SUPREME COURT OF INDIA

Union of India

Vs.

Bipad Bhanjan Gayen

C.A.No.3470 of 2008

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

09.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. Leave granted.

2. This appeal filed by the Union of India & Ors. against the judgment and order dated 27th July 2006 passed by the High Court of Calcutta arises out of the following facts:

3. The respondent, Bipad Bhanjan Gayen was selected for training as a Constable in the Railway Protection Force on 20th October 1993 and pending verification in terms of his declaration in Form No.12 as to whether he had ever been involved in any criminal case, he was sent for training. The declaration aforesaid was verified by the District Magistrate, Alipore, 24 Parganas (South) when it was revealed that he had been involved in FIR No.20/1993 Police Station, Usti, for an offence punishable under Section 376 of the IPC and that another case under Section 417 of the IPC apparently on complaint was pending in Court. On receiving this information, the Chief Security Officer, RPF, Eastern Railway, Calcutta passed an order dated 10th July 1995 terminating his services with immediate effect "because of his involvement in police case, as reported by DM/Alipore and suppression of this factual information in the attestation form by the candidate". Consequent to the aforesaid order, the services of respondent were terminated by a formal order dated 15th July 1995. Subsequent to the aforesaid orders, the respondent was discharged in the FIR on 8th January 1996 and it appears that a separate proceeding terminating the prosecution under Section 417 of the IPC was also initiated. The orders dated 10th July 1995 and 15th July 1995 were challenged before the Calcutta High Court. The Union of India filed a detailed counter affidavit on 11th March 1997 giving details of the verification report received from the District Magistrate. The learned Single Judge in his judgment and order dated 14th October 1999, allowed the writ petition and quashed the impugned orders on the ground that there had been a violation of the principles of natural justice, in that the petitioner had not been given any opportunity of being heard before the orders had been made and as the orders were stigmatic and penal in nature they could not have been made without proper enquiry etc. An

appeal was thereafter taken to the Division Bench which endorsed the findings of the learned Single Judge by observing that though a false declaration admittedly had been made by the respondent, but as the impugned order was stigmatic and visited the respondent with penal consequences, it was incumbent upon the employer to have given him a reasonable opportunity to show cause against the action proposed to be taken. The appeal was accordingly dismissed.

4. The learned counsel for the Union of India has submitted that the finding of the learned Single Judge as also the Division Bench of the High Court was clearly erroneous inasmuch that the respondent was admittedly a probationer and had been sent for training, subject to the verification of the details given by him in his attestation form and as the facts stood, the respondent had himself admitted that the two prosecutions were indeed pending on the day when he had filled in the form, the question of any need for enquiry or an opportunity of a hearing was to be ruled out. It has also been pleaded that though respondent had been exonerated in both the prosecutions but the misconduct alleged was of the incorrect filling of the attestation form and not of being involved in a criminal case and as such, the mere fact that he had been exonerated would have no effect on the merits of the controversy. The learned counsel has accordingly placed reliance on Rules 57 and 67 of the Railway Protection Force Rules, 1987 (hereinafter called the "Rules") as also several judgments of this Court reported in *Kendriya Vidyalaya Sangathan & Ors.Vs.Ram Ratan Yadav*[1], *A.P.Public ServiceCommission vs.Koneti Venkateswarulu & Ors.*[2] *and State of Haryana & Anr. Vs. Satyender Singh Rathore*[3]. The learned counsel for the respondent has however supported the judgments of the courts below and has pointed out that as the appellants had not put the copy of the attestation form on record, it was not possible to verify the correct facts and that in any case, the impugned order dated 15th July 1995 being stigmatic, could not be sustained,

5. We have heard the learned counsel for the parties and gone through the record. Rule 57 of the Rules provides for a probation period of 2 years from the date of appointment subject to extension. Rule 67 provides that a direct recruit selected for appointment as an enrolled member of the Force is liable to be discharged at any stage if the Chief Security Officer, for reasons to be recorded in writing, deems it fit to do so in the interest of the Force till such time as the recruit is not formally appointed to the Force. A reading of these two rules would reveal that till a recruit is formally enrolled to the Force his appointment is extremely tenuous. 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. 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. The learned counsel for the appellant- Union of India has rightly relied on Kendriya Vidyalaya Sangathan's case (supra) in which this is what the Court had to say:

> "It is not in dispute that a criminal case registered under Sections 323,341,294,506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A, B.Ed and MED degrees. Assuming even his medium of instruction was Hindi throughout; no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1- 11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns12 and13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.
>
> The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence of the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not."

6. Likewise in A.P. Public Service Commission's case (supra) the employee concerned was called upon to fill up Column No.11 of the form as to whether he had been in any previous employment. Column No.11 was left unfilled but in Annexure III appended therewith, a declaration was given that he had not been working in any Government department/Quasi-Government/Public sector/Private sector. It appears that this application was accepted and he was allowed to appear in the written examination which he passed, was called for interview and was duly selected, but before he could be notified the result, information was received that he had been employed as a Teacher and had submitted incorrect information. This Court observed that the fact that the employee had deliberately indulged in suppression of relevant information in the application form was incontrovertible and further held:

> "The explanation that it was irrelevant or emanated from inadvertence is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan and contending that a person who indulges in such suppression veri and suggestion false and obtains employment by false pretence does not deserve any public employment. We completely endorse this view."

7. More recently in *R.Radhakrishnan vs. Director General of Police & Ors.*[4] was a case of withholding of relevant information in the application form by a person seeking appointment as a fireman and this is what the Court had to say:

> "Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard 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. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosure and were, thus, similar situated had not been appointed."

8. We find that the observations in the above cited case are fully applicable to the present matter as well. We are of the opinion that it was a deliberate attempt on the part of the respondent to withhold relevant information and it is this omission which has led to the termination of his service during the probation period. The question of any penal consequences or a reading of the principles of natural justice in such a situation cannot be countenanced. The mere fact that the respondent has been subsequently discharged in the criminal cases will not in any way absolve him of his liability to have filled in the attestation form correctly and accurately as on the date he had done so. We accordingly allow the appeal, set aside the impugned judgments and dismiss the writ petition.

[1] *(2003) 3 SCC 437*
[2] *(2005) 7 SCC 177*
[3] *(2005) 7 SCC 518*
[4] *(2008) 1 SCC 660*