

CASE DETAILS

STATE OF WEST BENGAL & ORS.

v.

MITUL KUMAR JANA

(Civil Appeal No. 8510 of 2011)

AUGUST 22, 2023

[J. K. MAHESHWARI AND K. V. VISWANATHAN, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court erred in allowing the writ petition filed by the respondent, setting aside the order passed by the Administrative Tribunal and directing the appointment of the respondent as constable in the West Bengal police force.

Service Law – Suppression of material information – When not:

Held: Information sought in the verification roll was regarding arrest, detention and conviction by a Court in any offence – In reply to the information asked the respondent gave the answer as “no” – As per the contents of the information sought and as per the answer given by the respondent, he was not required to furnish information regarding pending criminal case – Therefore, supply of such information by the respondent does not fall within the expression ‘suppression of material information’ – Tribunal and the High Court rightly found that it is not a case of suppression of material information – Further, criminal case registered against the respondent were for petty offences – The allegations were neither of heinous/serious offences, nor related to an offence involving moral turpitude – Respondent was honourably acquitted – Considering the subsequent development of the clean acquittal of respondent, it requires consideration objectively by the authority, about the question of fitness, ignoring the issue of suppressing the information – High Court could not have directed the issuance of the letter of appointment and taken away the said discretion of the employer – Order modified – Appellant to consider the case of the respondent and issue order of appointment

to the post of constable in West Bengal Police Force, exercising the discretion judiciously in assessing the suitability and antecedents.[Paras 10, 12, 14 and 15]

Service Law – Pending criminal case, information furnished – Acquittal – Discretion of the employer:

Held: Even in case where the information regarding pending criminal case is truthfully furnished and on acquittal therein, an employer has the discretion to consider the antecedents while issuing the letter of appointment.[Para 14]

LIST OF CITATIONS AND OTHER REFERENCES

Dept. of Home Secy., A.P. and Others v. B. Chinnam Naidu (2005) 2 SCC 746 : [2005] 1 SCR 1147; *Avtar Singh v. Union of India and Others* (2016) 8 SCC 471 : [2016] 7 SCR 445 – relied on.

R. Radhakrishnan v. Director General of Police & Others (2008) 1 SCC 660 : [2007] 11 SCR 456; *Secy., Kendriya Vidyalaya Sangathan & Others v. Ram Ratan Yadav* (2003) 3 SCC 437 : [2003] 2 SCR 361 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8510 of 2011.

From the Judgment and Order dated 16.12.2010 of the High Court of Calcutta in WPST No. 600 of 2010.

Appearances:

Soumya Chakraborty, Sr. Adv., Ms. Astha Sharma, Sanjeev Kaushik, Advs. for the Appellants.

Abhijit Kumar Chattopadhyay, Ms. Swati, Sandeep Lamba, Indresh Chandra Sonkar, Bhaskar Deb, Sayantan Talapatra, Ram Ekbal Roy, Rameshwar Prasad Goyal, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****J. K. MAHESHWARI, J.**

1. This appeal arises out of the judgement of the High Court of Judicature at Calcutta, dated 16.12.2010, passed in ‘WPST No. 600 of 2010’ filed by respondent Mitul Kumar Jana. The High Court by the said judgment allowed the writ and set-aside the order dated 23.11.2010 passed by the West Bengal Administrative Tribunal (for short “**Tribunal**”) and directed the appellant no. 2, i.e., the Superintendent of Police to appoint the respondent as constable in the West Bengal police force.

2. Succinctly stated, facts of this case are that the respondent appeared before appellant no. 2 – Superintendent of Police, South 24 Parganas, for measurement, physical efficiency test and for interview on 06.09.2008, 09.09.2008 and 10.09.2008 respectively. He was declared fit in the said selection, and placed in the merit list of the constables in the West Bengal Police Force. Pursuant thereto, respondent was supplied with the ‘Police Verification Roll’ and asked to fill-up the same in his own handwriting. He deposited the same with the appointing authority within the time schedule. As per the police verification report sent by the local Police Station, it was alleged that the respondent was implicated in a criminal case bearing Case No. 124 of 2007, dated 03.08.2007, registered at Kakdwip Police Station. After investigation, charge-sheet was filed on 31.08.2007, whereafter, the trial was pending at the time of his interview and physical test. The police report further indicated that the respondent was granted anticipatory bail on 16.08.2007 and regular bail on 27.08.2007.

3. Upon scrutinizing the said verification form, the authority formed an opinion that the respondent had suppressed material information regarding his involvement in a pending criminal case. The verification roll submitted by the respondent was sent to the Intelligence Branch, West Bengal for opinion. Vide Memo no. 3875/S – 503-08/S.A. – II/VR, dated 09.02.2009, the Deputy Inspector General of Police, Intelligence Branch had informed that the respondent has suppressed the fact of his involvement in a criminal case and as the case against the respondent is sub-judice, no opinion for his suitability could be given at this stage. In the given facts, order of

appointment was not issued by the appellant. However, the respondent filed Original Application No. 343 of 2010 before the Tribunal seeking directions to issue the letter of appointment on account of his selection for the post of constable in the West Bengal Police Force. The Authorities filed their reply and contended that the respondent was involved in a criminal case and despite having knowledge of the same, he had not disclosed the same in the verification roll and suppressed the information about the pending criminal case, hence, he is not suitable for the appointment.

4. The Tribunal vide order dated 23.11.2010, disposed-off the Original Application and was of the opinion that it is not a case of suppression of information by the respondent. It was said that, without his acquittal in the pending criminal case, direction to issue the letter of appointment cannot be recommended and observed that, in case the respondent is acquitted, his case may be considered by the appellant as per rules.

5. Being aggrieved, the respondent preferred Writ Petition before the High Court at Calcutta and prayed for appropriate directions. The Court in the impugned judgement referred to column no. 12 of the verification roll and opined that the information sought in the said column was of arrest, detention and conviction. As per details asked in the said column, information regarding pending criminal case was not required to be furnished. Therefore, the High Court concurred with the finding of the Tribunal on the issue of suppression of material information and was of the opinion that because the respondent has not yet been held guilty in the criminal case by the competent Court, therefore, presumption of innocence in his favour still remains. Hence, the appellant was directed to issue the letter of appointment subject to final outcome of the pending criminal case. Being aggrieved by the said order, this appeal has been filed by the State of West Bengal.

6. Learned counsel for the appellants submits that High Court committed an error in directing appointment of the respondent particularly during the pendency of a criminal case against him. The said direction would affect the morale of the police force and undermine the public faith in it. Emphasizing the object of furnishing the information in the verification roll, it was urged that the character of a person to judge his suitability to the post in public employment is a necessary concomitant to avoid defacing of the Police Department. In support of the said contention, reliance is placed

on a judgement in the case of "**R. Radhakrishnan Vs. Director General of Police & Others, 2008 (1) SCC 660**" to urge that even on acquittal of a candidate, he can still be denied appointment on account of suppression of material information regarding pendency of a criminal case.

7. Per contra, learned counsel for the respondent referring to the details of column 12 of the verification roll, submits that the information sought was vague and considering the nature of the information asked, the respondent was not required to furnish the details of the pending criminal case. The Tribunal and the High Court have appreciated the said issue and rightly recorded the finding that it is not a case of suppression of material information, and the High Court was right in directing the appellant to issue the letter of appointment subject to the decision in the pending criminal case. He further contended that, in the said criminal case, respondent has been honourably acquitted. Therefore, there is no impediment before the appellants to carry out such directions. Placing reliance on the judgement of "**Secy., Deptt. of Home Secy., A.P. and Others Vs. B. Chinnam Naidu, (2005) 2 SCC 746**", it is urged that since specific requirement to mention about the pending criminal case was not sought in the verification roll, the respondent cannot be held at fault for suppression of material information.

8. Having heard learned counsel for the parties and on perusal of the material placed, it is not in dispute that vide judgement dated 04.06.2012, the learned Judicial Magistrate (First Class), Kakdwip District, South 24 Parganas, acquitted the respondent from the charges of Sections 147/149/447/323/506 of IPC in Criminal Case No. 362/2004. After appreciating the evidence as brought on record, the Court found that the prosecution has hopelessly failed to bring home the guilt and prove the charges against the respondent. On account of acquittal of the accused persons, the objection regarding pendency of criminal case no more subsists. In addition, on perusal of the prosecution story of the said case, the cause of dispute was of egress and ingress to a passage for which the order of attachment was passed by the Sub-Divisional Magistrate. As alleged, the accused persons started raising fencing which was opposed by the complainant. For the said incident, FIR against eight accused persons including the respondent was registered. In the said judgement, the name of the respondent was shown as "Mridul Jana" and not his correct name, i.e.,

“Mitul Kumar Jana”. Be that as it may, as discussed above, the prosecution has miserably failed to prove the charges. In our considered view, the said allegations do not constitute any offence affecting moral turpitude and shall not cause any impediment for public employment to a candidate who got selected by the due process of law.

9. In the facts of the case, the other objection raised by the appellant is related to suppression of material information in the verification roll. For analysing the sustainability of the said objection, the language used to ask information in Column No. 12 of verification roll may be relevant and for ready reference, it is reproduced as under;

“Have you been arrested, detained or convicted by a court of any offence if the answer is ‘yes’ the full particulars of the Arrest or detention or conviction and the sentence should be given.

Answer: No”

10. Bare perusal of the details of the information sought in the above column indicates that, it was regarding arrest, detention and conviction by a Court in any offence. In case the answer was ‘yes’, then full particulars of the arrest or detention or conviction and sentence were required to be furnished. In case the answer was in the negative, no other particulars were required to be furnished. In the case on hand, in reply to the information asked the respondent gave the answer as “no”. As per the contents of the information sought and as per the answer given by the respondent, he is not required to furnish information regarding pending criminal case. Therefore, supply of such information by the respondent does not fall within the expression ‘suppression of material information’. This Court had an occasion to deal with the similar issue in the case of **B. Chinnam Naidu (supra)**. The relevant paragraph of the said judgment is reproduced herein below –

“9. ...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.”

11. In the above case, the Court has distinguished the judgment of “*Kendriya Vidyalaya Sangathan & Others Vs. Ram Ratan Yadav, (2003) 3 SCC 437*”, on the pretext that the details of information sought in the verification roll in said case was different. In the facts of the present case, the information sought from the respondent in the verification form was vague. Similar was the position in the case of *Chinnam Naidu (supra)*. Therefore, the said judgment squarely applies in the facts of this case. Though in the said case, finding regarding desirability for appointment of a person in government service was not decided because it was not the subject matter.

12. In view of the discussion made herein above, the opinion given by the Deputy Inspector General of Police, Intelligence Branch, and the stand taken by the Department before the Tribunal and the High Court regarding suppression of material information by the respondent cannot be countenanced. The Tribunal and the High Court have rightly recorded the finding that it is not a case of suppression of material information and we affirm such finding. Simultaneously, the criminal case registered against the respondent were for petty offences. The allegations in the said case were neither of heinous/serious offences, nor related to an offence involving moral turpitude. In the said case, the respondent was honourably acquitted because the prosecution had miserably failed to prove the charges. Hence, in our view, *prima-facie* there appears no impediment to issue the order of appointment in favour of the respondent.

13. It is relevant to state here that on the issues relating to suppression of information and/or submitting false information and as to the question of having been arrested or regarding pendency of a criminal case and effect of conviction/acquittal in such criminal cases, there were conflicting opinions of Division Bench judgments of this Court. On making a reference, the said controversy has been decided in the case of “*Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471*”. The Court after considering various judgments has taken a holistic approach and summarised certain yardsticks in Paragraph 38, which are reproduced as thus:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize 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 recourse 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.”

14. As per the said case, para 38.10 comes to the aid of the respondent, because in this case, the information sought in verification roll was not specific and vague in nature. The respondent has specifically disclosed the

information which was required to be furnished. Considering the subsequent development of the clean acquittal of respondent for the petty offences, it requires consideration objectively by the authority, about the question of fitness, ignoring the issue of suppressing the information. Even in case where the information regarding pending criminal case is truthfully furnished and on acquittal therein, an employer has the discretion to consider the antecedents while issuing the letter of appointment. The High Court could not have directed the issuance of the letter of appointment as per para 38.5 of the case of *Avtar Singh (supra)*. In our view, the issuance of order of appointment is required to be left on the discretion of the employer and the High Court ought not to have taken away the said discretion. Accordingly, we modify the order passed by the High Court.

15. In view of the discussion made herein above, we confirm the findings of the Tribunal and the High Court on the issue of suppression of material information. As the respondent was not involved in heinous/serious offence or any offence involving moral turpitude, and the fact that in the said criminal case he has been honourably acquitted, therefore, modifying the order of the High Court, we direct the appellant to consider the case of the respondent and issue order of appointment to the post of constable in West Bengal Police Force within a period of four weeks from the date of passing of this order. Needless to observe that the authorities shall take note of the discussion made herein above and shall exercise their discretion judiciously in assessing the suitability and antecedents of the prospective candidate. It is made further clear that in the event of issuance of the order of appointment, the respondent would only be entitled to notional benefits including continuity in service and pay fixation at par with other similarly situated persons and he would not be entitled for salary and back wages till the date of his appointment.

16. Accordingly, this appeal stands disposed-off in the above terms. Pending application(s), if any, shall also stand disposed-off. No order as to costs.