
(2016) 03 MP CK 0070
In the Madhya Pradesh High Court
Case No : W.P. No. 7286/2015

Rajveer Shakya

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 498 (A)

Citation : (2016) 2 LLJ 562

Hon'ble Judges : Ravi Shankar Jha, J.

Bench : Single Bench

Advocate : Brijesh Sharma, Learned Counsel, for the Appellant; R.B.S. Tomar, Learned Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Shankar Jha, J.—1. The petitioner has filed this petition being aggrieved by the order dated 09.09.2015 by which the compassionate appointment of the petitioner on the post of Peon in Govt. High School Babedi, Bhind has been cancelled on account of the fact that on character verification it was found that the facts stated by the petitioner in the verification form were false and incorrect and that he had suppressed the fact that a criminal case has been filed and registered against him previously in which he had been acquitted on account of compromise and failure of the prosecution to prove the case beyond reasonable doubt.

2. Learned counsel for the petitioner submits that the petitioner had been duly appointed on compassionate ground in place of his father who had died while in service on 25.10.2014. It is submitted that the authorities at the time of his appointment had verified all his documents and therefore, the impugned order passed on 09.09.2015 after appointment of the petitioner and due verification is per se illegal. It is further stated that the impugned order has been passed without giving any opportunity to the petitioner and therefore, violates the fundamental rights of the petitioner.

3. The learned Govt. Advocate for the State in his return stated that the petitioner was granted compassionate appointment in accordance with the policy of the State in place of his father, who had died in harness. It is stated that the compassionate appointment of the petitioner was subject to police verification with the specific stipulation that in case the information given by the petitioner was found to be false, his appointment shall be cancelled. It is submitted that the petitioner on being asked had given an affidavit that no case was registered against him and had also made a similar declaration in the verification form. However, subsequently, on enquiry by the police it was found that a criminal case No. 4/2004 under Sections 498 (A) and 323 of the IPC had been instituted against the petitioner in which he was acquitted on account of compromise and failure of the prosecution to prove the case beyond reasonable doubt.

4. It is submitted by the respondents that the verification report dated 27.06.2015 (Annexure R/1) further states that the fact of registration of aforesaid case, trial against the petitioner and his acquittal was suppressed by the petitioner in column 12 of his verification form. It is also submitted that on a bare perusal of the aforesaid police verification report and the stipulation contained in para 4 of the order of appointment of the petitioner dated 23.06.2016, the respondent authorities have passed the impugned order dated 09.09.2015 with which no fault can be found.

5. Having heard the learned counsel for the parties, it is observed that the petitioner was appointed on compassionate ground on 26.03.2015 on the post of Peon. A bare perusal of the condition No. 4 of the order of appointment makes it, abundantly clear that the petitioner was well aware that his pay would be released to him only after character verification and that in case on police verification it is found that information submitted by him was found to be false or that his character was found to be doubtful, his services would come to an end automatically. A perusal of Annexure, P/4 filed by the petitioner, also indicates that the petitioner had submitted an affidavit before the authorities on 30.03.2015 to the effect that no case has ever been registered against him in the Union of India at any point of time. It is also apparent from perusal of Annexure R/1 that the police authorities on character verification found that a Criminal Case No. 4/2002 was registered against the petitioner and in which he was acquitted on 24.12.2010 and that the information given by him in column No. 12 of his character verification form was false and therefore, in view of the warning contained in para 1 of the character verification form and the note appended to column 12, appropriate steps be taken against the petitioner. It is also apparent that after receiving aforesaid information the impugned order dated 09.09.2015 has been passed cancelling the petitioner's compassionate appointment.

6. From perusal of the aforesaid facts on record, it is observed that it is an undisputed fact that the petitioner had admittedly suppressed the fact of institution of a criminal case against him and his acquittal therein in the character verification form submitted by him and had also not disclosed this fact

in the affidavit filed by him (Annexure P/4). It is also clear that under clause (4) of the appointment order as well as in paragraphs 1 & 12 of the character verification form, a specific warning had been previously given to the petitioner that in case any information submitted by him regarding his character verification was found to be false, his appointment would come to an end automatically. It is also clear that even in the affidavit filed by the petitioner he did not disclose the aforesaid fact in this regard.

7. The law in respect of suppression of criminal antecedents in verification form and consequence thereof as well as validity of the orders cancelling the appointment or terminating the services as consequence thereof has been extensively considered by the Division Bench of this court in , 2015(4) MPLJ 648 (Vinod Kumar Tomar v. Union of India) and several decisions of Supreme Court in this regard has also been considered. The Division Bench of this Court in the aforesaid decision has held as under:--

"7. Having heard the learned counsel for the parties and after perusing the record it is observed that admittedly, the petitioner was issued a letter of appointment on 6-9-2008 by which he was appointed on probation for a period of two years. It was also undisputed that the appellant, while submitting his attestation form, did not disclose the fact that a criminal case had been registered against him in Column No. 12 of the said form. It is also undisputed that on verification it was found that a criminal case i.e. Crime No. 35/2005 was registered against the appellant in which he was granted bail on 10-3-2005 and was ultimately acquitted in the same on 11-10-2005.

8. A perusal of the verification form, a copy of which had been filed by the respondents alongwith the return, indicates that a person filling the form has duly forewarned regarding the consequences of suppression of information as is evident from a perusal of paragraphs 1, 2 and 3 of the attestation form which are to the following effect:--

"1. The furnishing of false information or suppression in the Attestation form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this form, the details should be communicated immediately to the authority to whom the Attestation form has been sent earlier failing which it will be deemed to be a suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of any factual information, the attestation form comes to notices at any time during the service of a person, his services would be liable to be terminated."

9. In the instant case, when the verification report was called, the Supdt. of Police, Morena, by his report dated 19-12-2009 informed the authorities about

the case that had been registered against the appellant and the authorities on finding that the appellant had suppressed the material information in the attestation form, terminated the appellant's services.

10. Law in this regard is settled by a series of decisions rendered by the Supreme Court. In the case of Devendra Kumar (supra), the Supreme Court has discussed the same and held as under:--

"12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide: *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.*, , AIR 1994 SC 853. In *Lazarus Estate Ltd. v. Besalay*, 1956 All E.R. 349, the Court observed without equivocation that

"...No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

14. In *Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.*, , AIR 1994 SC 2151; and *State of Maharashtra & Ors. v. Prabhu*, , (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."

15. In *Smt. Shrisht Dhawan v. M/s. Shaw Bros.*, , AIR 1992 SC 1555, it has been held as under:--

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

16. In *United India Insurance Company Ltd. v. Rajendra Singh & Ors.*, , AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in *M.P. Mittal v. State of Haryana & Ors.*, , AIR 1984 SC 1888.

17. In *Ram Chandra Singh v. Savitri Devi & Ors.*, , AIR 2004 SC 4096, this Court

held that "misrepresentation itself amounts to fraud", and further held:(SCC p.327, para 18)

"18 "A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad." The said judgment was re-considered and approved by this Court in Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav, , (2004) 6 SCC 325).

18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India & Ors. v. M. Bhaskaran, , AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, , (1990) 3 SCC 655, observed as under:--

"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer."

19. In Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, , (1996) 11 SCC 605, this Court examined the similar case where the appointment was refused on the post of Police Constable and the Court observed as under: (SCC p. 606, para 3)

"3 ...It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service."

(Emphasis added)

20. In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, , AIR 2003 SC 1709; and *A.P. Public Service Commission v. Koneti Venkateswarulu*, , AIR 2005 SC 4292, this Court examined a similar case, wherein, employment had been obtained by suppressing a material fact at the time of appointment. The Court rejected the plea taken by the employee that the Form was printed in English and he did not know the language, and therefore, could not understand what information was sought. This Court held that as he did not furnish the information correctly at the time of filling up the Form, the subsequent withdrawal of the criminal case registered against him or the nature of offences were immaterial. "The requirement of filling column Nos. 12 and 13 of the Attestation Form" was for the purpose of verification of the character and antecedents of the employee as on the date of filling in the Attestation Form. Suppression of material information and making a false statement has a clear bearing on the character and antecedent of the employee in relation to his continuation in service.

21. In *State of Haryana & Ors. v. Dinesh Kumar*, , AIR 2008 SC 1083, this Court held that there has to be a deliberate and wilful misrepresentation and in case the applicant was not aware of his involvement in any criminal case or pendency of any criminal prosecution against him, the situation would be different.

22. In *Secretary, Department of Home, A.P. & Ors. v. B. Chinnam Naidu*, , (2005) 2 SCC 746, this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal Court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

23. In *R. Radhakrishnan v. Director General of Police & Ors.*, , AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

24. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation

itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. "*Sublato fundamento cadit opus*"- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *Nullus Commodum Capere Potest De Injuria Sua Propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide: *Union of India v. Maj. Gen. Madan Lal Yadav*, , AIR 1996 SC 1340; and *Lily Thomas v. Union of India & Ors.*, , AIR 2000 SC 1650) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)"

11. In the aforesaid decision, the Supreme Court has taken into consideration series of decisions in this regard wherein it has been categorically held that if a person obtains appointment by suppressing material information that act on the part of the employee in suppressing the material information amounts to moral turpitude and the employee is liable to be terminated on this ground of mere suppression of facts itself and the gravity of the criminal offence or acquittal therein has no bearing on this issue. To put it differently, in such cases the issue to be determined by the Court is not the impact of the gravity of the offence or its relevance for the purpose of employment but the impact of the suppression on the Character and Antecedents of the employee justifying dismissal on account of the loss of confidence in him by the employer. In such cases no relief can be sought or be granted by this Court by taking into consideration the fact that the criminal offence involved is petty in nature or does not involve any moral turpitude. To put it simply, action against the appointee or employee in such cases is taken on account of loss of faith and confidence directly on account of such suppression or false information by the incumbent as it reflects upon the moral character and antecedents of the candidate or the employee as the case may be. Similar view has also been taken by a Division Bench of this Court in W.P. No. 9268/2007(s), decided on 1-11-2007 and by a single Bench of this Court in W.P. No. 7440/2003, decided on 28-6-2007.

12. At this stage we may also consider the consequences of the suppression of fact by the petitioner and as to whether a detailed enquiry is required to be conducted by the authorities before passing any order of termination as contended by the learned counsel for the petitioner. It is pertinent to note that the appellant accepted the offer of appointment subject to the terms and conditions clearly stated and mentioned in the attestation form with full knowledge of the consequences. Paragraph 3 of the attestation form which has already been quoted in the preceding paragraph clearly stipulates and provides that if there is any suppression of any factual information in the attestation form filled up by the appellant which comes to the notice of the authorities at any time

during the service of the person, his service would be liable to be terminated. Note No. 1 appended to column No. 12 of the form also provides that the incumbent filling up the form should see the warning at the top of the attestation form. The facts of the present case also indicate that the details about the criminal case were suppressed by the appellant in the attestation form and in fact the factual aspect is undisputed and undenied. It is not the case of the appellant before this Court that no criminal case was ever registered against him, in fact the averments are to the contrary as it is asserted that the suppression was a mistake. In the circumstances it is apparent that the appellant was forewarned and was well aware that his services would be terminated in case of suppression of facts in spite of which he suppressed information regarding his criminal antecedents.

13. The Supreme Court in the case of *Kendriya Vidyalaya Sangathan and others Vs/Ram Ratan Yadav*, , (2003) 3 SCC 437 has taken into consideration an identical condition in the attestation form and has held that the termination in such cases of suppression is automatic in terms of the aforesaid stipulation contained in the attestation form in the following terms:--

"...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."

14. Even in cases where the employee had not been subjected to trial or had been subsequently acquitted or discharged, the Supreme Court has relied on the legal maxim: *Nullus commodum capere potest de injuria sua propria* (persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation, *Sublato fundamento cadit opus* (a foundation being removed, the superstructure falls) and *Jus ex injuria non oritur* (a person claiming any right arising out of his own wrongdoing cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation), to deny relief in the case of *Devendra Kumar* (supra).

15. We are also constrained to observe that the appellant is seeking appointment in the police force and therefore even if he had disclosed the material facts regarding registration of the case against him, the authorities would still have had the right to refuse appointment in appropriate cases in view of the law laid down by the Supreme Court in the case of *State of M.P. and others v. Parvez*

Khan, , 2015 (1) MPHT 1 (SC) and Mehar Singh v. Commissioner of Police, New Delhi and another v. Shani Kumar, , (2013) 7 SCC 685.

16. In view of the aforesaid, we do not find any ground to interfere in the impugned order passed by the learned Single Judge. The writ appeal, filed by the appellant, being meritless is, accordingly, dismissed."

8. In view of the law laid down by the Supreme Court and this Court, I do not find any illegality in the impugned order warranting interference.

9. Petition being meritless is hereby dismissed.