

(2013) 11 DEL CK 0148

In the Delhi High Court

Case No : Writ Petition (C) No. 5101 of 2012

Vakil Kumar Meena

APPELLANT

Vs

The Director Export Inspection Council of India

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Contract Act, 1872 — Section 17, 18, 19
Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2013) 11 DEL CK 0148

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.N. Sharma, for the Appellant; L.R. Khatana, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P.(C) No. 5101/2012

1. By this writ petition the petitioner seeks the relief of appointment to the post of Technical Officer of the respondent no. 1 on the ground that petitioner while filling up the attestation form by mistake/haste did not give the correct particulars that he was in fact convicted in a criminal case and a fine was imposed. Petitioner claims that he filled up the form by mistake and when he realized the mistake he immediately approached the respondent-authority and therefore petitioner is entitled to appointment.

Let me reproduce para 12 of the attestation form dated 14.2.2011 to which petitioner gave an answer "No", and the same reads as under:-

12. (ii) If the answer of any of the above mentioned questions is "Yes", give full particulars of the case/arrest/detention/fine/conviction/sentence/punishment etc. and/or the name of the case pending in the Court/University/Educational Authority etc., at the time of filling up this form.

2. In this very form, right in the beginning there are three paragraphs which specifically state that furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification for appointment and that especially if a person is convicted and such information is not given, it will amount to suppression. In fact, para-3 makes it clear that even after appointment if the facts come to notice that false facts were given, then, the services would be terminated. These paras 1 to 3 read as under:-

1. The furnishing of false information or suppression of any factual information in the Attestation Form would be a disqualification, and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred etc. subsequent to the completion and submission of this form, the details should be communicated immediately to the Union Public Service Commission or the authority to whom the attestation form has been sent earlier, as the case may be failing which it will be deemed to be a suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated.

3. Petitioner has qualification of being a graduate in B. Tech (Food Technology) and therefore, petitioner is an educated person. The warning-paras 1 to 3 were given right at the beginning of the attestation form and it cannot be said that petitioner did not read the same. I also refuse to believe the contention of the petitioner that he answered para 12 in haste by stating "No", then realized his mistake, and then informed the respondent inasmuch as the attestation form is dated February 2011 and petitioner informed the respondent much later i.e. almost after 7 months in September, 2011. Obviously, petitioner himself has given the information of "mistake" because by this time police verification would be in process and petitioner would have realized it would be futile to suppress the information of his conviction.

4. I have had an occasion to consider the subject issue in the case of Arun Vs. District & Sessions Judge in W.P.(C) No. 5880/2012 decided on 26.7.2013 and I have dismissed the writ petition which sought quashing of the termination of an appointment taken by stating false facts and concealing the real facts. The ratio of the aforesaid case in Arun (supra) will a fortiori apply to the petitioner, who has in fact not been given appointment by the respondent. Paras 2 to 7 of the judgment in the case of Arun (Supra) are relevant and the same read as under:-

2. Therefore, the issue is not of confirmation of the petitioner after completing probation in the post but of invalidity of appointment because if the appointment is obtained by misrepresenting a fact, then, the contract of employment was voidable at the option of the respondent. Section 17 of the Contract Act, 1872 defines fraud and Section 18 defines misrepresentation. Concealment of a fact

falls under both. Once the contract of employment is obtained by fraud or misrepresentation, then, as per Section 19 of the Contract Act, the contract is voidable at the option of the party against whom fraud or misrepresentation is committed. Respondent/District & Sessions Judge was thus entitled to and hence rescinded the contract thereby terminating the employment of the petitioner.

3. At this stage the counsel for the petitioner is asked to argue the next point because the aforesaid aspect has already been argued. The counsel for the petitioner, instead of addressing the Court, says that he does not want to argue further. Let it be so. If an advocate wants to behave in such a fashion surely, nothing further can be done except my disposing of the matter because the counsel for the respondent says that except the above facts noted there is nothing which remains to be argued and that adjournment should not result.

4. It may be noted that the petitioner when called personally by the District & Sessions Judge to explain the factual position, he himself gave the judgment as passed by the Court of Ms. Ankita Sharma, Judicial Magistrate, First Class, Sonapat, Haryana and by which judgment the petitioner had been acquitted. This judgment, however, fortifies the fact that the petitioner took employment when there was an FIR No. 197/2008 dated 4.9.2008 registered against the petitioner under Sections 323/325 read with Section 34 IPC. It is, therefore, clear that the petitioner had not only concealed the material facts but also had given a false affidavit that there is no criminal case pending, which is pending against the petitioner.

5. In *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, Supreme Court held that issue was not of a person being guilty of a criminal act but the issue was of giving information to the employer to judge the suitability of employment of a person. Para 12 of the judgment reads as under:-

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 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 serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent 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 column Nos. 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. In *A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others*, Supreme Court held that a person who obtains employment by suppression of fact does not deserve public employment. Para 7 of the said judgment reads as under:-

7. We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was *suppressio veri* and *suggestio falsi* on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been *suppressio veri* and *suggestio falsi* is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of *Kendriya Vidyalaya Sangathan* (supra) and contending that a person who indulges in such *suppressio veri* and *suggestio falsi*

and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

7. Merely because the issue of concealment having effect on employment is referred to a larger bench of the Supreme Court in a case (details of case not given by the petitioner) will not mean that the existing judgments will not hold the field till they are set aside.

5. I may note that the judgment dated 26.7.2013 in the case of Arun (supra) was carried in appeal in LPA No. 582/2013 and that LPA was dismissed by the Division Bench on 19.8.2013 by passing the following order:-

CM No. 12307/2013

Allowed subject to just exceptions.

LPA No. 582/2013

1. Having heard learned counsel for the parties we see no case made out to interfere with the impugned order dated July 26, 2013 dismissing the writ petition filed by the appellant challenging his service being discontinued while still on probation.

2. The law declared by the Supreme Court in the decision reported as Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, frowns upon appointment being given to those who deliberately suppress relevant information having a bearing on their character and antecedents verification. Those who deliberately, as against innocently, falsely write in the application form that they were not ever an accused in any criminal Court and do not claim to be misled by the question seeking information in the enrolment/application form have not to be granted public employment if it is found that in the past they were accused of having committed an offence. It matter not whether the person was ultimately acquitted.

3. In the instant case, the petitioner was admittedly an accused in an FIR for an offence punishable u/s 323/325 IPC. He was acquitted but upon witnesses turning substantially hostile, in that, they stood by the incident but refused to identify the assailant.

4. Not only did the petitioner not disclose said fact in his application form but when he was selected for the job in the office of the Districts and Sessions Judge, Delhi, pending verification of his antecedents when he was called upon to furnish an affidavit disclosing his past, the petitioner did not divulge the information that he was an accused at a criminal trial.

5. It is trite that a truthful information pertaining to ones past is required to be given when a person seeks employment even if one is acquitted by a criminal court for the reason the employer has a right to satisfy himself regarding the manner in which or the reason for which the person was acquitted; particularly more in India when witnesses being suborned has become the way of life.

6. As explained by the Supreme Court in Kamal Nayan Mishra's case (Supra), suppressing relevant information pertaining to an issue concerning one's character verification is a wrong by itself justifying denial of a public job.

7. The contention urged that recourse could not be had to Rule 5 of the CCS (Temporary Service) Rules 1965 for the reason the appellant was on probation for a period of two years and his services were terminated in the third year is neither here nor there for the reason it is not in dispute that the service of the appellant was not made permanent. It is trite that unless the rule pertaining to probation mandates that upon probation period being over there would be a deemed confirmation, the status of confirmation is not attained unless there is a specific order of confirmation.

8. As regards the reason why it took the Department three years to take the action impugned, the same is that while filling up the application form the petitioner did not disclose his being an accused. Since working hands were needed in the office of the District and Sessions Judge, Delhi, obtaining affidavits from all, including the appellants, temporary employment was granted on probation pending verification of the past of the persons appointed. Since the petitioner had withheld a relevant information, the police authorities took time and the verification revealed that the petitioner was an accused in an FIR.

9. The appeal is dismissed without costs.

CM No. 12308/2013

Dismissed as infructuous.

6. The judgment in the case of Arun (supra) dated 26.7.2013 was followed by me subsequently in the case of Ms. Nidhi Kaushik Vs. Union of India & Ors. in W.P. (C) No. 7457/2012 decided on 4.9.2013.

The present case is therefore fully covered by the judgments delivered in W.P.(C) and LPA in the case of Arun Vs. District & Session Judge. In view of the above, no relief can be granted to the petitioner and therefore the writ petition is dismissed, leaving the parties to bear their own costs.

W.P.(C) 5102/2012

It is not disputed that the present petition will also be covered by the reasoning given in W.P.(C) 5101/2012 and accordingly this writ petition is also dismissed, leaving the parties to bear their own costs.