

KENDRIYA VIDYALAYA SANGATHAN AND ORS.

v.

RAM RATAN YADAV

FEBRUARY 26, 2003

[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

Service law:

Termination of service—Candidate selected as teacher—Giving false information in attestation form on appointment—False information with regard to prosecution for any offence and if any case pending against candidate—Order of termination—Trial Court upholding the order however, High Court setting aside the same—On appeal held: Suppression of material information had a clear bearing on the character and antecedents of the candidate's suitability to continue in service for which the information was sought—Also the subsequent withdrawal of the court case and the nature of offence not material thus High Court erred in setting aside the termination order—Constitution of India—Article 136.

Attestation form—Filling up of—Requirement of giving details of criminal cases—Not to find out the nature or gravity of the offence but for the purpose of verification of character and antecedents of the candidate.

Respondent was selected for the post of teacher. On getting the appointment order he filled the attestation form and against a column seeking information with regard to prosecution by Court for any offence and if any case pending against him, respondent stated 'no' even though criminal case was pending against him. Respondent also certified the information to be correct and complete. Respondent's services were terminated as he suppressed factual information in the attestation form. Respondent filed an application challenging the termination order. Tribunal dismissed the same. However, High Court allowed the writ petition and set aside the termination order holding that the medium of instruction of the respondent was Hindi and the criminal case had been withdrawn which was not of serious nature. Hence the present appeal.

Appellant contended that in terms of memorandum containing offer

A of appointment, respondent was required to file necessary annexures and attestation forms if he was to accept the offer of appointment; that para 9 of the memorandum shows that suppression of any information will be considered a major offence for which the punishment may extend to dismissal from service; that the memorandum terminating services of the respondent was issued after proper consideration, taking note of respondent's statement made in column Nos.12 and 13 of the attestation form in regard to verification of character and antecedents; that the High Court committed a serious error in setting aside the order of the Tribunal and was also not justified in exercising power of judicial review; that the respondent having obtained the degrees of B.A., B.Ed. and M.Ed., it could not be accepted that he could not understand as to what is stated in column No.12; that the subsequent withdrawal of criminal case or that the offences were not serious were immaterial; and that the question, whether on the date when he filed the attestation form, the respondent suppressed the information or made a false statement, was material.

D Respondent contended that the suppression of information was not deliberate, it was because he could not correctly understand the contents of column No.12-terms like 'prosecution' and 'conviction'- having studied in Hindi medium; that for suppression of information respondent could be dismissed from service but, dismissal from service was not automatic and also his case ought to have been considered; that High Court was justified in setting aside the order of tribunal; and that this Court may not interfere with the impugned order having regard to nature of the offences in regard to which a criminal case was filed against respondent which did not involve any moral turpitude, respondent having been selected based on qualification and suitability and he having put in one-and-a-half years service.

Allowing the appeal, the Court

G HELD: 1.1. Assuming that the respondent's 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-B.A., B.Ed. and M.Ed and also his case was not so. If he could understand other columns correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns seeking information. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken help

of somebody. The respondent could not have said "no" as against column A
Nos. 12 & 13 without understanding the contents. The requirement of
filling these columns of the attestation form was not to find out either the
nature or gravity of the offence or the result of a criminal case ultimately
but was for the purpose of verification of character and antecedents of B
the respondent as on the date of filling the attestation 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 for which information was sought. High Court, has
failed to see this aspect of the matter. It went wrong in saying that the
criminal case had been subsequently withdrawn and that the offences, in C
which the respondent was alleged to have been involved, were also not of
serious nature and set aside the order of the tribunal. [368-A-E]

1.2. In the instant case, the respondent was to serve as a Physical
Education Teacher in Kendriya Vidyalaya. The character, conduct and
antecedent of a teacher will have some impact on the minds of the students D
of impressionable age. The appellants having considered all the aspects
passed the order of dismissal of the respondent from service. Tribunal after
due consideration rightly recorded a finding of fact in upholding the order
of dismissal passed by the appellants. [369-A-C]

1.3. Respondent accepted the offer of appointment subject to the E
terms and conditions mentioned therein with his eyes wide open.
Respondent was informed that the suppression of any information may
lead to dismissal from service. In the attestation form, the respondent has
certified that the information given by him is correct and complete to the
best of his knowledge and belief; if he could not understand the contents F
of the columns, he could not certify so. Having certified that the
information given by him is correct and complete, his version cannot be
accepted. Thus the order of termination of services clearly shows that there
has been due consideration of various aspects. In this view, the submission
that as per para 9 of the memorandum, the termination of service was G
not automatic and also that this Court may not disturb the impugned order
exercising jurisdiction under Article 136 of the Constitution of India,
cannot be accepted. [369-C-E]

*Regional Manager, Bank of Baroda v. Presiding Officer, Central
Government Industrial Tribunal and Anr., [1999] 2 SCC 247, referred to.* H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3266 of 2001.

From the Judgment and Order dated 25.7.2000 of the Madhya Pradesh High Court in W.P. No. 4191 of 1999.

B S. Rajappa, for the Appellants.

Prakash Shrivastava, for the Respondent.

The Judgment of the Court was delivered by

C **SHIVARAJ V. PATIL J.** The respondent was selected for the post of Physical Education Teacher. An appointment order dated 16.12.1997 was issued to him. On getting the appointment order, he was required to fill in the attestation form. As against column no. 12(I) of the said attestation form, he mentioned "No" despite the fact that a criminal case was pending against him in the court of law. On the ground of suppression of factual information in the attestation form, his services were terminated by the Memorandum dated **D** 7/8.4.1999. He approached the Central Administrative Tribunal by filing O.A. No. 1150/99 challenging the said order of termination contending that he had education in Hindi medium and he is not well-conversant with English words. As such, he failed to understand the meaning of the word 'prosecution' or **E** 'conviction'. Under the misconceived notion, he did not take note of the column no. 12 in the attestation form. He also submitted that whatever was done by him, was in order to get employment because at the relevant time, he was undergoing great difficulty. It was his case that the incident took place at Raipure Square (Jabalpur) where number of persons were raising their grievances against the State authorities relating to non-grant of earthquake **F** relief; he was not at all part of that mob; while he was passing, a few demonstrators who were his friends pulled him into the mob; he, all of a sudden, later learnt that a case has been registered against him under Sections 323, 341, 294, 506-B read with Section 34 IPC. The Tribunal dismissed the O.A. at the admission stage itself observing that "the intention for suppression and giving false information and the explanation following it that lack of **G** knowledge in English resulted in the misunderstanding of the meaning of the word 'prosecution' does not inspire any confidence in us. In the instant case, the applicant is a Graduate and a bare look of the Attestation indicates that the applicant intentionally concealed the facts. The Courts/Tribunals are not to pat a person on his shoulders in a case where he is making false statement **H** to the authorities concerned for obtaining employment. In the circumstances,

we are not inclined to interfere with the impugned memorandum.”

Aggrieved by and not satisfied with the order of the Tribunal, the respondent approached the High Court by filing a writ petition challenging the correctness and validity of the same. The Division Bench of the High Court, after considering the respective contentions urged on behalf of the parties, allowed the writ petition, set aside the order passed by the Tribunal and held that the respondent shall be deemed to be in service and entitled to consequential benefits. In allowing the writ petition, the High Court observed thus:-

“Non-mention of pending criminal case in column 12(I) of the attestation form can be for the reasons stated by the petitioner; more so when the medium of instructions in this State is primarily Hindi. That apart, the criminal case in which the petitioner was involved, has been withdrawn by the State Government. That means, the case was not serious and involvement of agitators in it was found for justification, otherwise the case against them would not have been withdrawn. That apart, it did not involve moral turpitude disqualifying the petitioner from seeking the employment.”

The present appeal is directed against the said judgment and order of the High Court made in the writ petition.

The learned counsel for the appellants urged that in terms of memorandum containing offer of appointment dated 16.12.1997, the respondent was required to file necessary annexures and attestation forms if he was to accept the offer of appointment as per the terms and conditions stipulated as stated in para 8 of the said memorandum; para 9 of the said memorandum itself clearly shows that suppression of any information will be considered a major offence for which the punishment may extend to dismissal from service. He drew our attention, in particular to column no. 12 of the attestation form dated 26.6.1998; the learned counsel further submitted that after proper consideration, taking note of his statement made in column nos. 12 and 13 of the attestation form in regard to verification of character and antecedents, memorandum dated 7/8.4.1999 terminating services of the respondent was issued. He contended that the High Court committed a serious error in setting aside the order of the Tribunal on the ground that the medium of instruction of the respondent being Hindi and that the criminal case had been withdrawn which was of not serious nature; the respondent having obtained the degrees of B.A., B.Ed. and M.Ed., it could not be accepted that

A he could not understand as to what is stated in column no. 12; subsequent withdrawal of criminal case or that the offences were not serious were immaterial; the question, whether on the date when he filed the attestation form, the respondent suppressed the information or made a false statement, was material. The learned counsel further added that the High Court was not justified in setting aside the order passed by the Tribunal exercising power of judicial review; the High Court was also not right in relying upon the case of *Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal and Anr.*, AIR (1999) SCW 474 which was on the peculiar facts of that case.

C The learned counsel for the respondent made submissions in support of the impugned order. According to him, suppression of information was not deliberate; it was because of the respondent not correctly understanding the contents of column no. 12 having studied in Hindi medium; he could not understand the terms like 'prosecution' and 'conviction' properly; he urged that suppression of information could be considered as a major offence for which the punishment may extend to dismissal from service as per para 9 of the memorandum of offer of appointment but, dismissal from service was not automatic; the appellant ought to have considered the case of the respondent before terminating his services. According to him, the High Court was right and justified in setting aside the order of the Tribunal for the reasons stated in para 7 of the impugned order. He urged that this Court may not interfere with the impugned order having regard to nature of the offences in regard to which a criminal case was filed against the respondent which did not involve any moral turpitude, the respondent having been selected based on qualification and suitability and he having put in one and a half years service.

F In order to appreciate the respective contentions advanced on behalf of either side, it is necessary and useful to notice the terms of offer of appointment and the columns contained in the attestation form. Paragraph 8 of the memorandum containing offer to the extent relevant reads:-

G "If he/she accepts the offer on the terms and conditions stipulated, he/she would send her acceptance immediately to this office on receipt of this memorandum and join the Kendriya Vidyalaya mentioned overleaf. Necessary proforma for the purpose in Annexure I to VI and attestation forms are enclosed herewith which should be submitted to the concerned Principal, after getting the same duly completed in all respects."

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Para 9 of the same memorandum is to the following effect:

A

“Suppression of any information will be considered a major offence for which the punishment may extend to dismissal from the service”.

The attestation form dated 26.6.1998 duly filled in by the respondent and attestation show that the respondent has taken B.A. degree from St. Alysius College, JBP and B.Ed and M.Ed. degrees from R. Durgavati Vishwavidyalaya, JBP. Column nos. 12 and 13 as filled up read thus:-

B

“12. Have you ever been prosecuted/ kept under detention or bound down/fined convicted by a Court of Law of any offence?

NO

C

13. Is any case pending against you in any Court of Law at the time of filing up this attestation form

NO”

The respondent has also certified the information given in the said attestation form as under:-

D

“I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government.”

E

The memorandum dated 7/8.4.1999 terminating the services of the respondent refers to column nos. 12 and 13 of the attestation form, the criminal case registered against the respondent on the basis of the report given to the appellants by IGI police, suppression of material information by the respondent while submitting attestation form and violating the clause stipulated under para 9 of the offer of appointment issued to him, O.M. dated 1.7.1971 of Cabinet Secretary, Department of Personnel, New Delhi, in which it is clearly mentioned that furnishing of false information or suppression of factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government and that as per clause 4 of offer of appointment, the respondent was on probation for a period of two years and that his services were liable to be terminated by one month's notice.

F

G

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

H

A respondent filled the attestation form. Hence, the information given by the respondent as against column nos. 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 M.Ed. 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 column nos. 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column nos. 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken 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 respondent was Hindi, he could not understand the contents of column nos. 12 and 13. It is not the case that column nos. 12 and 13 are left blank. The respondent could not have said "no" as against column nos. 12 and 13 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 column nos. 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.*

F The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. *The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or 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.* The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the

criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.

The High Court in passing the impugned order took support of the judgment of this Court in *Regional Manager, Bank of Baroda v. Presiding Officer, Central Government Industrial Tribunal and Anr.*, [1999] 2 SCC 247]. The very judgment specifically stated, thus:-

“We make it clear that this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future.”

It is unfortunate that the High Court treated the said judgment as a precedent despite this Court's saying that it will not be treated as a precedent in future, while confining the said judgment to the peculiar facts and circumstances of the case.

A In view of what is stated above and taking note of the facts and circumstances of the case, we are not inclined to accept the argument of the learned counsel for the respondent that this Court may not disturb the impugned order exercising jurisdiction under Article 136 of the Constitution of India.

B In our considered view, the impugned judgment and order of the High Court cannot be sustained. Hence, the appeal is allowed. The impugned judgment is set aside and the order passed by the Tribunal is restored. No costs.

N.J.

Appeal allowed.