
(2016) 03 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7101/2015

Varun Kumar Karwasra

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 320
Penal Code, 1860 (IPC) — Section 323, Section 324, Section 34, Section 341

Citation : (2016) 1 WLCRajUC 669

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

Bench : Division Bench

Advocate : Mukesh Agarwal, Counsel, for the Appellant; P.C. Sharma and Anupam Agarwal, Counsel, for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—1. Instant petition is directed against order of the Id. Central Administrative Tribunal dt. 17.03.2015.

2. The brief facts of the case which are relevant for the present purpose are that a Notification was issued by the respondents holding recruitment for the post of Senior Section Engineer in the Grade Pay of Rs. 4,600/- in different branches. The petitioner being eligible submitted his application and was declared successful in the Signal category and after found suitable was appointed vide order dt. 14.06.2013, subject to verification of medical and antecedents and directed to fill the Attestation Form and other relevant documents.

3. In the Attestation Form, the candidate is required to furnish, apart from desired information, his/her antecedents. The relevant conditions of Attestation Form para-12, extract of which being relevant for the present purpose is reproduced ad infra:--

I certify that the forgoing information is correct and complete to the best of my

knowledge and belief. I am not aware to any circumstance which might impair my fitness for employment under Government.

Signature of Candidate Date - 03.07.2013 Place - Vill: Dhandharia

It is Attested that I am Shri Varun Kumar Karwasra S/O Shri Lalchand Karwasra for the last 08 years 06 months and that to the best of my knowledge and belief the particulars furnished by him/her are correct.

Place: Dhandharia Date: 29/06/2013

Signature _____ Designation or status and address"

4. In the Attestation Form, of which we have made a reference, in para-12 (b), in particular, it is asked that have you ever been prosecuted and the answer given by the petitioner is NO, but the fact revealed while the report being received from the Office of concerned Police Station indicating that on account of some alleged family dispute, FIR at one stage came to be registered against him in the year 2003 for offence u/Sec. 341, 323 & 324/34 IPC and the challan was filed against three persons including the present petitioner and after taking cognizance, a case was registered against him No. 456/2003 and on the very day on which challan was filed, i.e. 14.08.2003, since all the offences are bailable offences, the parties simultaneously submitted their written compromise and taking note thereof, the Id. Magistrate passed order of acquittal, as is evident from order dt. 14.08.2003 and the matter was consigned to record.

5. It may be relevant to observe that the offences u/Sec. 341, 323 & 324 IPC are bailable offences at the time of incident. However, Sec. 324 IPC became non-bailable by substitution Act No. 25 of 2005 w.e.f. 23.06.2006 and looking to Sec. 323, 324 & 341 IPC are compoundable offences u/Sec. 320 of the Code at the relevant time, indisputably, in the Attestation Form in para-12 (b), in particular, where the requirement was that have you ever been prosecuted in the present circumstances he was never prosecuted.

6. Taking it to be a basis that he has suppressed the material information, services of the petitioner came to be terminated vide order dt. 03.09.2013 and it was stated in the order that his Attestation Form was sent for verification and a report was sent by the District Collector, Jhunjhunu that a case for offences u/Sec. 341, 323, 324 & 34 IPC is pending against the petitioner at Police Station Pilani, which was a cause for cancellation of his appointment. However, this fact was factually incorrect and the matter was decided long back on 14.08.2003 and no more pending.

7. The Id. Tribunal placing reliance on the judgment of Davendra Kumar v. State of Uttaranchal & Ors. reported in , (2013) 9 SCC 363 dismissed the Original Application observing that non-disclosure of a criminal case which was registered against him in 2003 was suppression of material information and it was considered to be a disqualification to hold the post of Senior Section Engineer as a consequence termination.

8. The Id.Tribunal, in conclusion, further observed that since the question involved in the instant case, has been referred by the Apex Court to be examined by the Larger Bench in Jainendra Singh v. State of Uttar Pradesh through Principal Secretary, Home & Ors. reported in , (2012) 8 SCC 748, it was expressed that it will be subject to final outcome of order of the Larger Bench of the Apex Court.

9. At the outset, we may observe that although the matter was referred on certain legal issues to be examined by the Larger Bench of the Apex Court but we are informed that the appellant before the Apex Court withdrew his appeal and while accepting the prayer, permission was granted by the Apex Court for withdrawal of SLP which came to be dismissed accordingly vide order dt. 13.04.2015 and we have been informed that the reference made by the Apex Court to the Larger Bench in the light of the later development which have taken place in view of order dt. 13.04.2015 is no more pending consideration before the Apex Court and no other information has been revealed to us in this regard.

10. Counsel for petitioner submits that in the instant case, the stage of prosecution did not commence on filing of the challan and being the family matter, parties appeared and submitted their written compromise and the offences being bailable and compoundable as well, the Id.Magistrate while taking the compromise on record passed order of acquittal dt. 14.08.2003. Thus, no inference could be drawn that the petitioner has ever been prosecuted and he has suppressed material information just to disqualify him from public employment.

11. Counsel further submits that the term "Prosecution" is nowhere defined either in the Code or in any of the law and thus, if we go by the general perception, a person who faces a trial certainly it can be said that he has been prosecuted but if the trial has not commenced and prosecution has not been called upon to prove the charge, at least a layman with ordinary prudence could presume that mere filing of a criminal case, against a person, could not infer that one has been prosecuted and submits that if all the requirement of other sub-clauses of para-12 of Attestation Form is taken into consideration the requirement is very specific that whether the candidate has been arrested or kept under detention or bailed out or fined or convicted by the court of law for any offence. Apart from other nature of requirements of debarring from any examination or rusticated by any University or debarred by any Public Service Commission from appearing in any of the Examination/Selections, the information which was tendered by the petitioner in no manner could be considered to be a case of suppression of material information and that being so, passing of the order of termination and that too on the ground that the District Magistrate has informed the authorities on his Attestation Form being sent for verification, that a criminal case is pending against him which is factually incorrect and the fact is that it was disposed of on the date of filing of challan i.e. on 14.08.2003. Thus, the decision of the respondents in holding that there was

suppression of material information and passing order of termination in consequence thereof dt. 03.09.2013 was wholly arbitrary and violative of Art. 14 of the Constitution.

12. Counsel for respondents while supporting order of the Id.Tribunal submits that a criminal case which was instituted against the petitioner, which was brought to the notice of the authorities only when his Attestation Form was sent for verification through the local administration and indisputably, he was involved in a criminal case instituted against him for the offence u/Sec. 341, 323 & 324 IPC. Although, the acquittal order came to be passed on the basis of a compromise arrived at by the parties on 14.08.2003 i.e. on the date of filing of challan but withholding of such information was suppression of material information and that entails termination of service and this what the Id.Tribunal considered in passing the order impugned dt. 17.03.2015 placing reliance on judgment of the Apex Court in Davendra Kumar's case (supra).

13. We have heard counsel for the parties and with their assistance examined the material on record.

14. The legal position has been, consistently by and large, settled that obtaining appointment by misrepresentation would definitely amount to suppression of material information and in that eventuality the service becomes liable to be terminated, even if there had been no further trial or the person stood acquitted or discharged.

15. The Full Bench of this court in the case of Dharam Pal Singh & Ors. v. The State of Rajasthan & Ors. reported in 2000 (4) Service Law Reporter 612 while examining the self same question finally in para 26 & 27 observed ad infra:--

"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.

27. Since the facts are not in dispute, we do not think it necessary to place these appeals before the Division Bench for disposal.

28. Hence, in view of our answers to the questions referred, these appeals are liable to be dismissed and accordingly, they are dismissed. No costs."

16. However, when the said question came up for consideration before the Apex

Court that if someone conceals the material information and was offered appointment on probation what will be its effect and the Apex Court was of the view that there appears to be conflicting views expressed in various judgments and taking note thereof, the matter was warranted to be referred for consideration by a Larger Bench in Jainendra Singh's case reported in , (2012) 8 SCC 748 and the cardinal principles which the Apex Court considered appropriate to be summarized and to be examined by the Larger Bench are reproduced ad infra:--

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/ antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case,

inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

17. It is brought to our notice that on request made by the appellant Jainendra Singh, he moved an application seeking permission of the court to withdraw the appeal and permission was granted by the Apex Court for withdrawal of the appeal and accordingly dismissed as is evident from the order dt. 13.04.2015 and we have been informed that reference after passing of the order by the Apex Court dt. 13.04.2015 is no longer pending consideration before the Apex Court.

18. It may not be relevant for our consideration at the moment. The Apex Court has examined the self same question in the case of Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav reported in , (2003) 3 SCC 437 which came to be further reiterated in the case of R. Radhakrishnan v. DG of Police reported in , (2008) 1 SCC 660 and in the case of Daya Shankar Yadav v. Union of India reported in , (2010) 14 SCC 103. The case of Davendra Kumar on which the Id.Tribunal has placed reliance reported in , (2013) 9 SCC 363 and affirmed the view that issue of obtaining appointment by misrepresentation, is no more res integra and the information sought by the employer, if not disclosed as required, the services become liable to be terminated even if there is no further trial or the person stood acquitted or discharged is immaterial and we consider it appropriate to quote the relevant extract of the judgment which reads ad infra:--

"11. We have examined the judgments of the Division Bench as well as of the learned Single Judge, that are based on pleadings and evidence placed before them, recording the finding that the fact of involvement in the criminal case had been suppressed. No material has been placed before this Court on the basis of which we can take a contrary view.

12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed, as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood

acquitted/discharged."

19. So far as legal proposition is concerned, it has been settled by the consistent view of the Apex Court that if appointment is obtained by misrepresentation or suppression of material information, in that eventuality service becomes liable to be terminated, even if there is no further trial or the person stood acquitted or discharged. At the same time, the nature of offence may not be sufficient to examine as long as misrepresentation or suppression of material information stands proved and established on the basis of material available on record.

20. In the instant case, the information, which was desired to be submitted in the Attestation Form, filled by the petitioner/candidate and in para-12(b), in particular, a candidate is required to furnish his/her criminal antecedents and rest of the information may not be that material and the only question arises as to whether the information which was extended by the petitioner regarding whether he has ever been prosecuted and he said "NO", amounts to suppression of material information.

21. The word "Prosecution", as such has not been defined in the Code and in common parlance and for a man of ordinary prudence if somebody faces criminal trial, certainly it could be construed of being criminally prosecuted and what the Black's Law Dictionary, 6th Edition indicates about "Prosecute" and "Prosecution" is ad infra:--

"Prosecute":-- To prosecute an action is not merely to commence it, but includes following it to an ultimate conclusion."

"Prosecution":-- A criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime."

22. Indisputably, in the instant case, the prosecution has not at all commenced and on the date of filing of challan, simultaneously compromise was filed by the parties who are none other than the family members and the Id.Magistrate disposed of the matter on the same day i.e. 14.08.2003.

23. As we have already observed that what is called "prosecution" is nowhere defined under the Code and in the instant case, the offences being bailable & compoundable, on filing of challan, the parties arrived to a compromise and on the basis of the said compromise, the Id.Magistrate passed order of acquittal dt. 14.08.2003. In our considered view, it may not be altogether expected from a layman and man of ordinary prudence to construe its legal meaning that he has ever been prosecuted by the court of law and if we examine the other exhaustive information required u/Cl.12 of the Attestation Form that indicate about arrest or detention or release on bail or fined by court of law or convicted in any offence and indisputably, in this case, all the information disclosed by the petitioner in the Attestation Form were correct and it may not be altogether unreasonable to expect from him to construe that he had been prosecuted in the case and

released on the date of filing of challan by the Id.Magistrate vide order dt. 14.08.2003 and even if it could be presumed that filing of challan, may be in a bailable offence, construed as commencement of prosecution, as we have observed that it may not be appropriate to expect from a layman of ordinary prudence to construe that in the facts & circumstances of the case he has been prosecuted. The benefit of a mistaken impression is always to be given to the incumbent concerned and it could not, in our considered view, be considered as suppression of material information, as desired.

24. In the instant case, challan u/Sec. 341, 323 & 324 IPC was filed against the petitioner on 14.08.2003 and on the same day, as there was a dispute in the family members, compromise was filed which was taken on record and the Id.Magistrate passed the order of acquittal dt. 14.08.2003 without there being any prosecution or trial and this fact could, in the present case, cannot be considered to be a non-disclosure/suppression of material information which has been made a basis for termination of his services.

25. Each case has to be looked into on its own facts & circumstances and what is the information desired to be disclosed by the employer and what information the candidate has disclosed to the employer in filling his Attestation Form is certainly to be seen but at the same time, we would further like to observe that in a case of such a trivial in nature where some dispute arose between the family members and parties settled and arrived to a compromise, the prosecution has never commenced and the matter is settled by themselves and the employer's object is to examine about involvement in the criminal case & to know about the criminal antecedents of the person to whom they are going to offer public employment and we may like to observe that from such material which is trivial in nature, if we take a strict view of the matter, we may brand them as criminals for the rest of their lives & which could never be the object & purport of the employer in seeking desired information from the candidates and can be counter productive in the society.

26. In our view, obtaining appointment by misrepresentation or suppression of material information indisputably, as held by the Apex Court, the service becomes liable to be terminated without taking fate of whether one has faced trial or the person concerned stood acquitted/discharged. Thus, what is the information desired by the employer and what has been disclosed by the candidate is the relevant question to be examined in the facts of each case.

27. In the instant case, the Id.Tribunal without taking note of the information, as desired by the employer and what has been disclosed by the petitioner, has not been taken note of and taking note of the order of termination dt. 14.08.2003 and further taking note of the fact that when his Attestation Form was sent to the local administration, it was informed that a criminal case is pending against him in the year 2013 which is factually incorrect and the criminal case was decided on the very date of filing of challan by the Id.Magistrate on the basis of compromise arrived at by the parties vide order dt. 14.08.2003 and the

Id.Tribunal has just gone ahead on the basis of judgment of the Apex Court in Davendra Kumar v. State of Uttaranchal & Others reported in , (2013) 9 SCC 363 and arrived to the conclusion that since the appointment was obtained by misrepresentation and that definitely amounts to suppression of material information, has no application and upheld the order of termination passed by the authorities which in our considered view is not legally sustainable in law.

28. Consequently, the instant writ petition succeeds and is hereby allowed. The order of the Id.Tribunal impugned dt. 17.03.2015 and so also the order of termination dt. 03.09.2013 are hereby quashed and set aside. The respondents are directed to reinstate the petitioner in service. However, he would be entitled to the notional benefits and would be entitled to the salary from the date of reinstatement in service. Compliance of the order be made within thirty days.

29. No costs.