

(2010) 07 DEL CK 0389

Delhi High Court

Case No: Writ Petition (C.) No. 2417 of 2010

Municipal Corporation of Delhi

APPELLANT

Vs

Ram Niwas

RESPONDENT

Date of Decision: July 27, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 279, 325, 338, 34

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Gaurang Kanth and Biji Rajesh, for the Appellant; Manpreet Kaur, for the Respondent

Final Decision: Dismissed

Judgement

Mool Chand Garg, J.

On 22.07.1997 a show cause notice was issued to the respondent alleging as under:

Municipal Corporation of Delhi

(Central Establishment Department)

Town Hall, Delhi

No. HC (B)-III/CED(C)/97/17869

Dated 22.07.1997

Show Cause Notice

Whereas Shri Ram Niwas S/o Shri Dharam Singh, D/W driver was engaged on 28th April, 1989 in the Municipal Corporation of Delhi.

AND

Whereas while processing the matter relating to the regularization of service of the said Ram Niwas D/W driver, it was found that the said Shri Ram Niwas has deliberately and knowingly suppressed/concealed the facts, relating to his arrest in case No. 70/84 u/s 325/34 IPC, P.S. Najafgarh, Delhi and 31/92 u/s 279/338 IPC, P.S. Karol Bagh, Delhi in the column No. 11 of the Attestation Form.

AND

Whereas the matter was referred to the Competent Authority and it has been ordered to issue a show cause notice as to why the action under service regularizations should not be taken against him for such intentional and deliberate suppression of material facts which can render him unsuitable for public employment.

Shri Ram Niwas is hereby given an opportunity to make such representation as he may wish to make against the proposal.

If, Shri Ram Niwas fails to submit his representation within 15 days of the receipt of this memorandum, it will be presumed that he has no representation to make and appropriate orders will be passed without any further notice.

The receipt of this notice should be acknowledged by Shri Ram Niwas.

Sd/-

(J.S. Sindhu)

Director (Personnel)

Shri Ram Niwas

Desig. D/W Driver

Through: S.S./CSE/K.B. Zone

2. It is apparent from a reading of the show cause notice that what was alleged against the respondent was suppression of the fact that he concealed the facts relating to his arrest in case No. 70/84 and case No. 31/92. We note that it should read FIR No. 70/84 and FIR No. 31/92.

3. The respondent replied that he gave no false declaration because he was never arrested in the said two FIRs. However, he clarified the fact that he was an accused in both cases and that he was ultimately acquitted in both.

4. We may note the facts with reference to the respondent's engagement under the petitioner. The respondent was engaged as a daily wager driver with the petitioners since 13.04.1989.

5. In terms of appointment decision taken to regularize daily wagers on 18.08.1995 the respondent was considered for regularization on 10.01.1996. He was called

upon to furnish Attestation Form to the Deputy Commissioner of Police, Special Branch, New Delhi on 22.01.1996. One of the columns which was required to be filled up in the Attestation Form and which is relevant was Column No. 11, which reads as under:

11. Have you ever been arrested, any case pending against you, have you ever been detained, fined or ever been convicted by a Court of law or have you ever been restrained from appearing in any examination by UPSC/University/education organization.

The respondent replied to this column in the negative.

6. After a verification report was submitted by the Deputy Commissioner of Police, New Delhi on 09.02.1996 containing adverse remarks against the respondent a show cause notice was served upon the respondent giving him fifteen days" time to submit a reply on 23.06.1997. The contents of the show cause notice are as noted in para 1 above.

7. The respondent filed a reply to the show cause notice on 11.08.1997 wherein while admitting that on the date when he submitted an application for regularization, a case FIR No. 31/1992 under Sections 279/338 IPC registered at Police Station Karol Bagh was pending against him but stated that he was never arrested in that case. He denied that there is willful concealment of fact as noted in the show cause notice.

8. It was submitted by respondent before the Tribunal that in case FIR No. 31/1992 u/s 279/338 IPC he was never arrested and that he had informed all the relevant facts to his superior officer. His remarks in the relevant log register on the date of the accident itself i.e. on 18.02.1992 that the vehicle in question was impounded by the Police and this fact was also intimated by him. It was thus submitted that there was no occasion for the respondent to hide or suppress any fact with respect to the said case.

9. Regarding the second matter, it was submitted that FIR No. 70/1984 u/s 325/34 IPC was registered against him on the basis of false report submitted by ASI/RR and in any case he was acquitted by the court of law in the said FIR on 02.12.1993 i.e. two years prior to the submission of Attestation Form and it is thus submitted that as on the date of filing of Attestation Form no case was pending against him. In any event, he was not arrested in case FIR No. 31/1992.

10. The petitioners, however, discontinued the services of the respondent vide order dated 27.04.1998 holding that the respondent was guilty of suppression of the concealment of material fact about his arrest in case FIR No. 70/1984 u/s 325/34 IPC at P.S. Nazafgarh, Delhi as well as in FIR No. 31/1992 registered at P.S. Karol Bagh, Delhi while filling up column No. 11 of the attestation form.

11. Aggrieved by the aforesaid, the respondent filed a writ petition before this Court challenging the order of discontinuing his services which was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") and was registered as TA No. 955/2009.

12. The Tribunal taking a view that it was not a case of misrepresentation and concealment of facts and was a case of mistaken impression. Relying upon the Judgment of the Apex Court in the case of [State of Haryana and Others Vs. Dinesh Kumar](#), and the Judgment delivered in the case of Secretary. Deptt. of Home Secy., A.P. and Ors. v. B. Chinnam Naidu 2005 SCC (L and S) 323 allowed the T.A. and directed the petitioners to re-engage the respondent in service and also consider him for regularization from the date others have been accorded the same.

13. Before us, the petitioners have again put forth the similar arguments, which were also addressed before the Tribunal. It has been submitted by them that it is apparent that in this case the respondent willfully suppressed material facts with regard to his arrest and pendency of the two FIRs as stated above.

14. From the reply filed by the respondent it is apparent that the respondent, who was in the service of the petitioners since 13.04.1989 was acquitted in both the cases referred to above and was not arrested in the understanding of the respondent in case FIR No. 31/1992 u/s 279/338 IPC, which is a bailable offence and the factum of the accident was well within the notice of the petitioners and in any event, he stood acquitted in the aforesaid case as well as in the other case under long ago.

15. In the case of [Vidya Charan Shukla Vs. Purshottam Lal Kaushik](#), dealing with the fact of acquittal in a criminal case the Supreme Court observed:

An order of acquittal particularly one passed on merits wipes off the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity. As Kelson puts it, "It is a true annulment, an annulment with the retroactive force." So when the conviction (for the offence) was quashed by the High Court (in Appeal)... "it killed the conviction not then, but performed the formal obsequies of the order which had died at birth".

16. It is apparent that the show cause notice was limited only to not informing that he was arrested, a fact which was not correct since the respondent was never arrested and thus with respect to the show cause notice it cannot be said that the respondent did a wrong.

17. Treating it to be a case that the intention under the show cause notice was to allege deliberate withholding facts with respect to what was required to be responded to column 11, suffice would it be to state that the respondent being acquitted in both the cases which we note pertained to offences not involving a moral turpitude, considering the fact that the respondent has worked as a driver

since 13.04.1989 and his service record is clear, we are of the opinion that instant case calls for no interference in exercise of our power under Article 226 of the Constitution of India which permits us to decline relief on grounds of justice and equity.

18. The writ petition is dismissed.

19. No costs.

C.M. No. 4089/2010

Dismissed as infructuous.