does not in any way support the petitioner's case.

11. Our attention has been drawn to Manoj Narula Vs. Union of India (UOI), (2014) AIRSCW 5287 : (2014) 9 SCALE 600 : (2014) 9 SCC 77 which is completely out of context. The judgment relates to Articles 75(1), 164(1) and 32 of the Constitution of India wherein the petitioner filed the writ petition before the Supreme Court under Article 32 of the Constitution assailing the appointment of some of the original respondents as Ministers to the Council of Ministers of Union of India despite their involvement in serious and heinous crimes. In our instant case we are not concerned with the legality of the persons with criminal antecedents being appointed as Ministers in the Central and State Governments. Reliance on this judgment is of no avail to the petitioner.

12. A futile attempt was made to impress upon us that denial of appointment to the petitioner was not justified since there was no suppression of the fact relating to pendency of a criminal case against him. It is true that there was no concealment of the aforesaid fact by the petitioner but we are not unmindful of

the judgment of the Apex Court in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, (1996) 8 AD 669 : (1997) 75 FLR 42 : (1996) 10 JT 34 : (1996) 8 SCALE 11 : (1996) 11 SCC 605 : (1996) 7 SCR 199 Supp : (1997) 1 UJ 159 wherein the aspect of concealment was not considered. The Court only concentrated on the desirability to appoint a person, against whom a criminal case is pending, to a disciplined force. It was held in the said case that though the respondent was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority rightly found it not desirable to appoint him as a constable to the disciplined force. The Apex Court observed that the consideration relevant to the case is of the antecedents of the candidate and the appointing authority rightly focussed on this aspect. The above decision clearly supports the case of the respondents.

13. Placing reliance on the judgment reported in Union of India (UOI) and Others Vs. Tilak Raj Gandhi, AIR 2014 SC 1216 : (2014) AIRSCW 980 : (2014) LabIC 1315 : (2014) 1 SCALE 337 : (2014) 3 SCC 145 : (2014) 1 SCC(L&S) 481 in the case of Union of India and others versus Tilak Raj Gandhi, Mr. Majumder rightly submitted that the petitioner cannot have any claim to be appointed to the post in respect of which the recruitment process was initiated long back in the year 1998. In the judgment referred the respondent though found to be eligible for appointment to the post in question could not be appointed as he was facing a CBI enquiry. The Apex Court held that the respondent was rightly not appointed and he cannot make any grievance on the ground that he was wrongly denied appointment. It was further held that the representation made by the respondent was also rejected and the original application filed before CAT had also been rightly rejected as the respondent was not found suitable at the time when his case was being considered for appointment to the post in question. It has also been observed in the said judgment that the respondent was given a clean chit by an order of the CBI Court on 22/12/2012 but by that time the entire process initiated in pursuance of the advertisement dated 13-11-2008/14-11-2008 for appointment to the post in question had come to an end. The respondent did not apply again for the post. Had he applied for the post in question he might have been appointed if he had been found to be the best amongst all candidates. This had not happened and therefore, the respondent cannot have any right to be appointed to the post in question at this juncture.

14. For the reasons discussed we are convinced that the order dated 26/08/2004 of the Deputy Commissioner of Police rejecting the petitioner's claim/representation for appointment to the police service is legally sustainable. There is no allegation of mala fides against the authority taking the said decision nor the decision is shown to be perverse. Regarding the criminal case which was pending against the petitioner at the relevant time, it is certainly not his case that he was falsely implicated nor is there any material before us to show false implication. Therefore the aforesaid order dated 26/08/2004 does not warrant any interference. Even the order dated 14/01/2010 of dismissal of the original

application passed by the West Bengal Administrative Tribunal does not suffer from any illegality or perversity.

15. Consequently the writ petition being WPST No. 106 of 2010 is dismissed without any order as to costs.

16. Urgent photostat certified copy of this judgment if applied for shall be supplied to the parties subject to compliance of usual formalities.