

(2011) 05 AHC CK 0127

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32961 of 2010

Shailendra Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2)
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471
Railway Protection Force Rules, 1987 — Rule 52, 67(2)

Citation : (2011) 05 AHC CK 0127

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioner has rushed to this Court questioning the validity of order dated 14.05.2010 passed by Chief Security Commissioner, Southern Railway, Chennai-3, and further prayer has been made for a writ of mandamus commanding the Respondents not to interfere in the Petitioner's completing his training and functioning as Sub-Inspector in Railway Protection Force.

2. Brief background of the case is that in the year 2007 recruitment proceedings were undertaken for recruiting Sub-Inspector for Railway Protection Force, North Eastern Railway, Gorakhpur, wherein Petitioner had also applied. Petitioner participated in the selection proceedings, which comprised of physical test conducted in December, 2007, written examination held on 20.04.2008 and interview conducted in January, 2009. All these proceedings were completed in Gorakhpur. Result was published in February 2009, wherein Petitioner was shown to have been duly selected. Information to this effect was issued to the Petitioner vide communication dated 20.03.2009 by Chief Security Commissioner, Railway Protection Force, North Eastern Railway, Gorakhpur and the Petitioner was directed to report for medical examination before the Railway Doctor and also to complete other formalities, including filling up of attestation form. In Clause 12

of the aforesaid attestation form there existed several questions to which the Petitioner had given answer in negative. On 09.04.2009 order was passed by the Chief Security Commissioner, Railway Protection Force, Gorakhpur directing the Petitioner to report for training at Southern Railway, Railway Protection Force Training Centre, Trichurapalli, Tamilnadu for undergoing 11 months" training. It was further stipulated that on completion of training Petitioner would be appointed as Sub-Inspector in Railway Protection Force. In pursuance of order dated 09.04.2009 the Petitioner forthwith joined the training in question. Thereafter, the Principal, Railway Protection Force Training Centre, Trichurapalli, Tamilnadu issued show cause notice to the Petitioner alleging suppression of information in filling up column No. 12 of attestation form and calling for explanation from the Petitioner. In response to the said notice Petitioner submitted his reply on 11.05.2010. On 14.05.2010 an order was passed by the Chief Security Commissioner, Southern Railway, Chennai declaring the Petitioner unfit for Government Service and cancelled his selection. At this juncture present writ petition has been filed.

3. Counter affidavit has been filed in the present case and therein plea has been taken that cause of action for filing present writ petition has arisen at Chennai, as the order impugned has been passed at Chennai, and further it has been contended that while issuing call letter Petitioner was informed that his selection was provisional and his enlistment was subject to satisfactory report from the authorities about his character and antecedents. It has been stated that attestation form was filled up by the Petitioner on 26.03.2009 and it was sent to the District Magistrate of the Petitioner's residential address for verification of character and antecedents, and while verification proceedings were undertaken, it was detected that the Petitioner had been facing criminal case, being case crime No. 1345 of 2007 under Sections 467, 468, 471 and 420 I.P.C. Police station Cantt. District Bareilly, and therein charge sheet had been filed on 11.03.2008. The Petitioner had suppressed this fact in the information furnished by him. Further reference has been given that as per R.P.F. Rule 52 if verification record of any incumbent is not found suitable, he shall not be appointed as member of the force. Rule 67(2) of the said Rules further provides that if a direct recruit selected for being appointed and has been enrolled as member, he is liable to be discharged at any stage before his formal appointment, if the Chief Security Commissioner for reasons to be recorded in writing deems it fit to do so in the interest of Force. In the present case Chief Security Commissioner has found the Petitioner unfit in the interest of the force, and in this background, it has been stated that rightful action has been taken after affording due opportunity to the Petitioner, as such no interference should be made.

4. To the said counter affidavit, rejoinder affidavit has been filed. Thereafter supplementary affidavit, supplementary counter and supplementary rejoinder affidavit have been filed.

5. After pleadings interse parties have been exchanged, present writ petition has

been taken up for final hearing and disposal with consent of the parties.

6. Sri Sidharth Khare, Advocate, learned Counsel for the Petitioner, contended with vehemence that disclosures made was rightful disclosure, as the Petitioner was unaware of filing of charge sheet against him in criminal case, and on account of such circumstances, the Petitioner should not be penalised. It has been further stated that speculations have been made about his character, whereas till date, the Petitioner has not at all been convicted.

7. Countering the said submissions, Sri Anand Kumar Advocate, representing the Respondents, on the other hand contended that induction of Petitioner is in relation to disciplined force; as such in the facts of the case no interference should be made, and this Court has got no territorial jurisdiction to entertain writ petition in question.

8. The first question to be answered is in relation to territorial jurisdiction of this Court to entertain the writ petition against the order passed by Chief Security Commissioner, Southern Railway, Chennai. This Court can entertain a writ petition under Article 226 of the Constitution if cause of action or part of cause of action has arisen within the territorial jurisdiction of this Court. Full Bench of this Court in the case of *Rajendra Kumar Mishra v. Union of India* 2005 (1) UPLBEC 108 has taken the view that the territorial jurisdiction of the High Court would extend to a place where cause of action wholly or in part has arisen. Paragraphs 40 and 41 of the said judgment being relevant are being quoted below:

40. For reasons given above we are of the opinion that the Chief of Army Staff can only be sued either at Delhi where he is located or at the place where the cause of action, wholly or partly, arises.

41. We may mention that a "cause of action" is bundle of facts which taken with the law applicable, gives the Plaintiff a right to relief against the Defendant. However, it must include some act done by the Defendant, since in the absence of an act, no cause of action can possibly occur. Vide *Radhakrishnamurthy Vs. Chandrasekhara Rao*,

9. This Court, in the case of *Jagveer Singh v. Union of India* Civil Misc. Writ Petition No. 32525 of 2004, decided on 30.11.2005, has taken the view that cause of action is bundle of facts, and to examine the issue of jurisdiction, it is necessary that one of the interlinked facts must have occurred in a place, where the case has been instituted. The said fact must have direct nexus to the lis between the parties. In the said case, Petitioner was selected for the post of constable at Mathura, appointment has been cancelled on account of his complicity in criminal case lodged at Uttar Pradesh, and on this score view has been taken that part of cause of action has arisen within the territorial jurisdiction of this Court. Again this Court in the case of *Namita Singh v. State of U.P.* Special Appeal No. 39 of 2009, decided on 05.02.2009, has taken the view that every fact which goes to constitute the legal right set up by Plaintiff or Petitioner and every fact which constitutes and infringement of that right

constitutes a part of such cause of action. Relevant extract of the said judgment is being reproduced below:

Cause of action has not been defined in any statute. It has however been judicially interpreted in a large number of decisions. The definition of cause of action in *Read v. Brown* (1889) 22 QBD 128 given more than a century back has been accepted by the Courts ever since. The term was explained as;

Every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

The aforesaid definition is in wide terms. Every fact, therefore, which goes to constitute the legal right set up by the Plaintiff or Petitioner and every fact, which constitutes an infringement of that right constitutes a part of the cause of action. Such facts would be only those essential facts without which the legal right claimed by the Petitioner or Plaintiff would not be constituted or such facts which constitute the breach of the legal right claimed. Any of such essential facts would form part of the cause of action and would have to be pleaded if the Plaintiff is to succeed. Courts have not taken a narrow view of "cause of action" as meaning merely the infringement of the legal right; in which case the place of the cause of action would only be the place where the right is infringed. No doubt part of the cause of action also arises at the place the right is infringed. In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and Another, cause of action was defined in paragraph 6 as under;

6. Cause of action implies a right to sue. The material facts, which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the Defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

In the present case the Petitioner cannot succeed unless it is established that she had three years experience as Shiksha Mitra and was also currently engaged as Shiksha Mitra. This is one of the essential facts upon which the right of the Petitioner to be considered for admission in the Special B.T.C. Training Course is based and which the Petitioner would have to prove in order to succeed. This fact is, therefore, a part of the cause of action. According to the Petitioner she had worked for three years as Shiksha Mitra at Fatehpur and was also currently engaged there at the relevant time. The cause of action, therefore, has arisen at least partly at Fatehpur. The certificate issued by the Fatehpur authorities regarding the experience of her working or regarding her being currently engaged as Shiksha Mitra in this case is merely evidence of the fact that she has worked but evidence of a fact is to be distinguished from the fact itself.

The infringement of the right to be considered for admission was in this case done by the order of the Principal, DIET, Rae Bareilly. The infringement of the right, therefore, occurred at Rae Bareilly. Part of the cause of action has therefore arisen at Rae Bareilly. The writ petition could therefore be filed in the Lucknow Bench. The report of the Basic Shiksha Adhikari, Fatehpur about the work experience of the Petitioner as Shiksha Mitra is a finding on the basis of verification of certain facts. The facts about which the report has been given may be a component of the legal right of the Petitioner but the report even if it were favourable would not be a component of the legal right nor would the report though adverse, infringe by itself any legal right of the Petitioner for it would not be operative as it was for the Principal, DIET to accept it or not. The single judge was, therefore right to this extent that the report of the Basic Shiksha Adhikari, Fatehpur would not constitute a part of the cause of action.

10. In the absence of an action, cause of action possibly may not occur. In order to assume jurisdiction, High Court will have to enquire, as to whether any cause of action or part of cause of action has arisen within the territorial jurisdiction of the said Court. In the cases where cause of action has arisen within the territorial jurisdiction of High Court, entertainment of writ petition and according of appropriate relief as per the merit of case is not an issue. Issues arise only when issues raised qua part of cause of action is there, which has direct bearing with the territorial jurisdiction of High Court. Part of cause of action has to be seen in the context, that all necessary facts must form an integral part of the cause of action; and further said facts should have bearing and live connection with the lis/dispute involved in the case, so as to confer jurisdiction on the concerned Court. Every fact cannot be considered as cause of action in part and create jurisdiction. It is for the Court to determine the issue of cause of action. For this purpose each fact has to be mechanically examined, and once the said fact has its genesis with the bundle of facts interlinking for direct relevance to the lis involved then said Court will have jurisdiction.

11. Core issue involved in the present case is, as to whether any part of cause of action has arisen in territorial jurisdiction of this Court. This much is accepted position that entire selection proceedings had taken place at Gorakhpur and thereafter verification form for character verification was filled at Gorakhpur. Thereafter, Petitioner was sent for training and then report was submitted by the concerned District Magistrate of Bareilly, that Petitioner has been an accused and has been charge sheeted.

12. Here in the present case verification form had been filled at Gorakhpur, character verification and antecedents of the Petitioner have been verified from Bareilly, and thereafter action has been taken dependent on the reports sent from Gorakhpur/Bareilly. Thus, there is direct relevance, and as such in the facts of the case on account of this peculiar characteristic part of cause of action has arisen within the territorial jurisdiction of this Court. Consequently, this Court has jurisdiction to entertain the matter.

13. Now coming to the second issue; There are two issues involved in the present case; (1) as to whether Petitioner has been untruthful in the matter or not (2) as to whether on the basis of character verification and antecedent Petitioner's candidature can be cancelled.

14. Hon'ble Apex Court in the case of State of Haryana and Others Vs. Dinesh Kumar, has held that there has to be 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, then it cannot be held that he made misrepresentation. In the said case information sought was as to whether he has ever been arrested, and the applicant therein was wanted in criminal case and had got stay order from the Court, in this background information was furnished in negative the Hon'ble Apex Court took the view that it may be case of mistaken impression but not the case is deliberate impression.

15. This Court also in the case of Mohd. Tahir v. State of U.P. and Ors. 2009 (9) ADJ 42 has proceeded to mention that where selection has been cancelled by Senior Superintendent of Police on the ground of concealment of factum of criminal cases by taking the view that if a person while applying for employment suppresses any relevant information, which reflects upon his character or conduct or fails to disclose correct facts, he is liable to be proceeded against and his selection or appointment is liable to be cancelled, but before taking such action or holding such person guilty of suppression of facts, the knowledge of such facts to the person concerned is necessary. A person is not supposed to disclose something of which he has no knowledge. He is not required to state something in his declaration, which has never come to his notice. The requirement of Clauses 4 and 9 of the affidavits are positive in nature to be disclosed on the information available to the person affirming the affidavit. The information given by the Petitioner that no criminal case was registered, or is registered, or has been registered against him and that no criminal case is pending consideration, or is in trial, and that he has not been arrested or charges, is to be furnished on the information available to such person. He is not required to give information, on the basis of the personal knowledge, of the facts of which he has no notice or information at all.

16. On the parameter of the dictum as settled by Hon'ble Apex Court as well as by this Court, it is to be seen as to whether in the facts of present case there has been deliberate suppression of material facts.

17. The Petitioner was required to fill up the form and as per Clause 12 thereof relevant questions were: firstly, as to whether the Petitioner had ever been arrested? Secondly, whether he had ever been challaned and thirdly, as to whether the Petitioner had been detained in prison. The Petitioner had answered each questions in negative, whereas fact of the matter, which is reflected from the record is that the Petitioner who was accused in the criminal case being case crime No. 1345 of 2007, under Sections 467, 468, 471 and 420 I.P.C., had filed writ petition before this Court and obtained stay order staying his arrest on

29.02.2008, and in the said criminal case charge sheet has been filed on 11.03.2008. The Petitioner while filling his declaration form on 26.03.2009, which was made after more than a year, he made each and every declaration in negative. Before making declaration after more than a year, the Petitioner ought to have enquired as to what was the status of the aforesaid criminal case. The interim order, which had been passed in his favour on 29.02.2008, was limited till the next date of listing or till submission of police report u/s 173 Code of Criminal Procedure, and the record of writ petition discloses that on 02.09.2009 same has been finally disposed of by mentioning that interim order shall continue till submission of police report u/s 173(2) Code of Criminal Procedure. Precise question was put to the Petitioner as to whether he had been challaned. The Petitioner very well knew that he had been named in the F.I.R. and he had preferred writ petition before this Court and then before making declaration after a year, he ought to have been vigilant. The question is that admittedly, Petitioner had not been vigilant, and it is precise case of Petitioner, that he had no knowledge of the charge sheet when he filled up his application form, can even then it be said that he suppressed the material information. Averment to the said effect has been mentioned in paragraph 17 of writ petition, and to the said averments in the counter affidavit, no link evidence has been produced to show that Petitioner, in fact had knowledge of filing of charge sheet, as Petitioner had not been arrested in the present case, whereas interim order was confined only for the period, till charge-sheet was filed, and further nothing has been brought on record, that on charge sheet being filed in Court, Petitioner was summoned and he knew of charge sheet being filed. The withholding of material has to be deliberate and willful, and here as there is nothing on record to show and substantiate, that Petitioner had knowledge of filing of charge sheet, and in spite of the same he made wrongful declaration. In such a situation, benefit of doubt will have to be given to the Petitioner, and Petitioner can not be hauled up for making wrong declaration, in the facts of the case. On this score, action taken is not being approved of.

18. The character verification and antecedents of an incumbent are the most important aspect in service matters. It is for testing as to whether the selected candidate is suitable to the post or not. In the case of Delhi Administration v. Sushil Kumar 1996 (2) SCC 605, view has been taken that though the candidate was physically fit and had passed written examination, but before provisionally selected on account of his antecedent record, the appointing authority found him not desirable to appoint a person of such record in disciplined force. Said view cannot be said to be unwarranted. Discharge or acquittal in a criminal case has nothing to do with the question of character or conduct of the candidate. What is relevant is the conduct and character of a candidate to be appointed to a service and not the actual result. The appointing authority has got every right to focus on this aspect of the matter.

19. Here, in the present case conscious decision has been taken by the authority concerned that it would not be desirable to retain the Petitioner in service in

consonance with the provisions of Rule 52 of the R.P.F. Rules. The selection being provisional and the same being subject to verification of character and antecedent, the report being adverse that the Petitioner was an accused in a criminal case and charge sheet had been filed against him, then this Court in exercise of authority of judicial review cannot come to rescue of the Petitioner on the strength of the judgment of Hon"ble Apex Court, in Civil Appeal No. 1430 of 2007, Commissioner of Police v. Sandeep Kumar, wherein compassionate view has been desired to be taken, in the facts of case, where incident in question had taken place twenty years back, case had been compromised on 18.1.1998 and acquittal order was passed on 18.1.1998 itself, specially in the background that the Petitioner has been charge-sheeted for procuring appointment in the past based on fictitious caste certificate, which has never been issued from Ballia, and his earlier appointment has been also cancelled on 17.8.2007. In such situation, Respondents can not be compelled to take Petitioner with stained background in service.

20. Consequently, present writ petition is dismissed.