(2009) 04 CAL CK 0005

Calcutta High Court

Case No: Writ Petition No. 3627 (W) of 2009

Uday Chandra Das		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: April 17, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 294, 302, 304, 323, 324

Citation: 113 CWN 615

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Pratik Dhar, Mr. Ritwik Pattanayak and Mr. Surya Sarathi Basu, for the Appellant; Mrinmoy Bhattacharya and Mr. G.S. Makker, for the Respondent

Final Decision: Dismissed

Judgement

Dipankar Datta, J.
The order dated 24th November, 2008 issued by the Deputy Inspector General of Police, Group C, Central Reserve Police Force, Durgapur terminating forthwith the service of the petitioner under the proviso to Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 is the subject matter of challenge in this petition.

2. Since the impugned order did not record any reason in support of the action taken, I had by my order dated 13th March, 2009 directed Mr. Bhattacharya, learned counsel for the respondents to place the records relevant to termination of the petitioner''s service.

3. The records (not in original but photocopies thereof) have since been placed for my consideration. Mr. Dhar, learned counsel for the petitioner has been given inspection thereof. He has not questioned the genuineness of the copy of the documents produced.

4. The petitioner''s service appears to have been terminated because while filling up the verification roll, he had allegedly suppressed vital facts which rendered him disqualified to continue in service of the Force. Mr. Bhattacharya referred to Question No. 12 (a) and (b) of the verification roll which the petitioner was required to answer correctly but did not attempt to answer. Question No. 12 (a) and (b) were to the following effect:

"12. (a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by, a Court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination selections, or debarred from taking any examination/rusticated by any University or any other education authority/Institution?

(b) Is any case pending against you in any Court of law, University or any other education authority/Institution at the time of filling up this Verification Roll?

If answer to (a) or (b) is ''Yes'' then give details of prosecution, detention fine, conviction, and punishment etc. and state about the case pending with the Court/University/education authority at the time of filling in this form."

5. It is noticed from the petition that the petitioner was arraigned as accused in Sessions Case No.186/2004, corresponding to Sessions Trial No.50/2005, u/s 302 of the Indian Penal Code. The Additional District and Sessions Judge, Fast Track Court, Katwa acquitted him vide judgment dated 12th October, 2006 on the ground that the prosecution had failed to prove the charge beyond all reasonable doubt. The verification roll was filled up by him more than a year later, on 17th, December, 2007 to be precise; yet, for some undisclosed reason, he did not give any answer to Question No.12 (a) though Mr. Dhar did not dispute that he had been arrested but released on bail later on.

6. However, Mr. Dhar submitted that even if the petitioner did not answer Question No.12 (a), that could not be a factor to disqualify him from continuing in service for there was no suppression of any material fact on his part. According to him, a distinction must be drawn between material suppression which might debar appointment and a suppression arising out of confusion as a result whereof the question goes unanswered. Elaborating on the point of confusion he urged that Question No. 12 (a) is a confusing question. It contains three blocks and it could be the requirement that the words "Have you ever been" are to be read before each block of words i.e. (i) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a Court of law for any offence? or (ii) Have you ever been debarred/ disqualified by any Public Service Commission from appearing at its examination selections? or (iii) Have you ever been debarred from taking any examination/rusticated by any University or any other education authority/Institution? The second and third blocks would not be relevant in the present case but he contended that the first block being relevant and read in the

manner he reads it, it would seem that information was sought in respect of a continuous process starting from arrest and culminating in conviction by a Court of law. To put it differently, he urged that the words "Have you ever been" are not required to be read each time before the words ''arrested'', ''prosecuted'', ''kept under detention or bound down/fined'', ''convicted by a Court of law for any offence''. Since the petitioner had not been convicted, he submitted that there was no occasion for the petitioner to say `Yes'' to Question No.12 (a) and by not answering the question and leaving the space for answer blank due to a confusion in his mind, he did not commit any wrong so as to lose public employment only on this ground.

7. In support of his submission, Mr. Dhar relied on the decision in T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre & Ors., reported in 1988 (supp) SCC 795. There, the Apex Court had directed appointment to be given to the appellant though he had not disclosed that during emergency, he had been convicted under the Defence of India Rules for shouting slogans.

8. Anticipating that the decision in Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, might be relied on against the petitioner''s claim, he submitted that there the candidate had answered the material question in the negative though on the date the verification roll had been filled up, a criminal case indeed was pending against him. Subsequent withdrawal of the same, it was held, would not enure to the benefit of the candidate having regard to the purpose of seeking information as per columns 12 and 13. Since the petitioner in the present case had been acquitted much prior to filling up the verification roll, he submitted that the decision in Kendriya Vidyalaya Sangathan (supra) ought not to stand in the way of granting relief to the petitioner.

9. He also referred to the decision in State of Haryana and Others Vs. Dinesh Kumar, wherein it was observed that when the question as to what constitutes ''arrest'' has for long engaged the attention of different High Courts as also the Apex Court, it may not be altogether unreasonable to expect a layman to construe that he had never been arrested on his appearing before the court and being granted bail immediately.

10. Based on the above submissions, he prayed that the impugned order bet set aside with a direction upon the respondents to treat the petitioner to be in continuous service of the Force.

11. Answering the submissions of Mr. Dhar, it was submitted by Mr. Bhattacharya that admittedly the petitioner did not disclose the factum of his arrest and prosecution before a court of law while filling up the said form, though it is a fact that subsequently he was acquitted. According to him Question No.12 (a) ought not to be read in the manner Mr. Dhar urges the Court to read it, and by withholding information relating to his arrest and prosecution, the petitioner had made himself

liable to be proceeded against for suppression of material factual information. In this connection, he referred to the warning in the form itself to the effect that "the furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification and is likely to render candidate unfit for employment under the Government". The petitioner, according to him, cannot evade responsibility by keeping the space for answering Question No. 12 (a) blank. He relied on the decision in Kendriya Vidyalaya Sangathan (supra) in support of his submission that the object of seeking information is not to find out the nature or gravity of the offence or the result of the criminal case ultimately; the same is sought for judging the character and antecedents of the appointee before directing his continuation in service. Thus, such object having been frustrated by the petitioner''s silence, he is not entitled to any relief and the petition is liable to be dismissed.

12. I have perused the relevant documents including the verification roll, wherein questions have been put both in Hindi as well as in English, and considered the submissions advanced by learned counsel for the parties.

13. Before I proceed to decide the contentious issue, the decisions of the Apex Court on the point of verification of character and antecedents vis-a-vis furnishing of false information leading to non-grant of offer of appointment/termination of service are required to be considered first.

14. The decision in Delhi Administration through its Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, appears to be the first one in a series of decisions of the Apex Court on such point where the importance of character and antecedents have been noticed. In paragraph 3 thereof it was held as follows:

3. ***** The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable u/s 304 IPC, u/s 324 read with section 34 IPC and u/s 324 IPC, he cannot be denied the right of appointment to the post under the State. 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 a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted."

15. The decision in Kendriya Vidyalaya Sangathan (supra) is the next one in line. Paragraphs 11 and 12 thereof, to the extent relevant, are quoted below:

"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, B.Ed and M.Ed 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 filling 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 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.*****"

(emphasis in original)

16. This decision was followed in A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, . Paragraph 7 thereof reads thus:

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 for, 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 bona fide 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 suppression veri and suggestio falsie 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 suppression veri and suggestio falsie 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 and contending that a person who indulges in such suppression veri and suggestio falsie and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

17. Soon thereafter, the decision in R. Radhakrishnan v. Director General of Police, reported in (2008)1 SCC 660 followed. In paragraphs 10 and 13, the Apex Court ruled as under:

"10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been

appointed.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

18. It may be noticed from this decision that the decision in T. S. Vasudavan Nair (supra) was relied on by counsel for the appointee. However, it was observed that the said decision had been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

19. The last decision in the series appears to be in the case of Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, . The Apex Court noticed most of its earlier decisions and ultimately, relying on the same, held as follows:

We are of the opinion that it was a deliberate attempt on the part of the respondent to withhold relevant information and it is this omission which has led to the termination of his service during the probation period. The question of any penal consequences or a reading of the principles of natural justice in such a situation cannot be countenanced. The mere fact that the respondent has been subsequently discharged in the criminal cases will not in any way absolve him of his liability to have filled in the attestation form correctly and accurately as on the date he had done so.

20. In all the decisions referred to above, the Apex Court ruled against those claiming appointment/continuation of service holding that it is the prerogative of the employer whether to appoint or not to appoint a candidate having regard to his antecedent record and if a decision is taken on the basis thereof adverse to the interest of the candidate, the same cannot be said to be unwarranted or arbitrary.

21. Secy., Deptt. of Home Secy., Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, is perhaps the only case where the Apex Court ruled in favour of the candidate holding, inter alia, as follows:

"8. In order to appreciate the rival submissions it is necessary to take note of column 12 of the attestation form and column 3 of the declaration. The relevant portions are quoted below:

''Column 12. - Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in Court of appeal or set aside by the appellate Court if appealed against.''

''Column 3. - I am fully aware that furnishing of false information or suppression of any actual information in the attestation form would be a disqualification and is likely to render me unfit for employment under the Government.''

9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a Court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate Court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a Court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression.
10. In Kendriya Vidyalaya Sangathan case the position was the reverse. There the candidate took the stand that as there was no conviction, his negative answers to columns 12 and 13 were not wrong. This Court did not accept the stand that requirement was conviction and not prosecution in view of the information required under columns 12 and 13 as quoted above. The requirement was ''prosecution'' and not ''conviction''. The logic has application here. The requirement in the present case is ''conviction'' and not ''prosecution''."

22. This being the law decided by the Apex Court let me now consider whether the petitioner is entitled to relief based on the eloquence of Mr. Dhar. At first blush, his contention that the words "Have you ever been" are required to be read before each of the three blocks appears to be attractive. However, on closer scrutiny, the contention is found to be without merit for more reason than one.

23. First, if information was sought for only in respect of the continuous process starting from arrest and culminating in conviction interspersed with prosecution, detention, etc. and Question 12 (a) was required to be answered as ''Yes'' only if conviction was ordered, as contended by him, there was no requirement to ascertain whether the candidate filling up the verification roll had ever been arrested or prosecuted or kept in detention prior to conviction or not. In that case, the question would have been framed as in the case of Chinnam Naidu (supra), via. ''Have you ever been convicted by a Court of law?'' Mere arrest and prosecution in such case would not have been sufficient to deny employment to the petitioner, as held there.

24. Secondly, I do not find reason to accept Mr. Dhar''s contention on perusal of the Hindi version of Question No. 12 (a) and (b), which in English format reads thus:

"12 (ka) Kya aap kabhi kisi apraadh ke liye giraftaar huye hai ya aap par mukkadama chalaya gaya hai ya aapko hirasaat me rakha gaya hai ya aapko zamanaat par chhora gaya hai ya kisi adalaat dwara aap par jurmaana kiya gaya hai ya doshsiddha kiya gaya hai ya aapko kisi lok seva aayog dwara oose kisi pariksha pravaran me banchit/apatra theheraaya gaya hai ya kya kisi vishwavidyalaya ya shiksha pradhikar sansthya dwara kisi pariksha se banchit kiya gaya/ nikala gaya hai?

(kha) ees satyapan chitthe ko bharte samay kya aapke virudhh kisi adalaat me ya vishwavidyalaya me ya kisi shiksha pradhikar/ sansthya me koi case chal raha hai?

Yadi (ka) ya (kha) ka uttar ''Ha'' ho to mukkadama, giraftari, hirasaat, jurmaana, doshsiddha danda aadi ka vyora de aur baataye ki yaha form bharte samay adalaat/ vishwavidyalaya/ shiksha pradhikari ke paas kis prakar ka case chaal raha hai?"

(''ya'' in bold font for emphasis)

25. The Hindi preposition ''ya'' after `giraftaar'', `mukkadama'', `hirasaat'', zamanaat, jurmaana'' and before `doshsiddha'' makes the position clear that these words are not to be read as part of an integrated whole but in segregation of one from the other. Assuming that the petitioner might have been under some confusion (though no such case has been made out in the petition), he could have consulted the Hindi version of Question No. 12 (a) for giving his answer instead of maintaining silence.

26. The decision in Dinesh Kumar (supra) was rendered in absolutely different facts and, therefore, is considered to be of no assistance to the petitioner.

27. Unfortunate it is that the petitioner, a Scheduled Caste candidate, even after being acquitted in the criminal case and even after securing public employment in these hard and competitive days finds himself dislodged. He has only himself to blame therefore. It is indeed intriguing as to why he did not to disclose in the verification roll that though he had been arrested and prosecuted, ultimately he was found not guilty and acquitted. The petitioner aspired to join the police force. He was required to have a spotless character. Even if he did not due to no fault of his, he ought to have been candid. By not disclosing facts, he has exposed a negative side of his character which has ultimately resulted in the impugned order being passed. The decisions of the Apex Court have consistently held that information is not sought in respect of the nature or gravity of the offence or the ultimate result of the case; such information is material only for judging the character and antecedents of the candidate for continuing him in service. Granting of equitable relief has also not been held to be permissible in such a case.

28. For the reasons aforesaid, no relief can be granted to the petitioner. The writ petition stands dismissed without order for costs.

Urgent photostat certified copy of this judgment if applied for may be furnished to the applicant within four days from date of putting in requisites therefore.