

2022 LiveLaw (SC) 300

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

AJAY RASTOGI; ABHAY S. OKA, JJ.

MARCH 02, 2022

CIVIL APPEAL NO(S). 1964 OF 2022 (Arising out of SLP(Civil) No(s). 871 of 2017)

UMESH CHANDRA YADAV

VERSUS

THE INSPECTOR GENERAL AND CHIEF SECURITY COMMISSIONER, R.P.F., NORTHERN RAILWAY, NEW DELHI & OTHERS

Service Law - Suppression of material information - The candidate who intend to participate in the selection process is required to furnish correct information relating to his character and antecedents in the verification/attestation form before or after his induction into service - The person who has suppressed the material information, cannot claim unfettered right of seeking appointment or continuity in service but, at the same time, he has a right not to be dealt with arbitrarily and power has to be exercised in reasonable manner with objectivity having due regard to the facts of case on hand. The yardstick which has to be applied always depends upon the nature of post, nature of duties, impact of suppression on suitability has to be considered by the competent authority considering post/nature of duties/services and power has to be exercised on due diligence of various aspects at the given time and no hard and fast rule of thumb can be laid down in this regard. (Para 15)

Summary - Appeal against the High Court judgment which upheld the cancellation of appointment of the appellant on the premise of non-disclosure of criminal case being instituted against him in the year 1997, when he was a juvenile - Allowed - the appellant was a juvenile when a criminal case was registered against him and was also a juvenile when the order of discharge was passed - This was indisputedly a special circumstance indeed which was not taken into consideration by the authority while passing the order of cancellation of his appointment - The seriatim of facts cumulatively indicate that the nature of information which was not disclosed by the appellant, in any manner, could be considered to be a suppression of material information.

(Arising out of impugned final judgment and order dated 06-05-2016 in SA D No. 348/2016 passed by the High Court Of Judicature At Allahabad)

For Petitioner(s) Ms. Anushree Prashit Kapadia, AOR(AC) Ms. Priyanka Rathi, Adv. Mr. Vandit Mishra, Adv. Mr. Suraj, Adv. M/S. Anuradha & Associates, AOR

For Respondent(s) Ms. Madhavi G.Divan, ASG (NP) Mr. Ajit Kumar Sinha, Sr.Adv.(NP) Mr. Deepak Goel, Adv. Mr. Surendra Kumar Gupta, Adv. Ms. Nidhi Khanna, Adv. Ms. Priya Mishra, Adv. Mr. Nitansh Jaiswal, Adv. Mr. M.K.Maroria, AOR

J U D G M E N T

Rastogi, J.

Leave granted.

2. The appellant was indisputedly a juvenile when a criminal case was instituted against him on 25th October, 1997 for offences under Sections 465, 468 and 471 IPC with an allegation that he had fraudulently prepared a forged caste certificate. After the chargesheet came to be filed against him, he moved an application seeking discharge and the learned ACJM recorded a categorical finding that prosecution has failed to collect sufficient evidence against the appellant and he was discharged from the alleged offences by an Order dated 15th December, 2001.

3. After almost a decade thereafter, the advertisement came to be published by the respondents dated 23rd February, 2011 for holding recruitment and selection of constables in Railway Protection Force. In pursuance to the advertisement, selection process was initiated in June 2014 and after undergoing the process of selection, appellant was finally selected and sent for training to Police Recruit Training Centre, Hoshiarpur by letter dated 7th October, 2014. Pursuant thereto, he joined the training center on 1st November 2014. The appellant was shocked when he was served with the Order cancelling his appointment by order dated 19th February, 2015 on the premise of nondisclosure of criminal case being instituted against him in the year 1997.

4. The Order dated 19th February, 2015 regarding cancellation of his appointment came to be challenged by filing writ petition under Article 226 of the Constitution before the High Court of Allahabad.

5. The learned Single Judge, after taking into consideration the material available on record and also the fact that he was a juvenile when the criminal case was instituted against him in the year 1997 and the fact that the learned trial Judge had passed the order of discharge dated 15th December, 2001 arrived at the conclusion that it was not the case of suppression of material information which may deprive him of his appointment and placing reliance on the judgment of this Court in **Ram Kumar Vs. State of Uttar Pradesh and Others, 2011 (14) SCC 709** set aside the order of cancellation dated 19th February, 2015 with a direction to reconsider the case of the appellant afresh in light of the observations made under the judgment dated 20th January, 2016.

6. The order passed by the learned Single Judge dated 20th January, 2016 was the subject matter of challenge in appeal filed at the instance of respondents. The Division

Bench of the High Court proceeded on a straight jacket formula on the premise that since the fact of criminal case once instituted against him is not disclosed, that appears to be the material suppression and in consequence thereof, while setting aside the judgment of the learned Single Judge, allowed the appeal by an Order dated 6th May, 2016 that became the subject matter of challenge in appeal before us.

7. Learned counsel for the appellant submits that this fact is not disputed that the date of birth of the appellant which is recorded in the school records is 15th July, 1985 and on 25th October 1997, when the criminal case was instituted against him, he was 12 years of age. No such charges, at all, could have been levelled against the juvenile of an allegation that he had fraudulently prepared a forged caste certificate and in mechanical process, the chargesheet came to be filed but the learned trial Judge on examination of the record, discharged the appellant by an Order dated 15th December, 2001 after recording a categorical finding that there was no evidence available on record on the basis of which the charge could be prima facie proved against the appellant for either of the offences levelled against him and after a decade, the process of selection was initiated by the respondents pursuant to an advertisement dated 23rd February, 2011 wherein he was required to indicate by filing an attestation form under Clause 12 as to whether he was ever been prosecuted or arrested or detained.

8. In the instant facts and circumstances, when there was an order of discharge passed by the Court of competent jurisdiction neither he was said to be prosecuted nor he was arrested and, thus, the information which was tendered by him in reference to clause 12 of the attestation form filled by him, was not a case of misrepresentation or of concealment which led to the cancellation of his appointment by the authorities by an Order dated 19th February, 2015.

9. Learned counsel further submits that the Division bench has failed to look into the material aspect of the matter and the finding which has been recorded of suppression or concealment by the appellant, which he had intentionally not disclosed in the attestation form, is not supported by the material on record and unsustainable in law. In support of submissions, learned counsel has placed reliance on the judgment of this Court in ***Avtar Singh Vs. Union of India and Others, 2016 (8) SCC 471.***

10. Per contra, learned counsel for the respondents, while supporting the finding recorded by the Division Bench, submits that there is material concealment made by the appellant by not disclosing the correct facts in his attestation form and particularly, in clause 12 where he was specifically asked to indicate as to whether he has ever been arrested or prosecuted and once this fact stands established from the record that a criminal case was instituted against him which he had failed to disclose, and that been the basis for passing the order of cancellation of his order of appointment

by an order dated 19th February, 2015, no error was committed by the Division Bench of the High Court in the impugned judgment which calls for interference of this Court.

11. We have heard learned counsel for the parties and with their assistance perused the material available on record.

12. It is not disputed that the date of birth of the appellant in the school records is 15th July, 1985 and he was a juvenile of 12 years when a criminal complaint was instituted against him on 25th October, 1997. The allegation against him was that he had fraudulently prepared forged caste certificate. How it could have been possible for a juvenile to prepare a fraudulent caste certificate. At the stage after the chargesheet came to be filed, the learned trial Judge, at the very threshold, after recording a finding that there was no evidence available on record which could attract the alleged offence for which the complaint had been instituted discharged the appellant by an order dated 15th December, 2001 and the criminal complaint against him at the given point of time, stood finally closed for all practical purposes.

13. The attestation form filled by the appellant and clause 12 in particular and relevant for the purpose is reproduced as under:

ATTESTATION FORM

WARNING

Umesh Chandra Yadav 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, arrested, prosecuted, bond down, fined, convicted, debarred acquitted 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.

1.....

2.

.....

12.(a) Have you ever been arrested? Yes/No

(b) Have you ever been prosecuted? Yes/No

(c) have you ever been kept under detention? Yes/No

(d) have you ever been bound down? Yes/No

(e) Have you ever been fined by a Court of law? Yes/No

14. Later, when the character and antecedent verification certificate was made by the respondents, the District Magistrate, Gorakhpur by its letter dated 30th December,

2014 informed that Crime No. 586/98 at one stage was registered against the appellant but he was discharged by the learned Court of competent jurisdiction by an order dated 15th December, 2001. Still the authorities, without taking note of the material on record, took a decision for cancellation of the candidature of the appellant by order dated 19th February, 2015 that became a subject matter of challenge at the instance of the appellant.

15. This cannot be disputed that the candidate who intend to participate in the selection process is required to furnish correct information relating to his character and antecedents in the verification/attestation form before or after his induction into service. At the same time, it is also true that the person who has suppressed the material information, cannot claim unfettered right of seeking appointment or continuity in service but, at the same time, he has a right not to be dealt with arbitrarily and power has to be exercised in reasonable manner with objectivity having due regard to the facts of case on hand. The yardstick which has to be applied always depends upon the nature of post, nature of duties, impact of suppression on suitability has to be considered by the competent authority considering post/nature of duties/services and power has to be exercised on due diligence of various aspects at the given time and no hard and fast rule of thumb can be laid down in this regard.

16. Earlier there been conflict of opinion in the various decisions of the Division Bench of this Court, the three Judge Bench of this Court in the judgment reported in **Avtar Singh**(supra), after noticing various decisions of this Court and after detailed discussions, summarized the conclusions in para 38, the relevant part is reproduced as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit

for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

17. In the instant case, the appellant was a juvenile when a criminal case was registered against him on 25th October, 1997 and was also a juvenile when the order of discharge was passed by the learned trial Judge on 15th December, 2001. This was indisputedly a special circumstance indeed which was not taken into consideration by the authority while passing the order of cancellation of his appointment by order dated 19th February 2015.

18. The Division Bench, in the impugned judgment, has proceeded mechanically, without taking note of the fact that a juvenile could not have been entangled in a criminal complaint instituted against him in October 1997 and this fact remained

unnoticed by the Division Bench that he was a juvenile when the order of discharge was passed on 15th December, 2001 and almost a decade thereafter, the process of selection came to be initiated by the respondents pursuant to an advertisement dated 23rd February 2011, the seriatim of facts cumulatively indicate that the nature of information which was not disclosed by the appellant, in any manner, could be considered to be a suppression of material information not being bona fide disclosed in clause 12 of attestation form filled by him. In this regard, the finding which has been recorded by the Division Bench in holding that there was a suppression of material information is unsustainable and deserves to be set aside.

19. At the first blush, we were not inclined to grant the appellant consequential benefits as he had not worked after his services came to be terminated on account of cancellation of appointment dated 19th February 2015, but in the present facts and circumstances, when the appellant was never at fault and no one has afforded him a reasonable opportunity to justify and, at the same time, the authorities have also failed to consider that the appellant was a juvenile on the date when the complaint was made and the date when he was discharged by the learned trial Judge by an order dated 15th December, 2001, these peculiar facts were not noticed by the authority while exercising its judicious discretion as to whether the so called alleged suppression at all disentitle the appellant from continuation of service.

20. Consequently, the appeal succeeds and is hereby allowed. The orders passed by the authority cancelling the order of appointment dated 19th February, 2015, so also the order of the Division Bench of the High Court under the judgment impugned dated 6th May, 2016 are hereby quashed and set aside. The respondents are directed to reinstate the appellant in service with all consequential benefits including salary, seniority, etc. Necessary orders shall be passed by the respondents for his reinstatement within a period of one month and consequential benefits be paid to the appellant within a period of two months. No costs.

21. Pending application(s), if any, stand disposed of.