
(2014) 02 RAJ CK 0158

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14693 of 2011

Shiv Prasad Meena

APPELLANT

Vs

Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 294(b), 323, 34, 342
Probation of Offenders Act, 1958 — Section 12, 3, 4

Citation : (2014) 3 CDR 1801 : (2014) LabIC 2388 : (2015) 1 RLW 30

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Amit Mathur, Advocate for the Appellant; Neeraj Batra, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant petition is directed against order of the Id. Central Administrative Tribunal dated 01.09.2011 declining to interfere in the order dated 16.09.2009 whereby the petitioner's appointment/selection was cancelled for the post of Junior Telecom Officer (JTO) on the pretext that he suppressed material information while the application form was filled, at the stage of participating in the selection process for JTO Examination, 2007. The salient facts which are relevant for appreciation of the present controversy are that the respondents issued an advertisement for selection to the post of JTO by open Competitive Examination, 2007. The examination was conducted on 15.06.2008 in which the petitioner was declared successful on the basis of merit and it was subject to provisionally fulfillment of eligibility conditions. At that stage, the petitioner was required to submit necessary information in the attestation form and in Clause (13) thereof, the petitioner was required to disclose information regarding pendency of criminal cases/trial, if any initiated against him. The information which was desired to be disclosed by the petitioner/applicant in Clause (13) of the attestation form (Ann. 2), he indicated both the cases which were registered against him. In Criminal Case No. 454/2002 he was acquitted of the charges

levelled against him vide judgment dated 04.01.2003 and another Criminal Case No. 113/2004 (328/2005) registered against the petitioner for offence u/Ss. 452/34 & 323, IPC and after the charge-sheet was filed, parties arrived at a compromise as regards charge u/S. 323, IPC and as regards charge u/S. 452/34, IPC, this being non-compoundable offence, as usual, the petitioner accepted his guilt and after recording of guilt for offence u/S. 452/34, IPC, he was granted benefit of probation u/S. 4 of the Probation of Offenders Act but since there was no sentence which was to undergo and the petitioner being unaware of niceties & terminology as to what will be the effect of distinction between "acquittal" or "benefit of probation" in the attestation form Clause (13), he mentioned that he was acquitted of the charges by judgment dated 01.10.2005. Obviously, when the case was sent for police verification, the District Magistrate, Kota sent his report dated 13.07.2009 that in Criminal Case No. 328/2005 charge-sheet was filed against the petitioner u/Ss. 452 & 323, IPC but after being convicted u/S. 452/34, IPC, he was granted benefit of probation u/S. 4 of the Probation of Offenders Act and the Court bound down him to pay Rs. 2,000/- and ordered him to that during the period of two years, the petitioner shall not indulge in any crime and shall maintain peace and treating it to be an act of concealment, the petitioner was served with a show cause notice dated 15.04.2009 and with the follow-up action, he was declared disqualified and selection was cancelled vide order dated 16.09.2009 and further letter was issued to him dated 30.10.2009 directing him to deposit the bond amount, training expenses and stipend paid during the training and other expenses.

2. This was challenged by the petitioner by filing Original Application before the Id. Tribunal and the Id. Tribunal considered the fact which was indicated in Clause 13(ii) of the attestation form where the petitioner indicated that he faced trial but was finally acquitted, however, the fact is that he was granted benefit of probation u/S. 4 of the Act with furnishing of bond of Rs. 2,000/- for maintaining peace for next two years. It was considered to be a suppression of facts on part of the petitioner, which he was supposed to indicate/disclose in Clause (13) of the attestation form and in furtherance thereof the respondents cancelled his selection and that was upheld by the Id. Tribunal under order impugned dated 01.09.2011.

3. The main thrust of submission of counsel for petitioner is that the petitioner voluntarily disclosed the criminal trials which he faced with specific terms available at his command in Clause (13) of the attestation form and he could not realize the legal implications of conviction/sentence and granted benefit of probation u/S. 4 of the Act, and the distinction between "acquittal" or "probation" and such legal implications could not be known by him and he has no intention to suppress any material facts from the authorities regarding criminal trials which he faced and whatever information he gathered from the judgment, he voluntarily disclosed in Clause (13) of the attestation form and under these facts & circumstances, this could not be considered to be an Act of concealment on the part of petitioner and the premise on which the respondents

have taken decision for cancellation of his selection further upheld by the Id. Tribunal, is not in conformity with the mandate of law and that requires interference by this court.

4. The respondents, on the other hand, have supported the order of Id. Tribunal and submit that in Clause (13) of the attestation form, the facts referred by the petitioner in respect of his criminal case for offence u/S. 452/34, IPC, on acceptance of guilt, he was convicted but granted benefit of probation u/S. 4 of the Probation of Offenders Act, as indicated from the judgment dated 01.10.2005 and this fact was not disclosed by the petitioner and that being a suppression of fact on his part, the authorities have not committed any error in their decision making process for cancellation of his selection and the action after being examined by the Id. Tribunal, has been upheld and the consistent judgments of the Apex Court also support its contention that wherever there is any concealment of information at the time of entering into service, such incumbents are not required to seek indulgence and cancellation of selection made by the appointing authorities are not interfered with by the courts and what is observed by the Id. Tribunal is supported by the settled principle of law and does not require interference by this court.

5. We have considered the submissions made by the counsel for the parties and with their assistance, examined the material on record.

6. The facts are not in dispute and the issue for our consideration is that what was desired to be disclosed in the attestation form and the information disclosed in the attestation form could be treated as a suppression of fact that disentitle from seeking appointment.

7. In fact he faced two criminal cases at different point of time. The criminal case No. 454/2002 was related to University Election dispute and the case was registered against as many as 12 persons and parties entered into compromise for offence u/Ss. 342, 451 & 323, IPC and court acquitted the petitioner of the offence u/S. 147, IPC vide judgment dated 04.01.2003. In the second criminal case No. 113/2004 (328/2005) allegation was that the accused persons trespassed and tried to assault and case was registered against four persons & parties entered into compromise as regard offence u/S. 323 IPC but as regard charge u/S. 452/34, IPC, on the guilt being accepted, the petitioner was given benefit of probation u/S. 4 of the Probation of Offenders Act and the court directed him to furnish a bond of Rs. 2,000/- and undertaking for maintaining peace for next two years and as regards co-accused Manak Chand who was the main accused, against whom there was a direct allegation, he was granted benefit of S. 12 of the Probation of Offenders Act but it reveals from the record that present petitioner also filed Criminal Misc. Petition No. 707/2010 before this court and prayed that he too may be granted benefit of S. 12 of the Act and looking to the nature of offence, this court vide order dated 23.04.2010 granted him benefit of S. 12 of the Probation of Offenders Act.

8. After receipt of report of police verification from District Magistrate, Kota, a show cause notice was served and selection of the petitioner was cancelled vide order dated 16.09.2009 on the premise that he suppressed material facts by not disclosing true facts in Clause (13) of the attestation form, which reads ad infra :--

13(i)(a) Have you ever been arrested? Yes.

(b) Have you ever been prosecuted? Yes.

(c) Have you ever been kept under detention? No.

(d) Have you ever been bound down? No.

(e) Have you ever been fined by a court of law? No.

(f) Have you ever been convicted by a court of law for any offences? No.

(g) Have you ever been detained from examinations or restricted by any University or any other educational authority/institution? No.

(h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections? No.

(i) Is any case pending against you in court of law? No.

(j) Is any case pending against you in any University or any other educational authority/institutions at the time of filling up this attestation form? No.

13(ii) If the answer of any of the above mentioned question is "Yes" give full particulars of the case arrest/detention/fine/conviction sentence/punishment etc. and or the nature of the case pending in the court/University, Educational authority etc. at the time of filling up this form. Yes.

(Vernacular matter omitted....Ed.)

9. As it appears from the record, the incident happens to be of period when the petitioner was of very young age and at that young age, people often commit indiscretions and to know the distinction between "acquittal" or "probation" u/S. 3 or 4 of the Probation of Offenders Act or "conviction" & "sentence", such niceties of law is not expected from a person of young age from rural background and it should be examined as to whether such minor indiscretions deserve to be condoned or the person is to be branded as criminal for rest of his life, keeping in view the modern approach is to reform a person instead of branding him as a criminal all his life.

10. In the instant case it is not disputed that the petitioner faced two criminal trials at different point of time and full particulars of the criminal cases which were registered against him along with judgments are disclosed by him in Clause (13) of the attestation form, however, in Criminal Case No. 328/2005, the main accused was Manak Chand and the allegation of the complainant was against

four persons who entered his house and threatened him for causing hurt and case was registered against them including petitioner and parties entered into compromise as regard offence u/S. 323, IPC and as regard offence u/S. 452/34, IPC is concerned, as advised by the legal experts and as the petitioner was not aware of legal consequences and its effect, on acceptance of guilt, the court granted him benefit of probation u/S. 4 of the Act and being a requirement of law, the bond was furnished by him for maintaining peace for next two years and later on the benefit of S. 12 of the Act was also granted to him by this court vide order dated 23.04.2010.

11. The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless and as regards S. 4 of the Probation of Offenders Act, it is intended to attempt possible reformation of an offender instead of inflicting on him normal punishment of the crime and once such of the persons who fulfill the conditions and other formalities, as mentioned in S. 4 of the Act, power has been given to the courts to release such of the persons on probation of good conduct. It appears to be a special provision which the Legislature intended for offenders below 21 years of age. The idea behind is that modern criminal jurisprudence recognizes that no one is a born criminal and a good many crimes are the product of socio-economic milieu. The present trend in the field of penology is that effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice and this appears to be the basic idea of legislative intent in introducing Probation of Offenders Act.

12. We can also take a judicial notice that it is difficult for a layman to know the distinction of honourable acquittal or with benefit of doubt and acquittal or probation under the Probation of Offenders Act or conviction & sentence and what is their intent and relation which follow the other and people usually think that if one is not sentenced, he appears to be acquitted and as regards furnishing of bond is concerned, its implication may not be known to a large number of people may be because of illiteracy or lack of awareness.

13. We are aware of this fact that there is judgment of Larger Bench of this Court and also of the Apex Court wherein view has been expressed that non-disclosure of material facts by the incumbent, involved in the criminal case and that too of cognizable offence is concealment and interference should not be made by the Court and the Larger Bench of this Court in *Dharam Pal Singh v. State of Rajasthan* reported in 2000(2) WLC (Raj) 400 : (2000 Lab IC 1580) after conflict of opinion, finally expressed its view in para 26 which reads as follows:--

26. In the light of the facts stated and the discussion made above, we answer the questions 1 to 3 aforementioned as follows :--

1. That a candidate was prosecuted or subjected to investigation on a criminal

charge is a material fact, suppression of which, would entitle an employer to deny employment to a candidate on that ground.

2. That ultimate acquittal of a candidate, who was prosecuted on a criminal charge, would not condone or wash out the consequences of suppression of the fact that he was prosecuted.

3. That suppression of material fact would be itself disentitles a candidate from being appointed in service.

14. The suppression of material facts tantamounts to concealment and that disentitles a candidate from being appointed in service. The Apex Court also in its judgment in *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, upheld the termination on the pretext that in the attestation form the employee mentioned "No" despite the fact that a criminal case was pending against him in the court of law and this was considered to be suppression of factual information in the attestation form, which was the ground of termination of his service. The later judgment of the Apex Court in *R. Radhakrishnan Vs. The Director General of Police and Others*, is a case where information desired was as to whether the applicant has ever been concerned in any criminal case as accused or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence or there is any civil/criminal case pending against him and in all the columns, the applicant mentioned "No", however, the fact was that he was proceeded against u/S. 294(b), IPC and was arrested and released on bail but acquitted of the said charge later on and this is considered to be a false statement as he did not mention regarding pendency of criminal case against him at the time when the application form was filled-up by him.

15. In all the three cases which have been cited before us, we can take notice that the applicant claimed ignorance and concealed from disclosing the pendency of criminal case or trial which he was facing despite being called upon to indicate in the attestation/application form which is considered to be a case of suppression of material information that disentitles the person seeking appointment despite finally selected.

16. The word "concealment" inherently carried with it the element of mens rea and deliberate furnishing of inaccurate particulars may be concealment and intention to conceal is one of the element of mens rea but furnishing of inaccurate particulars in itself may not be termed as concealment unless there is an element of mens rea.

17. At the same time, suppression of fact envisages a deliberate or conscious omission to state of fact with the intention of deriving wrongful gain as considered by the Apex Court in *Collector of Customs, Calcutta Vs. Tin Plate Co. of India Ltd.*, The dictionary meaning which has been referred to may not be of much relevance for our consideration but this fact cannot be ruled out that the facts which the petitioner disclosed in Clause (13) of the attestation form with complete particulars of the criminal cases in which he was charge-sheeted and

details of final judgment where, after acceptance of guilt, he was granted benefit of probation u/S. 4 of the Probation of Offenders Act and further benefit u/S. 12 of the Act was also granted under the orders of this court. As already observed, it is not a case where the petitioner has completely ignored or refuted by suppressing the fact of criminal case being pending/instituted against him or he faced trial at any point of time and as already observed by us, distinction between acquittal & benefit of probation and what will be its legal implications and ramifications, certainly cannot be expected from a layman and we are also of the view that material particulars of the criminal cases which the petitioner disclosed and the information desired under Clause (13) of the attestation form, in the given facts of the case before us, have been materially & substantially disclosed by the petitioner and there was no such deliberate suppression of fact on his part which may disentitle him of public employment which he was able to succeed after undergoing cumbersome procedure and what was termed to be a suppression of fact appears to be bona fide on the part of petitioner and we can take a judicial notice that the element of mens rea was completely missing in the facts of the present case on the basis of which it can be held that it was not a case of suppression of information, desired to be disclosed in Clause (13) of the attestation form, filled by the petitioner.

17A. At the time of employment certain employers ask from the incumbent whether he has been arrested or remained in custody or convicted by any court of law for any offence. Question certainly arises that when somebody is asked for arrest/custody, what could be a distinction between "arrest" & "custody" in relation to the criminal proceedings, may not be expected from a layman and its niceties came to be examined by the Apex Court in *State of Haryana and Others Vs. Dinesh Kumar*,

18. Thus, the niceties of criminal proceedings and the decision in respect thereof may not be possible for a layman to understand but as already observed, each case has to be examined on its own facts as to whether there is suppression of fact on the part of applicant in respect of what was desired by the employer and what has been disclosed by the applicant and no strict parameters, in our view, can be laid down and the Id. Tribunal has proceeded on the basis that cases might have been referred by the petitioner with full particulars in the attestation form but he mentioned-acquittal, however, the fact is that he was convicted and granted benefit of probation u/S. 4 of the Probation of Offenders Act and that was considered to be a material suppression of fact in not disclosing true facts in its attestation form in upholding the order of cancellation of his selection, in our considered view, in the light of the judgment of the Apex Court and the material which has come on record, before us, the finding of the Id. Tribunal is not sustainable in the eye of law and deserves to be quashed.

19. Consequently, the instant writ petition succeeds and stands allowed. The order of Id. Tribunal dated 01.09.2011 and order of cancellation, passed by the respondents canceling selection of petitioner dated 16.09.2009 followed with

order dated 30.10.2009 directing him to deposit the bond amount, are not legally sustainable, and deserve to be quashed and are hereby quashed and the respondents are directed to appoint the petitioner on the basis of his selection on the post of Junior Telecom Officer, on which he was selected after going through the process of selection, however, he will be entitled for notional fixation of pay and other consequential benefits except the salary for intervening period. Necessary orders shall be passed within two months. No costs.