

(2019) 02 KAR CK 0047
In the Karnataka High Court
Case No : Writ Appeal No. 200289 Of 2015

Special Director General

APPELLANT

Vs

Mallappa Holkundi S/O Bhimsha

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Karnataka High Court Act, 1961 — Section 4
Code Of Criminal Procedure, 1973 — Section 107
Indian Penal Code, 1860 — Section 34, 324, 504
Central Civil Service (Temporary Service) Rules 1965 — Rule 5(1), 5(2)(a), 6, 7

Citation : (2019) 02 KAR CK 0047

Hon'ble Judges : P.G. M.Patil, J

Bench : Single Bench

Advocate : S. S. Aspalli, Shivakumar Kalloor

Final Decision : Disposed Off

Judgement

1. This intra Court appeal is filed by the appellants against the order dated 15.07.2014 made in W.P.No.86607/2012, wherein the learned Single Judge of this Court quashed/setaside the impugned order dated 19.09.2011 passed by the 3rd respondent Director Inspector General of Police, Group Centre, CRPF, and ordered to reinstate the respondent into service with all consequential benefits.

I. FACTS OF THE CASE:

2. It was the case of the petitioner before the learned Single Judge that on 21.05.2010 the petitioner/present respondent was enlisted for the post of constable in CRPF, at Group Centre, Bengaluru and was allotted 116 Battalion on Temporary basis and he was discharging his duties with honesty and integrity without blemish. The facts stood thus, 3rd respondent/ present appellant No.3 issued termination notice dated 19.09.2011 (Annuxure-A) under the provisions of Rule 5(1) of Central Civil Service (Temporary Service) Rules 1965 (for short 'the Rules') by the Commandant of the Office of Director and Inspector General of Police, Group Centre, CRPF, Muzzaffarpur, Bihar on the premise that the

Deputy Commissioner, Kalaburagi vide letter dated 21.09.2010 while carrying out verification of the character and antecedents of the petitioner and sent a communication intimating that the petitioner has suppressed the fact of registration of criminal cases against him prior to his selection. The 4th appellant Commandant issued an office order dated 22.11.2011 (Annexure-B) striking off the name of the petitioner from the strength of his Unit 116 Battalion.

3. Being aggrieved by the orders under Annexure-A and B, petitioner preferred an appeal/revision before the 2nd appellant under Rule 5 (2) (a) and 5(1) of the Rules contending that the termination and striking of name was passed by the authorities, without providing an opportunity to the petitioner to defend his case. The 2nd appellant/respondent rejected the appeal on the ground of suppression of facts of registration of criminal case against him at the time of his selection as constable in CRPF on 06.03.2012 (Annexure-D). Being aggrieved by the said order passed by the appellant Nos.1, 2 and 3, the petitioner filed writ petition before this Court in W.P.No.86607/2012 for issue of writ of certiorari to quash the impugned order at Annexure A passed by the 3rd respondent/appellant dated 19.09.2011, Annexure B passed by the 4th respondent dated 22.11.2011 and Annexure D passed by the 2nd respondent, and Annexure C and E by 1st respondent/appellant dated 06.03.2012.

4. Before the learned Single judge, the present appellants/Central Government has not filed any statement of objections. The learned Single Judge after hearing both the parties, by the impugned order dated 15.07.2014 allowed the writ petition and set aside the impugned order and the petitioner was ordered to reinstate into the service with all consequential benefits. Being aggrieved by the said order, the present appeal came to be filed on 17.08.2015 by the appellants.

II ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES:

5. We have heard the learned counsel for the parties to the lis.

6. Sri S.S. Aspalli, learned Asst. Solicitor General of India vehemently contended that the impugned order passed by the learned Single Judge allowing the writ petition directing the appellants/respondents to reinstate the respondent/petitioner into service with all consequential benefits is against the Rules. He would further contend that the respondent has suppressed the real facts in "Form No.25 which contains a question as to whether the respondent/petitioner was involved in any criminal case?" to this respondent/petitioner has stated that he has not involved in any criminal case. But on verification, he was found guilty. Therefore, the CRPF authorities initiated proceedings under Rule 5 of the Rules, 1965. He would further contend that the petitioner has suppressed the facts leading to miscarriage of justice. Therefore, the learned Single Judge ought not to have allowed the writ petition. The question of reinstating the respondent into service after termination of service and all consequential benefits would not arise. The order passed by the learned Single Judge cannot be sustained, therefore, he sought to set aside the order passed by the learned Single Judge

by allowing the writ appeal.

7. Per contra, Sri Shivakumar Kalloor, learned counsel for the respondent sought to justify the impugned order passed by the learned Single Judge and contended that the impugned notice and orders passed by the appellants/authorities as per Annexure A, B, D are arbitrary, illegal and contrary to the provisions of Central Civil Service Rules (Temporary Service Rules), 1965. He would further contended that failure to fill up CRPF verification Form No.25, (Character and Antecedent Role) registration of criminal case against the petitioner at the time of selection, cannot be a ground for termination of the petitioner, since the Rule 6 and 7 contemplates only in the case of physical unfitness, the termination notice can be sustained. He would further contend that punishment of termination of the petitioner is disproportionate for the mistake committed by the petitioner for not filling up CRPF verification column No.25 in the form. He would further contend that the entire proceedings are vitiated for not conducting enquiry and not providing an opportunity as contemplated under Rule 5(2)(a) of the Rules.

8. He also contended that alleged criminal cases filed against the petitioner came to be closed on 18.12.2007 and 25.03.2008. As on the date of the application filed that is on 27.08.2009 no criminal cases were pending against him and he was not involved in any criminal case. Therefore, he sought to dismiss the appeal.

9. In support of his contentions, learned counsel relied upon the following judgments:

i) In the case of Commissioner of Police and others Vs. Sandeep Kumar reported in (2011) 4 SCC 644

ii) In the case of Ramkumar Vs. State of Uttar Pradesh and others reported in AIR 2011 Supreme Court 2903.

III THE POINT FOR CONSIDERATION:

10. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the only point that arise for consideration in the present appeal is:

' Whether the appellants have made out a case to interfere with the impugned order passed by the learned Single Judge in exercise of power under provisions of Section 4 of the High Court Act, 1961?'

IV DETERMINATION:

11. Having heard learned counsel for the parties, it is undisputed fact that in response to the notification called for by the present appellants for the post of constable in CRPF, the petitioner has applied and he had selected in CRPF at GC Bengaluru in 116 Battalion on Temporary basis on 25.01.2010, and he was discharging his duties in the said post till he received the termination notice on 19.09.2011. The appellant authorities proceeded to terminate the respondent/petitioner mainly on the ground that while filling up form No.25, the respondent/petitioner has not disclosed his involvement in criminal cases and after

verification it was found that he was involved in the criminal case. Therefore termination notice was issued. The appellate authority confirmed the termination on the ground that the respondent/petitioner failed to disclose about the accusation made against him in the criminal case and tried to conceal the fact while filling up the verification form, accordingly, the appeal came to be dismissed.

12. Before the learned Single Judge, in spite of granting sufficient time, the present appellants have not filed any statement of objections and nor made available the original records culminated into the termination order of the respondent/petitioner. The learned Single Judge at Para 5 and 6 recorded as under:-

"5. I have heard the learned Counsel for the parties. Respondents were given sufficient opportunity to make available the records and file statement of objections. In fact, on 02.06.2014 after hearing the learned Counsel for the petitioner, following order was passed:-

Heard the counsel for the petitioner.

Prima facie, I find that termination of service of the petitioner is on the ground that he has suppressed certain material facts with regard to his involvement in the criminal case and that the criminal case, according to the learned Counsel for the petitioner, was registered after he filed application seeking appointment and that the case has subsequently ended in acquittal.

In any event, it is his submission that without holding an enquiry such an order terminating the service on the allegation of misconduct of suppressing material fact could not have been passed.

On 28.04.2014, this Court has permitted the Central Government Standing Counsel to secure the records relating to the recruitment of the petitioner. Again time is sought by him to secure the records.

Hence, finally, list on 11.6.2014.

6. The matter had been adjourned from time to time and as many as four adjournments had been given and before passing the above order. The respondents have not made available the records. However, the Central Government Standing Counsel has supported the orders under challenge contending interalia that as the petitioner was appointed in a temporary service and as he had not disclosed material facts, the authorities have terminated his service and the said termination does not impose any stigma on the petitioner."

13. Though Sri S.S. Aspalli, learned ASGI contended with vehemence in support of the orders passed by the appellants, but even today before the Division Bench of this Court also not made available the original records which culminated into termination of service of the petitioner/respondent. The main grievance of the learned counsel for the appellants is while filling up form No.25, the respondent/

petitioner has suppressed the fact whether he was involved in any criminal case. The said contention cannot be accepted for the simple reason that admittedly in the present case, the respondent/petitioner applied for the post of constable on 28.07.2009 and he came to be appointed on 21.03.2010, even assuming that there were criminal cases pending against the respondent/petitioner, the alleged criminal case under section 107 of Cr.P.C. initiated by the Taluka Magistrate, Aland, for breach of peace came to be closed on 18.12.2007 and another case under the provisions of sections 324, 504 read with section 34 of IPC ended in acquittal on 15.03.2008. Even assuming for the sake of arguments that while filling up form No.25, whether the respondent/ petitioner was involved in any criminal case as on the date of the application filed for the post, the respondent/petitioner was not involved in any case and as on the date of the application for the post of constable, the criminal case filed against him was closed.

14. Since, criminal case filed against him was closed, prior to the application filed by him, the respondent/petitioner might have thought fit while filling the application, it is not necessary to disclose such fact. Therefore, the said act of the respondent/petitioner cannot be termed that he actively concealed any important material regarding his conduct and character, which would come in the way of his appointment or continuation of service. The basis on which the respondent/petitioner was terminated from service is clearly erroneous. The fact remains that as on the date of the appointment and on the date of the application filed, the respondent/petitioner has not involved in any criminal case which was pending.

15. It is very strange though the appellants have filed the writ appeal before this Court on 17.08.2015, against the order passed by this Court dated 15.07.2014 directing the present appellants to reinstate the respondent/petitioner into service with all consequential benefits as long back, unfortunately, the appellants being Special Director General, Central Zone Police, Inspector General of Police and Director General of Police and Commandant of 116 Battalion, have not complied the order passed by the learned Single Judge even after lapse of nearly five years. Even though, there is no interim order granted by this Court in the present writ appeal staying the order passed by the learned Single Judge, if such high ranking officers do not follow or obey the order passed by the learned Single Judge of this Court after contesting the matter by the Central Government what we expect a poor constable to fill up column No.25 in verification regarding character and antecedents it was occurred prior to filing of the application. On that ground also the appeal filed by the appellants is liable to be dismissed.

16. The material on record clearly depicts that it is not the case of the appellants that subsequent to the application filed and after appointment order issued, the respondent/petitioner has involved in any criminal case thereby he was punished by any competent Court. The only grievance made before this Court that he has not disclosed the involvement in criminal cases as on the date of the application filed. In fact, the petitioner respondent/petitioner was not involved in any

criminal case. With regard to alleged Form No.25 has not produced before this Court. By reading of the ground No.15 raised by the appellants, in the appeal memo, , the only requirement was made whether petitioner was involved in any criminal case, in the absence of production of original records and the alleged form No.25, we already held that as on the date of the application filed for the post of Constable and as on the date of appointment, the respondent was not involved in any criminal case. Therefore, by inadvertence he might not have mentioned and there was no necessity to mention the same.

17. Our view is fortified by the Hon'ble Apex Court in an identical circumstances in the case of Commissioner of Police and others Vs. Sandeep Kumar reported in (2011) 4 SCC 644 at para 8, 9 and 11 of the decision held as under:

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give out own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age, young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character " Jean Valjean" in Victor Hugo's Novel Les Miserables, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

11. As already observed above, youth often commit indiscretions, which are often condoned.

18. In the absence of any statement of objections filed before the learned Single Judge, not producing, the relevant records before the learned Single Judge and before the Division Bench of this Court and the view taken by the learned Single Judge reinstating respondent/petitioner is just and proper and the order passed by the appellants authorities terminating the petitioner on the ground that he dishonestly concealed the material fact cannot be accepted.

19. It is also relevant to state at this stage, in the application Form No.25 to disclose whether he has been arrested, prosecuted, kept under detention etc. convicted by a Court of law for any offences against him, he had written "NO" and got cleared in all the tests and was selected to the post. He filled up the attestation form wherein for the first time he disclosed that he had been involved in a criminal case and later compromised and has been acquitted also disclosed.

V CONCLUSION:

20. In view of the above, the termination of the services for not mentioning certain omission and commission in form No.25 is disproportionate to the gravity

of the charge shocks our judicial consciousness. Therefore, the order passed by the learned Single Judge to reinstate the respondent/petitioner is just and proper. For the aforesaid reasons the issue raised in the present writ appeal has to be answered in the negative holding that the appellants have not made out any ground to interfere with the impugned order passed by the learned Single Judge directing the appellants to reinstate the respondent/petitioner into service with all consequential benefits in exercise of the power under the provisions of Section 4 of the High Court Act, 1961.

21. At this stage, Sri S. S. Aspalli, learned counsel for the appellants fairly submits that though the order passed by the learned Single Judge dated 15.07.2014 allowing the writ petition directing the petitioner to reinstate into service with all consequential benefits has not given effect to, in spite of non granting interim order by this Court in the present writ appeal, the fact remains that respondent/ petitioner has not worked at all in all these years. Taking into consideration the said submission and in the interest of justice to both the parties, we are of the considered opinion, that respondent/petitioner is entitled to at least 25% of back wages for which he has spent for litigation expenses with all consequential benefits with continuity of service in the post already held by him on the date of termination. Accordingly, the writ appeal is disposed off.

22. The appellants are hereby directed to reinstate the respondent/petitioner into service with 25% back wages, continuity of service and consequential benefits thereon within 30 days from the date of receipt of certified copy of this order.