
(2016) 03 JH CK 0005
In the Jharkhand High Court
Case No : L.P.A. No. 92 of 2015.

Yogendra Pandey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 2 JCR 275 : (2017) 1 JLJR 480

Hon'ble Judges : Virender Singh, C.J.;S. Chandrashekhar, J.

Bench : Division Bench

Advocate : Mahesh Tiwary and Baleshwar Yadav, Advocates, for the Appellant;
JC to Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J. - Appellant-writ petitioner (hereinafter to be referred as petitioner) when saddled with the order of termination from service dated 29.8.2003 challenged the said order before the appellate authority which was confirmed vide order dated 9.2.2004 and thereafter, the revision petition filed by him also met the same fate vide order dated 24.9.2007 which gave him the cause to knock at the door of writ Court through the medium of W.P.(S) No. 4579 of 2008, which now stands dismissed vide order dated 22.12.2014 handed down by learned Single Judge, aggrieved thereof he has preferred the instant Letters Patent Appeal, which is at admission stage, but taken on Board for its final consideration with the consent of learned counsel for both the sides.

2. Heard learned counsel for the parties and perused the documents on record.

3. The charge against petitioner as one finds from the charge memo served to him after he was appointed as Constable was that he suppressed the material fact of his involvement in a criminal case being Manjhiaon Police Station Case No. 15 of 2000 registered under Sections 147, 148, 323,325 and 307 of the Indian Penal Code. At the time of his initial appointment, when character of the petitioner was verified in terms of Rule 673(ga) of Police Manual, it surfaced that

he was involved in the aforesaid case.

4. During the inquiry proceeding, the petitioner took a plea that although he was named in the said case but he had no knowledge of the said case when declaration was made by him in the prescribed form at the time of appointment. Further ground taken was that he was released on bail on 5.1.2001(inadvertently mentioned as 25.1.2001 in the impugned order) which is much after his appointment, and thus there was no mis-representation or suppression of any material fact by the petitioner. The Inquiry Officer ultimately returned a finding against the petitioner, which resulted into passing of an order of termination of his service.

5. Mr. Mahesh Tiwary, learned counsel appearing for petitioner reiterated the same plea as taken by the petitioner before the Inquiry Officer and the writ Court. We, however, are not in agreement with the submissions advanced by Mr.Tiwary.

6. In the case of Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, reported in (2003) 3 SCC 437, the Hon"ble Supreme Court in para-12 observed 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 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 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."

7. Assuming for the sake of argument, although we are not accepting the plea of Mr. Tiwary that petitioner was not aware of the registration of the aforesaid criminal case at the time of initial appointment and, therefore, he possibly could not mention the said fact in the form submitted by him, the subsequent fact that he after 5-6 months when came to know about the registration of the case against him, himself surrendered in the court of learned C.J.M. on 5.1.2001 and obtained an order of bail on the ground that other co-accused were already granted the concession of bail. This all happened much prior to his involvement in the criminal case came to the notice of respondent authorities. At least, at this stage, petitioner had come to know of the fact that he is involved in a criminal case, still he did not inform the concerned authority of this material fact. This again amounts to suppression of the material facts. Not only that, it has also not been pleaded by the petitioner, during disciplinary proceeding, whether he is also from the family of other co-accused or not. If he is from the same family to which other co-accused belong, then the explanation tendered by him that he was not aware of the registration of the criminal case against him would not be sustainable. If the other co-accused are related to the petitioner or known to him, it cannot be accepted that those who were enlarged on bail prior to petitioner's surrender before the court had not disclosed this fact to him. The plea otherwise taken by the petitioner for the purpose of grant of bail is that other co-accused have already been granted the concession of bail.

8. Taking this case from any angle, the fact remains that the petitioner, in any case, had suppressed the material fact of his involvement in the criminal case before it came to the notice of the concerned authority while verifying his character. The petitioner thus, has no case on merits.

9. The appeal on hand stands dismissed accordingly.