

Daya Sankar Yadav vs Union Of India & Ors on 24 November, 2010

Author: R.V.Raveendran

Bench: H L Gokhale, R V Raveendran

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9913 OF 2010
[Arising out of SLP [C] No.16989 of 2006]

Daya Shankar Yadav

... Appellant

Vs.

Union of India & Ors.

... Respondents

JUDGMENT

R.V.RAVEENDRAN, J.

Leave granted.

2. The appellant was selected and appointed as a Constable in the Central Reserve Police Force on 12.6.2003. Rule 14(b) of the Central Reserve Police Force Rules, 1955 required every newly recruited employee to furnish factual information about himself. In view of it, the appellant was required to fill up and sign a Verification Roll (for short 'the form'), which he did on 6.7.2004. The form starts with the following warnings :

"1. 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.

2. If detained, convicted, debarred 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 Verification Roll 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 the false information has been furnished or that there has been suppression of any factual information in the Verification Roll comes to notice at any time during the service of a person, his services would be liable to be terminated."

Queries 12(a) and (b) in the form relating to the antecedents of the employee are extracted below :

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"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/restricted by any University or any other education authority/Institution ?

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(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."

The appellant answered both these questions in the negative by writing `Nahin' (i.e. `no'). The form was filled in Hindi, a language understood by the appellant.

3. The said form was referred to the Police for verification, who reported that Crime case No.67/1997 had been registered against the appellant in the Police Station, Bahariya, for offences punishable under sections 323/504/506 IPC and that the court had however discharged him on 17.1.2001, after trial.

4. In view of the said report, the fifth respondent (Addl. Dy.IG,CRPF, Allahabad) issued a notice dated 27.5.2005 alleging that the appellant had given false information in the verification form by concealing facts and called upon him to show cause why his services should not be terminated. The appellant sent a reply dated 4.6.2005 stating that the relevant clause in the verification form required him to disclose whether any criminal case registered against him was pending before any court and whether he had been convicted by any court; and that as he was discharged in the criminal case and as no case was pending against him before any court or authority, and as he was never sent to jail, he had answered the relevant query in the negative and that he had not misrepresented or suppressed any fact nor given false information.

5. By order dated 25.6.2005, the fifth respondent terminated the services of the appellant under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The departmental appeal filed by the appellant was dismissed by the Inspector General of Police, CRPF, Lucknow (third respondent herein), by order dated 23.9.2005. Thereafter the appellant filed a writ petition challenging the order of termination which was dismissed by the High Court by the impugned order dated 3.8.2006. The High Court held that the appellant ought to have answered the query 12(a) as "yes" and furnished the particulars of the criminal prosecution even if he had been acquitted in the criminal case. It was of the view that as he was prosecuted in a criminal case, appellant's answer to query 12(a) as 'no' amounted to concealment of relevant information and therefore his termination from service was justified. The said order is challenged in this appeal by special leave. The question is whether termination of the service of appellant was justified.

The legal position

6. This Court has considered the consequences of making a false statement or suppressing material information in verification forms in several decisions. In *Delhi Administration, v. Sushil Kumar* - 1996 (11) SCC 605, this Court stressed 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.

6.1) In *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* - 2003 (3) SCC 437, this Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction etc. in the verification form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

6.2) In *R. Radhakrishnan vs. Director General of Police* - 2008 (1) SCC 660, this Court considered the case of a candidate for appointment as a Fireman, furnishing wrong information about his

involvement in a criminal case, though he was acquitted. This Court held that the standards 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. As the application for appointment and the verification roll were both in Hindi as also in English, this Court concluded that the candidate knew and understood the implications of his statement or omission to disclose a vital information, and by not disclosing about his involvement in a criminal case, the candidate is preventing the authority from verifying his character as also suitability of the appointment. This Court therefore refused to exercise its equitable jurisdiction in favour of such a candidate who had suppressed material facts. 6.3. In *Union of India vs. Bipad Bhanjan Gayen - 2008 (11) SCC 314*, this Court dealt with the validity of the termination of service of respondent therein who had been selected for training as a constable in a Railway Protection Force. This Court observed thus :

"9. It is the admitted case that the respondent was still under probation at the time his services had been terminated. It is also apparent from the record that the respondent had been given appointment on probation subject to verification of the facts given in the attestation form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the appellant was at liberty to dispense with the services of the respondent as the question of any stigma and penal consequences at this stage would not arise.

10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes a higher level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated."

7. On the other hand, where the non-furnishing of material information is due to absence of clarifying the question or due to the candidate not being aware of the said information, it cannot be said that he had suppressed material information or made false statements.

7.1) In *Secretary, Department of Home, A.P. vs. B. Chinnam Naidu - 2005 (2) SCC 746*, this Court after reiterating that suppression of material information or giving false information in attestation form would result in the candidate being discontinued from service, cautioned that the court will have to examine in each case, whether a candidate has suppressed material information or has given false information in the attestation form; and where the candidate is required to state as to whether he has been convicted by a criminal court, if the candidate answered in the negative, the fact that a criminal case was pending as on that date, would not amount to misrepresentation. This Court held :

"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.

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'.

The question whether he was a desirable person to be appointed in government service was not the subject-matter of adjudication and the Tribunal was not justified in recording any finding in that regard. Whether a person is fit to be appointed or not is a matter within the special domain of the government."

7.2) In *State of Haryana v. Dinesh Kumar* - 2008 (3) SCC 222, this Court considered the case of an employee who had answered "No" to a query whether he was arrested. It was found that subsequent to registration of FIR, he had voluntarily appeared before the magistrate, without being taken into formal custody and was granted bail and was ultimately acquitted. It was held that in such circumstances, it was not altogether unreasonable to expect a layman to construe that he had never been arrested, even though the legal position may be otherwise. It was held that in such circumstances, even if what transpired may technically amount to arrest, the benefit of a mistaken impression rather than the consequences of a deliberate and willful misrepresentation and concealment of facts, should be extended to the employee.

8. Rule 14 of the Central Reserve Police Force Rules 1955, relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below :

(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time.

The Verification Roll shall be sent to the Distt. Magistrate or Dy. Commissioner of the Distt. of which, the recruit is a resident.

(b) The Verification Roll shall be in CRP Form-25 and after verification shall be attached to the Character and Service Roll of the member of the Force concerned."

The purpose of seeking the said information is to ascertain character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the

questions in these Columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.

9. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

10. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment: (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to

prosecution or conviction for an criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.

Position in this case

11. The respondents contended that the decision of High Court was in consonance with the principles laid down in several decisions of this Court and therefore, did not call for interference. The appellant on the other hand contended that the decision in Kendriya Vidyalaya Sangathan, was distinguishable. He drew our attention to the nature of the queries in that case. The following were the two queries in the verification form relating to antecedents and character :

"12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law for any offence?

13. Is any case pending against you in any court of law at the time of filling up this attestation form?"

The appellant contended that the said queries (12) and (13) in Kendriya Vidyalaya Sangathan, were simple and clear; and that this Court had also found in that case that the employee, who answered the said queries in the negative and thereby misrepresented the facts, was highly qualified (holding BA, B.Ed. and M.Ed. degrees) and had therefore rejected the contention that he could not understand the queries.

12. The appellant submitted that in this case questions 12(a) and (b) in the verification form were complex, ambiguous, tangled, involved and confusing for the following reasons :

(i) Question 12(a) involved three distinct and separate issues. The first relates to criminal prosecution and conviction. The second relates to disqualification by public service commission. The third relates to debarment from examinations by universities/educational authorities.

(ii) The first part of Question 12(b) sought information relating to pendency of cases. The second part of query 12(b) was not a query, but an instruction common to queries (a) and (b), as to how further information should be given if the answer to the query was "yes".

(iii) There was a variation between the English version and the Hindi version of question 12(a) and the words "restricted by any university or other education Institution", in query 12(a) appears to have been erroneously printed instead of the words "rusticated by any university or other educational institution."

(iv) The second part of query 12(b) as also the nature of Queries 12(a) and 12(b) contemplated the employee - declarant to answer the queries 12(a) and

(b) in monosyllable answers of 'yes' or 'no'; and only if the declarant answered query 12(a) as 'yes', he had to give further particulars. If an employee answers query 12(a) by the word 'yes' it would really mean that he has been arrested, prosecuted, kept under detention and bound down/fined/and convicted by a court of law even if he has not been subjected to all those processes.

(v) The first part of query 12(a) is capable of being interpreted in two ways. One way of reading it is : "whether the declarant had ever been arrested, or prosecuted, or kept under detention, or bound down/fined, or convicted by a court of law for any offence", thereby requiring the declarant to state whether he was subjected to any one of those events/processes. Another way of reading it is : "whether the declarant has been arrested, prosecuted, kept under detention, bound down/fined, and convicted by any court of law for any offence" thereby requiring the declarant to state whether he had undergone all those events/processes with reference to a criminal offence. The above questions can confuse not only a person with basic education, but may even confuse a person legally trained to assume that he has to answer 'yes' only if he had been convicted and not otherwise.

13. We agree that the English version of the questions were involved and confusing. If the queries in 12(a) and (b) in this case had been split into separate questions with instructions, to provide clarity and precision, there would have been no room for controversy. For example, if questions 12(a) and (b) had been split up into five separate questions with a note as follows, there would have been no confusion or ambiguity :

a) Have you ever been arrested or prosecuted or kept under detention?

b) Have you ever been bound down or fined or convicted by a court of law for any offence ?

c) Have you ever been debarred or disqualified by any Public Service Commission from appearing in any of its examinations or selections ?

d) Have you ever been debarred from taking any examination by any University, or expelled or rusticated from any educational institution ?

e) Whether any case is pending against you in any court or before any University/educational authority/institution at the time of filling up of this Verification Roll ?

Note: If the answer to any of the above queries is 'yes', then give details. If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer

cannot dismiss/discharge/ terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer.

14. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may.

15. But in this case, the appellant is not entitled to any benefit of doubt on the question whether he knew the meaning and purport of questions 12(a) and (b). Even assuming that there was ambiguity in the English version of the questions, a reading of the Hindi version of the questions shows a clear indication of the information that was required to be furnished by the declarant. The appellant read the questions in Hindi and answered them in Hindi. We extract below an English translation of query 12(a) in Hindi to show that there was no ambiguity in regard to the question :

English Translation of the question in Hindi "Have you ever been arrested for any offence or have been prosecuted or have been taken in custody or have been released on bail or have been fined/convicted by court of law or have been debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from taking any examination/restricted by any university or any other educational authority/institution?"

(emphasis supplied) The fact that a criminal case was registered against the appellant is not disputed. The fact that no criminal case was pending against him, when he gave the verification declaration in the year 2004, or the fact that he was not convicted or fined or bound down in any case, loses relevance, when he clearly suppressed the material fact that he was prosecuted and thereby made a false statement. Though the English version of the questions could have used a little more clarity, we cannot agree with the contention that he was misled into answering the question wrongly, as the Hindi version of the questions which were answered by the appellant did not suffer from any vagueness or ambiguity.

16. We are satisfied that the appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.

.....J.
(R V Raveendran)

New Delhi;
November 24, 2010.

.....J.
(H L Gokhale)