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COMMR.OF POLICE AND ORS

v.

SANDEEP KUMAR

(CIVIL APPEAL NO. 1430 OF 2007)

B

MARCH 17, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Service law: Appointment – Respondent applied for the post of Head Constable – Application form contained a question if he was ever arrested, prosecuted, kept under detention, fined or convicted by court of law for any offence – Respondent answered the question in negative – He qualified in all the tests – While filling the attestation form, he disclosed for the first time that he had been involved in a criminal case with his tenant which later on was compromised and he was acquitted – His candidature was cancelled on the ground that he made a false statement since he was involved in a criminal case – Aggrieved, the respondent filed petition before CAT – CAT dismissed the petition – High Court holding that cancellation of candidature of respondent was illegal – Justification of – Held: Justified – Respondent was 20 years of age when the incident had happened – At that age, young people often commit indiscretions, and such indiscretions can often been condoned – They are not expected to behave in a mature manner as older people – The modern approach should be to reform a person instead of branding him as a criminal all his life – In the application form, the respondent may not have mentioned that he was involved in a criminal case out of fear of automatic disqualification – Even otherwise, it was not such a serious offence like murder, dacoity or rape, and, therefore, in such matters, a more lenient view should be taken.

Morris v. Crown Office (1970) 2 Q.B. 114 – referred to.

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Case Law Reference:

(1970) 2 Q.B. 114 referred to **Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1430 of 2007.

From the Judgment & Order dated 31.7.2006 of the High Court of Delhi at New Delhi in W.P. (C) No. 12565 of 2004.

T.S. Doabia, Rekha Pandey, Mukesh Verma and D.S. Mahra for the Appellants.

Deepak Kumar and Sudarsh Menon for the Respondent.

The following Order of the Court was delivered

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment of the High Court of Delhi dated 31.07.2006.

The facts have been given in the impugned judgment and hence we are not repeating the same here, except wherever necessary.

The respondent herein-Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed :

"12(a) Have you ever been arrested, prosecuted kept under detention or bound down/fined, convicted by a court of law for any offence debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any Examination, rusticated by any university or any other education authority/Institution."

Against that column the respondent wrote : 'No'.

A It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR 362 under Section 325/34 IPC. This case was admittedly compromised on 18.01.1998 and the respondent and his family members were
B acquitted on 18.01.1998.

In response to the advertisement issued in January 1999 for filing up of certain posts of Head Constables (Ministerial), the respondent applied on 24.02.1999 but did not mention in his application form that he was involved in the aforesaid
C criminal case.

The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 03.04.2001 he filled the attestation form wherein for the first time
D he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

On 02.08.2001 a show cause notice was issued to him asking the respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17.08.2001 and an additional
E reply but the authorities were not satisfied with the same and
F on 29.05.2003 cancelled his candidature.

The respondent filed a petition before the Central Administrative Tribunal which was dismissed on 13.02.2004. Against that order the respondent filed a writ petition which has
G been allowed by the Delhi High Court and hence this appeal.

The learned counsel for the appellants has submitted that the respondent should have disclosed the fact of his involvement in the criminal case even if he had later been acquitted. Hence,
H it was submitted that his candidature was rightly cancelled.

We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. A

When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives. B C

In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. D

The modern approach should be to reform a person instead of branding him as a criminal all his life.

We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :- E F

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was G H

A no concern of theirs. It was necessary for the judge to show
 – and to show to all students everywhere – that this kind
 of thing cannot be tolerated. Let students demonstrate, if
 they please, for the causes in which they believe. Let them
 make their protests as they will. But they must do it by
 B lawful means and not by unlawful. If they strike at the course
 of justice in this land – and I speak both for England and
 Wales – they strike at the roots of society itself, and they
 bring down that which protects them. It is only by the
 maintenance of law and order that they are privileged to
 C be students and to study and live in peace. So let them
 support the law and not strike it down.

But now what is to be done? The law has been
 vindicated by the sentences which the judge passed on
 Wednesday of last week. He has shown that law and order
 D must be maintained, and will be maintained. But on this
 appeal, things are changed. These students here no
 longer defy the law. They have appealed to this court and
 shown respect for it. They have already served a week in
 prison. I do not think it necessary to keep them inside it
 E any longer. These young people are no ordinary criminals.
 There is no violence, dishonesty or vice in them. On the
 contrary, there was much that we should applaud. They
 wish to do all they can to preserve the Welsh language.
 Well may they be proud of it. It is the language of the bards
 F – of the poets and the singers – more melodious by far
 than our rough English tongue. On high authority, it should
 be equal in Wales with English. They have done wrong –
 very wrong – in going to the extreme they did. But, that
 having been shown, I think we can, and should, show mercy
 G on them. We should permit them to go back to their studies,
 to their parents and continue the good course which they
 have so wrongly disturbed.”

[Vide : *Morris Vs. Crown Office*, (1970) 2 Q.B. 114]

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In our opinion, we should display the same wisdom as displayed by Lord Denning. A

As already observed above, youth often commit indiscretions, which are often condoned.

It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. B

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter. C

For the reasons above given, this Appeal has no force and it is dismissed. No costs. D

D.G.

Appeal dismissed.