

(2006) 11 MP CK 0058
In the Madhya Pradesh High Court

Union of India (UOI) and Others

APPELLANT

Vs

Hariom

RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 380

Citation : (2007) 2 MPHT 373 : (2007) 1 MPJR 191 : (2007) 1 MPLJ 362

Hon'ble Judges : A.K. Patnaik, C.J;P.K. Jaiswal, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.

This is a petition under Article 227 of the Constitution of India against the order dated 9th December, 2000 passed by Central Administrative Tribunal, Jabalpur Bench in O.A. No. 469 of 1994.

The facts briefly stated, are that the respondent Hariom was employed in temporary capacity in B.S.F. Academy, Tekanpur on 16-12-1984. He was arrested in connection with the theft of one Rifle by the Police on 24-6-1985. Since he had not disclosed about the pendency of the aforesaid criminal case at the time of his appointment, his services were terminated by the Director of the B.S.F. Academy on 16-8-1995 under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965. Aggrieved by the said order dated 16-8-1985 terminating his services, respondent filed an O.A. No. 296 of 1988 before Central Administrative Tribunal, Jabalpur Bench and after hearing parties, the Tribunal set-aside the order of termination by its order dated 18-8-1989 and directed the petitioner to pass fresh order after holding regular departmental enquiry. In compliance of the said order of Tribunal, a departmental enquiry was held and after completion of departmental enquiry, the disciplinary authority passed an order on 11-12-1993 removing the respondent from service. The respondent filed an appeal before the appellate authority against the said order of removal and the appellate authority remanded the case back for further enquiry. The respondent then filed O.A. No.

174 of 1993 before Jabalpur Bench of the Tribunal and the Tribunal disposed of the said O.A. directing that the departmental proceedings be completed within a stipulated time. Thereafter, the enquiry was concluded and order dated 11-12-1993 was passed by the disciplinary authority terminating services of the respondent. The respondent went up in appeal but the appellate authority confirmed the said order of termination and dismissed the appeal by order dated 24-2-1999. Thereafter, the respondent filed O.A. No. 469 of 1999 before the Jabalpur Bench of the Tribunal and by the impugned order dated 9th December, 2000, the Tribunal set-aside the order of disciplinary authority removing respondent from service as well as the impugned order of the appellate authority confirming the said order of removal and directed the petitioners to reinstate the respondent within two months. By the impugned order dated 9th December, 2000, the Tribunal also directed that the respondent be paid 50% backwages from the date of removal to the date of reinstatement and a fresh order be passed for treatment of the period from 17-8-1985 to 17-8-1989 in accordance with the rules.

Mr. T.C. Singhal learned Counsel for the petitioners submitted that the respondent was appointed in temporary capacity and under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 petitioners have a right to terminate the services of the respondent at any time and therefore, in accordance with Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965, petitioners had terminated services of the respondent by order dated 24-6-1985. He vehemently submitted that this aspect of the matter has not been considered by the Tribunal in the impugned order dated 9th December, 2000 passed in O.A. No. 469 of 1994.

We find on reading of the order dated 9th December, 2000 passed in O.A. No. 469 of 1994 that the order of termination dated 24-6-1985 passed by the petitioners under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 had already been challenged by the respondent before Tribunal in O.A. No. 296 of 1988 and after hearing learned Counsel for the parties, the Tribunal by order dated 18-8-1989 passed in O.A. No. 296 of 1988 set-aside the order of termination with the direction to the petitioners to pass fresh order after holding regular departmental enquiry. The order dated 18-8-1989 passed by the Tribunal in O.A. No. 296 of 1988 has not been challenged by the petitioners either before the High Court or before the Supreme Court. The result is that the said order dated 18-8-1989 setting aside the order of termination dated 16-8-1985 passed under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 has attained finality. At this stage, the petitioners cannot be allowed to raise the contention that the petitioners were entitled to terminate services of the respondent under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 without holding any enquiry. Moreso when, in compliance of the order of Tribunal dated 18-8-1989 petitioners have already held departmental proceedings and passed an order removing respondent from service on the basis of the finding in the said departmental proceedings.

Mr. Singhal, learned Counsel for the petitioners, next submitted that the charge against the respondent in the departmental proceeding was that he deliberately concealed material facts and did not give the true information to the department at the time of his appointment. The facts which were concealed by him from the department are that a case u/s 380 of IPC on account of theft of a rifle had been registered against him, he was arrested by Police on 16-7-1982 and that the said case was being tried by the Judicial Magistrate First Class, Dabra. He submitted that at the time of appointment, the respondent was required to fill up a verification roll which and after the 10th question in the said verification roll a certificate was required to be signed by all candidates including the respondent that the information furnished in the verification roll was correct and complete to the best of their knowledge and belief and that they were not aware of any circumstance which might impair fitness for employment under Government. He submitted that the respondent signed the said certificate to the effect that he was not aware of any circumstance which might impair fitness for employment under Government but did not disclose in the verification roll that the aforesaid criminal case for theft of a Rifle has been registered against him and he was arrested by the Police in connection with that case on 24-6-1985 and the said case was being tried by Judicial Magistrate, First Class, Dabra. He submitted that it was only when the respondent was again arrested in connection with the aforesaid case on 24-6-1985 that the petitioners came to learn about the pendency of the criminal case against respondent and therefore proceeded against the respondent for terminating his services because, the respondent could not have been properly retained in the service of a distinguished force like B.S.F. with the criminal case of theft of a Rifle pending against him in a Court of law.

Mr. Singhal vehemently submitted that the Tribunal has erroneously held in the impugned order that the respondent was under no obligation to disclose the aforesaid facts regarding pendency of a case and his omission to do so, does not amount to suppression or concealment of any material facts. He further submitted that the Tribunal appears to have been influenced by the fact that subsequently the respondent, though convicted, was exonerated by the appellate Court and there was no stigma whatsoever on the past life disqualifying him from the government service. But these are all facts which were subsequent to the appointment of the respondent and should not have been taken into consideration by the Tribunal for setting aside the order of removal passed by disciplinary authority. Mr. Singhal cited decisions of the Supreme Court in *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, and *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, in which, the Supreme Court has held that the person who indulged in suppression of material facts does not deserve to be in public service and has upheld the order of removal passed by the disciplinary authority for suppressing material information in the forms filled by the employee at the time of appointment.

Mr. M.P. Sharma, learned Counsel for the respondent, on the other hand sought

to sustain the impugned order of learned Tribunal. He submitted that the verification roll did not contain any question as to whether any criminal case was pending against a candidate. He submitted that question No. 9 in the verification roll only requires information as to whether a candidate had been convicted by the Court of offence and since in the year 1984, when the respondent had filled up the verification form, the criminal case against the respondent was pending and the respondent had not been convicted of any offence, the respondent answered the said question No. 9 as "Nil". He further submitted that the certificate that was required to be signed by the candidate at the end of question No. 10 in the verification roll was only with regard to the information which was required to be given in answer to the different questions in the verification roll and the respondent signed the said certificate as in none of the question Nos. 1 to 10, there was any question as to whether any criminal case was pending against the candidate. He sought to distinguish the decisions of Supreme Court in *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav (supra)* and *A.P. Public Service Commission v. Koneti Venkateshwarulu and Ors. (Supra)* cited by Mr. Singhal saying that in said two cases, the columns or questions which were filled up by the candidate wrongly or were not filled up were differently worded and there was no question or column in the verification roll requiring a candidate to state that there was no criminal case pending against him.

On perusal of the enquiry report, we find that the only question which related to criminal case in the verification roll was question No. 9 and the said question No. 9 read as follows:

Have you ever been convicted by Court of offence? If the answer is "Yes" the full particulars of the conviction and the sentence should be given.

Respondent answered this question by putting the word "Nil". This was done by the respondent because, at the time when he filled up verification roll in the year 1984, the aforesaid criminal case was pending against him and he had not been convicted of any offence. At the end of question No. 10, the following certificate was required to be furnished by the candidate in the verification roll:

I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair fitness for employment under Government.

Signature of the candidates Sd/-. (Emphasis supplied).

The underlined expression "foregoing information" shows that the certificate given by the candidate is with regard to the information furnished in answer to the several questions in the verification roll. There was no question in the verification roll as to whether, any criminal case was pending against a candidate. As indicated above, the only question i.e., question No. 9 required an information from a candidate as to whether, he had been convicted by the Court of any offence and the respondent had given correct information that he has not been convicted by the Court of offence by using the word "Nil".

In the last portion of the certificate, the respondent was required to certify that he was not aware of any circumstance which might impair fitness for employment under government. The respondent who was an illiterate scheduled caste person obviously is not expected to know as to which circumstance might impair fitness under Government. It is for the authorities proposing to appoint a candidate as Safai Karmchari to indicate clearly in the different questions in the verification roll the circumstances which might impair fitness for employment under Government by putting a question in that regard in the verification roll. No question whatsoever was included in the verification roll as to whether, a criminal case was pending against a candidate and hence, the circumstance that a criminal case was pending against a candidate and had not ended in conviction, presumably was not treated as a circumstance which would impair fitness for employment under Government. As a matter of fact, in *A.P. Public Service Commission v. Koneti Venkateshwarulu and Ors.* (supra), the Supreme Court has held that as to the purpose for which the information is called for, the employer is the ultimate judge and it is not open to the candidate to sit in a judgment about the relevance of the information called for and decide to supply it or not. Since, the petitioners in this case had not called for any information in the verification roll as to whether a criminal case was pending against a candidate, it was not expected of the candidate to treat this information as relevant and furnish the same voluntarily even though, there was no question in the verification roll asking from the candidate.

In *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav* (supra) cited by Mr. Singhal, there was a clear column i.e., Column No. 12 putting a question to a candidate as to whether the candidate had ever been prosecuted/kept under detention or bound down/fined, convicted by a Court of law of any offence and to both these questions, the candidate answered "no" and the Court found subsequently that a criminal case under Sections 323, 341, 294, 506B read with Section 34 of IPC was pending against the candidate on the date of filing of the attestation form. Obviously, this was a case of suppression of material information and the termination of the candidate from the service was found to be justified by the Supreme Court.

In *A.P. Public Service Commission v. Koneti Venkateshwarulu and Ors.* (supra), cited by Mr. Singhal Column No. 11 of the application form given to the candidate required the candidate to give information about his previous employment but the candidate left this column totally blank and it was found by the authorities that the candidate had been employed and was working as a teacher and therefore, his candidature was cancelled and the Supreme Court found the cancellation justified, because the appellant had left Column No. 13 blank and furnished a declaration that all statements made in the application are true and correct.

As discussed above, in the verification roll in the present case, there was no column or no question pertaining to pendency of a criminal case against a

candidate and the only question i.e., question No. 9 related to the conviction of a candidate in a criminal case of an offence was there. The facts of the present case, therefore, are different from the aforesaid two cases of *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav* and *AP. Public Service Commission v. Koneti Venkateshwarulu and Ors.* (supra). In our considered opinion, the Tribunal was right in coming to the conclusion that the respondent was under no obligation to narrate all facts regarding the pendency of a criminal case and his omission to do so does not amount to suppression or concealment of any material information. Moreover, although subsequently conviction of the Trial Court ended in acquittal in the appeal, the fact that the respondent was acquitted in the criminal case ultimately is a relevant factor for the Court to take into consideration for deciding whether the order of removal should be sustained or should be set-aside. There was nothing wrong for the Tribunal to have taken this fact of exoneration of the respondent of the charges in a criminal case together with all other facts for deciding to set-aside the order of removal passed against him.

Mr. Singhal next submitted that in any case this was not a fit case in which, the Tribunal should have awarded any backwages to the respondent. Mr. Sharma, on the other hand, submitted that the award of backwages is limited to the extent of only 50% and the same was justified in the facts and circumstances of the case.

The law is well settled that when the Court or the Tribunal sets-aside an order of removal or termination, payment of backwages is not automatic. The Court or the Tribunal has to examine the facts of each case and find out whether any backwages should be given when the order of the termination is set-aside and if so, what percentage of the backwages is to be given to the employee concerned. In the facts of the present case, it is not disputed that a criminal case was pending against the respondent when the order dated 17-8-1985 was passed by the petitioners terminating services of the respondent under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965. Hence, the petitioners were under a bonafide belief that they were entitled to terminate the services of the respondent who had been appointed in temporary capacity under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965. After the order dated 16-8-1985 was issued terminating service of the petitioner, he was in fact convicted by the Trial Court of the offence on 4-10-1985 and the respondent filed an appeal before 1st ASJ, Dabra and it was only on 24-11-1987 that the 1st ASJ, Dabra acquitted respondent in the said criminal case. On these facts, we are of the considered opinion that the petitioners should not be saddled with the financial burden of paying any backwages particularly, when the respondent has not been working as a Safai Karmchari in the B.S.F. Academy since 16-8-1985.

For these reasons, we set-aside the direction of the Tribunal in the impugned order to pay 50% of the backwages to the respondent but we uphold the order of Tribunal setting side order of removal and direct reinstatement of the respondent in service. The petition is allowed to the extent indicated above.