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Baldeo Singh Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-04-2013

Appellant : Baldeo Singh

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Justice K.K.Trivedi. Shri D. Chandramalik

Judgement :

1 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR.

WRIT PETITION N0.15511/2003 (O.A.No.3433/2000) Baldeo Singh.

-Versus- The State of M.P.and otheRs.PRESENT : Honble Shri Justice K.K.Trivedi.

Shri D.

Chandramalik, learned counsel for the petitioner.

Shri Rahul Jain, learned Deputy Advocate General for respondents.

ORDER

(4.9.2013) 1: The petitioner, a Pump Operator, appointed in the services of the respondents has filed the Original Application before the M.P.Administrative Tribunal, ventilating his grievance against the order dated 24.5.2000, by which his

services were terminated on account of a report submitted by the police authorities after character verification of the petitioner.

The Original Application was entertained, was pending before the Tribunal, when the Tribunal was closed, therefore, the Original Application has been transmitted to this Court and is registered as writ petition.

2: The claim of the petitioner is that earlier a fair price shop was allotted to him.

On account of rivalry between the petitioner and some other, who could not get the allotment of fair price shop, a false case under Section 3/7 of the Essential 2 Commodities Act was got registered against the petitioner in Crime No.151/1976.

A Challan was filed against the petitioner in the Court of Judicial Magistrate, where a Criminal Case No.267/76 was registered against him.

After the full dressed trial, the petitioner was acquitted in the said criminal case vide judgment dated 10.8.1977.

The petitioner left the fair price shop and got an appointment as a daily wager employee in the Water Resources Department.

The petitioner worked as a contingency employee thereafter for a long time and under the Scheme of the State Government, his claim was considered for regularisation and vide order dated 2.2.1999, the petitioner was regularised on the post of Pump Operator.

The name of the petitioner was included in the said order.

In terms of the order of appointment, the petitioner was required to furnish an attestation form for the purposes of police verification.

The petitioner is semi-literate person, having little knowledge of English.

The attestation form was in English, which according to information and the knowledge the petitioner has filled in.

However, in Column-12 of the attestation form, the petitioner has not mentioned anything and has left it blank only because he was confused whether fact relating to his acquittal in the aforesaid case was required to be mentioned or not.

On verification, the police authorities mentioned only this much that the petitioner was prosecuted for the aforesaid offence under Section 3/7 of the Essential Commodities Act.

However, nothing was found whether the petitioner was having any other criminal record or not.

Treating as if the petitioner has concealed these information in his attestation form, deliberately, without issuing any show cause notice, the order impugned was issued terminating the services of the petitioner.

It is, thus, contended that the action on the part of respondents was per se illegal.

The petitioner was not to be terminated in such a manner as there was no intention of petitioner to conceal the material information in 3 his attestation form.

Even such information if would have been given, it would not have constituted a cause for not granting appointment to the petitioner or ineligibility for appointment on the post, therefore, the termination of the petitioner on this count was bad in law.

3: Upon service of the notices of the petition, the respondents have filed their return.

They have placed on record the attestation form, filled by the petitioner as Annx.R/1.

It is contended by them that a specific warning was mentioned in the form itself that in case any material information is concealed and the said fact came to the notice of the authorities that will amount a serious misconduct for which the services of the employee concerned could be terminated.

Thus, it is contended that the order was rightly issued terminating the services of the petitioner as it was found by the police authorities that material information with respect to the criminal prosecution of the petitioner was concealed by him.

It is contended that on account of such a misconduct, the petitioner would not be entitled to the reliefs claimed in the petition and the same deserves to be dismissed.

4: Heard learned counsel for the parties at length and perused the record.

5: It is not in dispute that the attestation form placed on record as Annx.R/1 is in English.

The warning as incorporated in the form is required to be examined whether such a warning would make it clear that in case any information is not given or concealed, it would amount to a misconduct or a disqualification for appointment in service.

For the said purposes, the warning contains in the attestation form are reproduced :- 4 (1) The furnishing of a false information or suppression of any factual information in the attestation form would be disclarification and is likely to render the candidates for employment under the Government.

(2) If detailed convicted debarred etc.subsequent to the completion and submission of this form the details should be communicated immediately to the State Public Service Commission or the authority to send the attestation form not been sent earlier, as the same may be failing which it will be deemed to be suppression of factual information.

(3) In the fact false information as on furnished or that there has been suppression of any factual information the attestation form came to notice at any time during the service of a pension the services would be liable to be terminated.

From this, it would be clear that for the purposes of prosecution if the information is not given believing that because the same is resulted in acquittal, it cannot be said that such a serious misconduct is committed because prosecution word is not

used in the warning mentioned herein above.

6: The other aspect is whether the prosecution of the petitioner was relating to an offence involving moral turpitude.

A case under Section 3/7 of the Essential Commodities Act, would not fall within the category of those offences where moral turpitude is involved.

The prosecution for such offence is not under the provisions of Indian Penal Code.

The procedure laid down under the Code of Criminal Procedure only is adopted for the trial.

From the report of the police authorities placed on record, it is found that the petitioner was 5 not charged for committing any offence involving moral turpitude under the provisions of Indian Penal Code.

That being so, merely because the petitioner has not disclosed the fact that he was prosecuted, for an offence under Section 3/7 of the Essential Commodities Act and was acquitted, it would not amount to such a serious misconduct on account of which his services could be terminated.

This particular aspect is considered by the Apex Court in the case of Daya Shankar Yadav versus Union of India [(2010) 14 SCC 103].wherein the Apex Court has held that verification of character and antecedents of candidate are important criteria to test his suitability for the post, but if such an information is concealed in the attestation form due to absence of clarification in the question or due to candidate was having no knowledge of the effect of concealment of such information, it cannot be said that the candidate has suppressed the material information knowingly or has made a false statement to misguide the authorities.

This being so, if the warning incorporated in the attestation form is seen, coupled with the information sought in paragraph 12 of the attestation form, it can safely be inferred that the petitioner was of the view that he has not been convicted and, therefore, it would not be necessary for him to give the detail information.

Though it may not be justified in view of the fact that in subsequent paras of the attestation form, the details were asked for, but this has to be kept in mind that the attestation form was only in English language, which the petitioner was not fully knowing.

Had it been a case that an attestation form in bilingual manner is prescribed and it is not filled in such a manner, petitioner would be liable to be held guilty of misconduct, but not in such circumstances as referred to herein above.

In the considered opinion of this Court, if these aspects would have been taken into consideration, the petitioner would not have been sacked in such unceremonious manner.

7. Learned Deputy Advocate General appearing for respondents has relied on a decision of this Court in Writ Petition No.6137/2007 Vinot Kumar Singh versus Union of India and otheRs.decided on 11.1.2012.

In the opinion of this Court, the law laid down by the Apex Court in the case of Daya Shankar Yadav (supra) was rightly considered and since the case related to petitioner in the said case was for seeking employment in the disciplined force like Police Department, and that the petitioner in the said case was prosecuted for offences under the Indian Penal Code and this particular aspect was deliberately concealed by him, such a circumstance was considered by this Court and it was rightly held that the petitioner was not entitled to relief in the said case.

However, the facts and circumstances in the present case are totally different.

Firstly, the petitioner in the present case was not prosecuted for any offence under the Indian Penal Code involving moral turpitude.

Secondly, it was a case of regularisation and not a direct recruitment, the petitioner has remained in the employment right from the year 1977 till the date of regularisation and none of the offences were registered against him during this period.

Lastly, the attestation form was filled in by the petitioner bonafidely leaving certain places blank where he could not understood the language and it was not only Column No.12 which was left blank.

That being so, it cannot be said that it was a deliberate misconduct of the petitioner on account of which he was not entitled to remain in the employment.

It will not be out of place to mention here that only the opinion given by the police authorities duly forwarded by the District Magistrate was mechanically accepted by the respondents authorities of the Water Resources Department.

It was not thought better by them to initiate any departmental proceedings against the petitioner before terminating his services only because of such 7 opinion of the police authorities and District Magistrate.

On their own, they have not terminated the services of the petitioner.

8: In view of the discussions made herein above, the writ petition is allowed in part.

The order dated 24.5.2000 contained in Annx.A/4 is hereby quashed.

The petitioner be reinstated in service.

However, looking to the conduct and the present circumstances of the case, the petitioner will get 40% of the back wages only in case it is certified that he was not gainfully employed after his termination from services.

Let it be done within a period of two months from the date of receipt of copy of the order passed today.

9: The writ petition stands allowed to the extent indicated herein above.

There shall be no order as to costs.

(K.K.Trivedi) Judge A.Praj.

8 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR WRIT PETITION N0.15511/2003 (O.A.No.3433/2000) Baldeo Singh.

-Versus- The State of M.P.and otheRs.

ORDER

(.9.2013) Post it for 4/9/2013 (K.

K.Trivedi) Judge

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