

CASE NO.:
Appeal (civil) 1014 of 2005

PETITIONER:
Secy. Deptt. of Home Secy.A.P. & Ors.

RESPONDENT:
B. Chinnam Naidu

DATE OF JUDGMENT: 09/02/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 2269 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to legality of the judgment of a Division Bench of the Andhra Pradesh High Court setting aside the order passed by the Andhra Pradesh Administrative Tribunal (in short the 'Tribunal') and holding that authorities were not justified in denying appointment to the respondent.

A brief reference to the factual aspects would suffice:

The respondent appeared for the recruitment test conducted for the selection of Stipendiary Cadet Trainee Police Constable (Civil) in Visakhapatnam. He was successful in the test and thereafter he was subjected to medical test. After the two tests were over, he was required to undergo training. But he was not sent for training on the ground that the Superintendent of Police, Visakhapatnam by order dated 5.5.2003 had directed that he was not to be sent for training. Questioning legality of such order, the respondent filed an Original Application before the Tribunal. The Tribunal noted that the examination for selection was conducted on 16.3.2003. Subsequently, he underwent the physical test and was successful. By order dated 28.4.2003 the Superintendent of Police, Visakhapatnam informed the respondent about his selection and directed him to report at the District Police Office at Visakhapatnam for further medical test. He was also directed to carry with him uniforms and other items necessary for training which was organized at Central Police Lines, Amberpet. Though, the respondent was subjected to medical examination he was not allowed to join the training programme. He was informed that since he had been arrested in crime No. 28/2000 on the file of Police Station, Kukatpally, registered under various provisions of the Indian Penal Code, 1860 (in short the 'IPC') and Andhra Pradesh Public Examination Prevention of Malpractice and Unfair Means Act, 1997 he was not eligible to be appointed. Before the Tribunal the respondent took the stand that since he had not been charged and had not been convicted and since he had no connection with the crime, the order of the Superintendent of Police was not tenable. His further stand was that the case was registered in respect of the earlier recruitment test in the year 2000 and there was no reason to debar him since there was no conviction, and, therefore, the action of the authority is not proper. The present appellants filed counter-affidavit stating that before final verification the respondent was permitted to appear in the

examination and the tests. Subsequently, it was noticed that the respondent herein was arrested on 16.1.2000 and was sent to judicial custody in the case referred to above. That case was under investigation and Forensic Science Laboratory report was awaited. The applicant while submitting Attestation Form after completion of written examination did not mention about his arrest and the pending case which he was required to do. Since he had suppressed the truth in terms of the instructions laid down in Declaration at Cl. No. 3, the respondent had incurred disqualification and he was not a fit person for employment under the Government. The Tribunal noted that against Col. No. 12 of the Attestation Form, the respondent had not mentioned about the pending case and had not even indicated about his arrest. This amounted to suppression of truth in the Attestation Form and Declaration at column No.3. Therefore, in terms of the instructions he had incurred disqualification and was unfit for employment under the Government. The Tribunal held that the respondent was not a person of good conduct and character since he had suppressed material information while filling up the Attestation Form. He did not deserve any relief. Accordingly the Original Application was dismissed.

The matter was challenged before the Andhra Pradesh High Court and by the impugned judgment it was held that there was no requirement under Column No. 12 to mention about any pending case or arrest and, therefore, the action of the authorities, in not permitting the respondent to join the training, cannot be sustained.

In support of the appeal the learned counsel appearing on behalf of the appellants submitted that the Tribunal had correctly held that the respondent was guilty of suppression of material facts and taking into consideration the conduct and character the Tribunal had rightly held that he was not entitled to any relief, and High Court should not have interfered with the order. Reference was made to some cases where this Court has held that giving of incorrect reply and suppressing material facts while filling up the Application Form or Attestation Form or Declaration disentitles the candidate for any relief. Particular reference was made to the case of Kendriya Vidyalaya Sangathan & Ors. Vs. Ram Ratan Yadav [2003 (3) SCC 437].

In response, the learned counsel for the respondent submitted that there was no requirement to mention about the arrest or the pending case, therefore, High Court's order is perfectly justified.

In Kendriya Vidyalaya Sangathan's case (supra) the factual position can be ascertained from paragraphs 8 and 9 which read as follows:

"8.- The Attestation Form dated 26.6.1998 duly filled in by the respondent and attestation show that the respondent has taken BA degree from St. Aloysius College, JBP and Bed and Med degrees from R. Durgavati Vishwavidyalaya, JBP. Columns 12 and 13 as filled up read thus:

"12.- Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence? - No."

"13.- Is any case pending against you in any court of law at the time of filling up this Attestation Form?- No."

"9.- The respondent has also certified the information given in the said Attestation Form as under:

"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."

As is noted in Kendriya Vidyalaya Sangathan's case (supra) the object of requiring information in various columns like Column No. 12 of the Attestation Form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information.

In order to appreciate the rival submissions it is necessary to take note of Column No. 12 of the Attestation Form and Column No.3 of the declaration. The relevant portions are quoted below:

"Column No.12- Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against."

"Column No.3- I am fully aware that furnishing of false information or suppression of any actual information in the Attestation Form would be a disqualification and is likely to render me unfit for employment under the Government."

A bare perusal of the extracted portions show that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central Preventive Detention Laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under Preventive Detention Laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the Attestation Form to incur disqualification. 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 No. 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 No. 12 is concerned the respondent cannot be found guilty of any suppression.

In Kendriya Vidyalaya Sangathan's case (supra), the position was the reverse. There the candidate took the stand that as there was no conviction, his negative answers to columns 12 to 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. For denying somebody appointment after he is selected, though he has no right to be appointed, has to be governed by some statutory provisions. That was not the issue which was to be adjudicated in the present case. The only issue related to suppression of facts or mis-declaration.

In view of the aforesaid, we find no merit in this appeal which is accordingly dismissed with no order as to costs.

JUDIS