

CASE NO.:
Appeal (civil) 5335 of 2005

PETITIONER:
A.P. Public Service Commission

RESPONDENT:
Koneti Venkateswarulu & Ors.

DATE OF JUDGMENT: 30/08/2005

BENCH:
H. K. Sema & B. N. Srikrishna

JUDGMENT:
J U D G M E N T
(arising out of Special Leave Petition (Civil) No. 22848/2004)

SRIKRISHNA, J.

Leave granted.

This appeal by special leave is brought by the A.P. Public Service Commission to impugn a judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad directing the appellant commission to give employment to the First Respondent by accommodating him in the next available vacancy. The facts leading to the present appeal fall within a limited matrix and they are as follows.

On 2.7.1999 the appellant commission published an advertisement inviting applications for filling up various categories of posts including four posts of Women Child and Welfare Officers by direct recruitment from candidates belonging to Scheduled Tribes. The application form given out to the candidates, required by Column 11 and Annexure III, that the candidates should furnish full information with regard to their appointments in Government / private sectors, if any. The notification issued by the commission specifically informed the candidates that giving of any false/ wrong information or suppression of material information would lead to cancellation of the candidature. The First Respondent was a candidate for the recruitment as he belongs to Scheduled Tribe. He filled up the application form, but left Column 11 pertaining to previous employment totally blank. He gave a declaration at the end of the application which stated:

"I hereby declare that all statements made in this application are true and correct and I undertake to produce original documents at any moment of time, failing which my candidature could be cancelled."

He also filled up Annexure III in which the declaration was as follows:

"I hereby declare that I am not working in any Government Department/ Quasi Government/ Public Sector/ Private Sector and that my maximum age does not exceed 35 years as on 1.7.1999.

I further declare that the information furnished by me is true and correct and my candidature shall be cancelled at any stage if it is found in-correct."

The application of the First Respondent was accepted and he was allowed to take the written examination. The First Respondent passed the written examination and was called for interview. He was also selected in the interview. Before the First Respondent could be notified about the result, the appellant learnt that the First Respondent was employed and was working as a teacher, and that he had suppressed this information by

deliberately not filling up Column 11. A show cause notice was issued to the First Respondent calling upon him to show cause why his candidature should not be cancelled. The First Respondent submitted an explanation to the show cause notice stating therein inter alia that he inadvertently filled up and signed Annexure III of the application form, which was not required to be filled up by him and, therefore, there was no suppression of material information. Annexure III was intended only for candidates seeking fee exemption for un-employed youth in the age group of 18-35. This was not applicable to the First Respondent as he belonged to Scheduled Tribe. The appellant commission cancelled the candidature of the First Respondent by taking the view that he had deliberately indulged in suppression of relevant information and that his explanation to the show cause notice was not satisfactory.

The First Respondent moved the A.P. Administrative Tribunal, Hyderabad ("the Tribunal") by his application O.A. No. 7962/2001 challenging the cancellation of his candidature. The Tribunal heard the parties and by its order dated 18.11.2003 dismissed the O.As. and upheld the action of the appellant commission in cancellation of the candidature of the First Respondent. The First Respondent moved the High Court of Judicature, Andhra Pradesh by a Writ Petition No. 26743/2003 in which he impugned the judgment and order of the Tribunal. By the impugned judgment the High Court allowed his writ petition and accepted the explanation of the First Respondent that he had not misrepresented or suppressed any material information. Since the selection of the petitioner-first respondent was for the year 1999 and all posts had been filled up by 7.1.2004, the date on which the judgment of the High Court was rendered, the High Court directed that the First Respondent had to be accommodated in the next available vacancy to the post of Women & Child Welfare Officer reserved for ST candidates. The appellant commission being aggrieved by the said order is in appeal before this Court.

The learned counsel for the appellant drew our attention to the photocopy of the application dated 24.7.1999 from which it is clearly seen that as against Column No. 11 the First Respondent has given no information whatsoever, leaving the column blank by drawing lines. He had put his signature and made declaration in the application which is earlier reproduced. The First Respondent also filled up Annexure III and made a declaration therein as reproduced earlier. Learned counsel for the appellant commission relied on the judgment of this Court in *Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav* and contended that when information with regard to the antecedents of a candidate is called for, it is intended to verify and cross-check the information so that the suitability of the candidate for employment could be judged. If the candidate indulges in suppressio veri and suggestio falsi, he proves himself unfit to be employed, all the more so, if he is to be employed in public employment. If the information as to the full particulars of employment was available with the commission, the commission could have checked the antecedents of the First Respondent with his employer and ascertained the suitability of the First Respondent for employment. In any event, it had been made clear to the candidates, both in the advertisement calling for applications as well as in the body of the application itself that furnishing of false information or its suppression was liable to result in cancellation of the candidature. The First Respondent, therefore, did not deserve any consideration and the High Court erred in interfering with the order of the Tribunal.

The learned counsel for the First Respondent, however, rejoins that there was no malafide intention in not giving the full particulars. He reiterated the contentions urged before the Tribunal and submitted that Column 11 refers to paragraph 3(d) of the advertisement, which was concerned only with age concession. Since age concession was being made available to ST candidates under paragraph 3(a), there was no need for him to fill up the requirements of Column 11 of the application. He also urged that Annexure III was intended only for candidates claiming fee exemption; since the First Respondent was not claiming fee concession, the annexure

need not have been filled by him. The fact that it was filled by him wrongly could, therefore, not lead to any adverse consequences. He, therefore, submits that it was pure inadvertence on the part of the First Respondent and not malafides, which lead to the non-disclosure of his employment status. In the submission of the learned counsel, this could not be a reason for the cancellation of the First Respondent's candidature.

We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. 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 (supra) and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

In the result, we allow the appeal and set aside the impugned judgment of the High Court and restore the judgment of the Tribunal.

Considering that the First Respondent belongs to Scheduled Tribe, we refrain from imposing costs upon him, with the fond hope that the next time he applies for employment elsewhere, he will be more careful and forthright.