

(2005) 01 GUJ CK 0043
In the Gujarat High Court

Case No : Special Civil Application No. 468 of 2005

Sursinh Bhurabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Army Act, 1950 — Section 13

Penal Code, 1860 (IPC) — Section 294, 304, 323, 324, 34

Citation : (2005) 01 GUJ CK 0043

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : P.A. Jadeja, for the Appellant;

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The petitioner who was recruited as Police constable in the year 1987 has filed this petition challenging the action of the respondents in dismissing him from service. A chargesheet came to be issued to the petitioner on 20th October 1993 mainly alleging that at the time of entering the service while filling up form for applying for the post in question, the petitioner gave wrong information to the questions in column 8 (1) and column 10. It was alleged that in column 8(1), the petitioner was required to answer whether he was earlier engaged in any institution including the police force. The petitioner answered the question in the negative. Similarly, in column No. 10 the question was whether any case is conducted against the petitioner for a criminal offence, if yes, what is the result and if there is conviction, details of such conviction to be given. In answer to this question also, the petitioner replied in the negative. It was alleged that both these answers given by the petitioner were factually incorrect since the petitioner was earlier recruited in the Police force on 24.2.85 and was thereafter terminated from service on 1.6.85. It was further alleged that the case under the Bombay Prohibition Act was registered against the petitioner and thus the petitioner had given wrong information with respect to both these

questions.

2. Upon conclusion of the departmental inquiry, the Disciplinary Authority found that the charges have been proved and imposed punishment of reverting the petitioner to the lowest pay-scale for a period of ten years. The reviewing authority, however, found that the charges were serious and after giving an opportunity of being heard to the petitioner, enhanced the penalty to that of dismissal from service by the order dated 9th July 1999. The petitioner challenged this order before the higher authorities and the State Government by the order dated 1st April 2000 was pleased to reject the appeal of the petitioner. The petitioner has, therefore, preferred this petition challenging the abovementioned orders adverse to him.

3. During the course of the arguments, learned advocate for the petitioner has not made out any grounds for challenging the procedure adopted during the course of the departmental inquiry. No allegations have been made to the effect that there was any breach of principles of natural justice in conducting the inquiry. The counsel for the petitioner has however confined his submissions on two grounds. Firstly, it is submitted that the charges were wrongly held to have been proved since the petitioner had given correct answers to both the questions. In the alternative, it is submitted that the penalty imposed is harsh and excessive and the charges cannot be labelled as grave charges calling for extreme penalty of dismissal from service.

4. With respect to the first contention, it is elaborated that in column 10, the question was whether any criminal case was pending against the petitioner. It is suggested that the case involving offence under the Bombay Prohibition Act was concluded and the petitioner was acquitted by the order dated 23.8.85. It is his contention, therefore, that when the petitioner applied for the post in question and filled up the form, there was no criminal case pending against the petitioner and his answer to the question in the column therefore was not incorrect. In the question, though it is stated whether any case is pending against the candidate, the candidate was also required to give details of any conviction if arrived at. It is, therefore, not possible to accept that the petitioner could have withheld this information from the Department at the time of applying for the post in question. Even if two views are possible and therefore, the petitioner was justified in believing that such information was not necessary to be disclosed, second aspect of the matter requires a closure scrutiny. In column 8, it is clearly required that the candidate should disclose the details as to the previous employment. In case of the petitioner, he was engaged in the Police Department itself and subsequently, was terminated on account of his involvement in the prohibition offence. This is different from the incident for which a criminal case was lodged which ended in acquittal later on. It was, therefore, absolutely essential for the petitioner to make a clean breast of all the facts and details. There is no ambiguity in the question in column No. 8 whatsoever and it required the petitioner to give full particulars of his previous employment. It is not possible to

accept the submission of the counsel for the petitioner that the petitioner mechanically gave negative answers to all questions put and that he had no intention to mislead the department. One cannot lose sight of the fact that the petitioner was being inducted in Police force and when in the past, his services were terminated on account of being found in drunken condition, it was the most relevant aspect which was required to be disclosed to the Department before the petitioner could have been considered for recruitment. The petitioner deliberately did not disclose this aspect to the Department and therefore incurred the liability of being proceeded departmentally. When the authorities have considered this aspect of the matter, it is not possible for this Court to interfere especially when it is not shown in any manner that the departmental inquiry conducted against the petitioner was defective. The Government in its order dated 1.4.2000 while rejecting the appeal of the petitioner has placed the entire focus on the aspect of answer given by the petitioner to column No. 8 and has observed that on 11.8.85, the petitioner was caught in a drunken condition and was found to have committed unruly behaviour and was therefore terminated by the order dated 6.9.85.

5. In the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, the Hon"ble Supreme Court upheld the action of the authorities in not appointing the person as Constable in Delhi Police Service though he was found physically fit, appeared in written test and interview and was provisionally selected on the ground that his antecedents were not found to be satisfactory. The Hon"ble Supreme Court overturned the decision of the Central Administrative Tribunal though it was found that the petitioner was ultimately acquitted of the offences punishable u/s 304 of IPC and section 324 read with section 34 of the IPC. The Hon"ble Supreme Court made the following observations :

"The question is whether the view taken by the Tribunal is correct in law ? 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 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 offences, 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 consequences. 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."

5.1 In the decision of Sanjay Kumar Bajpai Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court upheld the action of the Union of India in terminating the services of an employee on the ground that at the time of recruitment the employee had furnished wrong information and had suppressed the information about the criminal case pending against him. In para 7 of the judgment, following observations were made :-

"7. Having regard to the aforesaid provision contained in Section 13 of the Army Act and the answers that have been recorded in the enrolment form as well as the declaration at the end of the form under signatures of the appellant that the answers made by him to the questions are true, we are unable to uphold the contention of the appellant that the answers recorded against the questions in the enrolment form were not based on the answers given by him at the time when the said form was filled and that his signatures were obtained on a blank form which was filled by the authorities without the appellant being required to give answers to the questions. Having appended his signatures at the end of the form it is not open to the appellant to disown the same. The filling of enrolment form was an official act required to be performed u/s 13 of the Army Act and a presumption about regularity of such official act can be drawn. There is no reason to assume that the enrolment form was not filled in the manner as required. We must, therefore, proceed on the basis that the answers that are recorded against the questions contained in the said enrolment form are based on the statement made by the appellant at the time of enrolment. Since as per the enrolment form Question No. 8 was answered in the negative, it must be held that at the time of enrolment the appellant did not disclose that the criminal case was pending against him and made a false statement that no case was pending against him at the time."

5.2 In the case of Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another, the Hon"ble Supreme Court upheld the action of the employer, i.e. Government of Karnataka in cancelling the appointment of the petitioner as Vice Chancellor before it became effective on the ground that a criminal case was pending against him and the authority did not find it desirable to appoint him as Vice-Chancellor.

5.3 In the case of Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, the Hon"ble Supreme Court upheld the action of the Kendriya Vidyalaya Sangathan in terminating the services of an employee on the ground of suppression of material information relating to the character and antecedents. In the attestation form which was submitted by the employee, there were questions to the effect that if he had ever been prosecuted or convicted by the court of any offence and if any case was pending against him in any court at the time of filling up the attestation form. The employee then a candidate replied to this question in the negative also certifying that the information given by him was correct though there was a criminal case pending against him at the relevant time. The Hon"ble Supreme Court found that this amounted to suppression of material

information and making false statement which had a clear bearing on the character and antecedents of the employee. The Hon''ble Supreme Court made the following observations in this regard :

"11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of BA, BEd and MEd degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filing and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of a serious nature. In the present case the respondent was to

serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. 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."

6. It can thus be seen that law on the aspect of disclosure to be made by a candidate while seeking public employment is sufficiently clear. The petitioner who was seeking an employment in the Police Department as a constable had a duty to disclose true and full facts. His earlier engagement in the Police Department itself and his termination on account of having found in drunken condition and unruly behaviour would certainly have serious repercussions so far as the decision of the authorities to judge his character antecedents is concerned. Withholding such an information from the Department to seek employment would be a serious lapse and would certainly expose him to departmental proceedings. The final order of penalty therefore cannot be termed as so severe as to shock the conscience of the Court.

7. In the result, the petition fails and is hereby rejected.