

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.5880/2012 and C.M. No.12101/2012**

% **26th July, 2013**

ARUN Petitioners

Through: Mr. Arvind Kumar Sharma, Adv.

versus

DISTRICT & SESSIONS JUDGE Respondent

Through: Ms. Avnish Ahlawat &
Mr. Nitesh Kumar Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition came up for hearing in the morning when a request was made by the learned counsel for the petitioner for adjournment to file the rejoinder affidavit. The counter affidavit was filed way back in January, 2013 (i.e as many as six months back), and therefore, request for filing rejoinder was declined. The request for passover was however acceded to. On the second call, during the course of hearing I told the counsel for the petitioner that whatever is the rejoinder with him, he may give the same to the Court, however, this rejoinder has not been given to the Court. Counsel

for the petitioner thereafter more or less concluded his arguments because the issue in the present case which was argued on behalf of the petitioner is that the petitioner was appointed on probation, that probation period came to an end, and the petitioner therefore should be taken as having been confirmed to his appointment by being co-related to the original date, however, none of these arguments have any merit because the defence of the respondent/District & Sessions Judge, Delhi is that the issue is not of entitlement of confirmation after probation but invalidity of original appointment because the petitioner had concealed the fact that, at the time he joined the service, an FIR was registered against him, and though the petitioner as per the affidavit which was required to be filed and filed with respondent should state whether any FIR is registered or any criminal case is pending, yet the petitioner gave an affidavit that no FIR is registered and no criminal case is pending. This is specifically stated by the respondent in the counter affidavit and Ms. Avnish Ahlawat, counsel for the respondent has also shown to me the original notarised affidavit given by the petitioner dated 15.6.2010, which records that the petitioner is not involved in any kind of criminal activity and no criminal case has been registered or pending trial in any court of law against the petitioner in Delhi or any part of the country

since his birth till the date of the affidavit.

2. Therefore, the issue is not of confirmation of the petitioner after completing probation in the post but of invalidity of appointment because if the appointment is obtained by misrepresenting a fact, then, the contract of employment was voidable at the option of the respondent. Section 17 of the Contract Act, 1872 defines fraud and Section 18 defines misrepresentation. Concealment of a fact falls under both. Once the contract of employment is obtained by fraud or misrepresentation, then, as per Section 19 of the Contract Act, the contract is voidable at the option of the party against whom fraud or misrepresentation is committed. Respondent/District & Sessions Judge was thus entitled to and hence rescinded the contract thereby terminating the employment of the petitioner.

3. At this stage the counsel for the petitioner is asked to argue the next point because the aforesaid aspect has already been argued. The counsel for the petitioner, instead of addressing the Court, says that he does not want to argue further. Let it be so. If an advocate wants to behave in such a fashion surely, nothing further can be done except my disposing of the matter because the counsel for the respondent says that except the above facts noted there is nothing which remains to be argued and that adjournment should not

result.

4. It may be noted that the petitioner when called personally by the District & Sessions Judge to explain the factual position, he himself gave the judgement as passed by the Court of Ms. Ankita Sharma, Judicial Magistrate, First Class, Sonapat, Haryana and by which judgement the petitioner had been acquitted. This judgement, however, fortifies the fact that the petitioner took employment when there was an FIR No.197/2008 dated 4.9.2008 registered against the petitioner under Sections 323/325 read with Section 34 IPC. It is, therefore, clear that the petitioner had not only concealed the material facts but also had given a false affidavit that there is no criminal case pending, which is pending against the petitioner.

5. In *Kendriya Vidyalaya and Others Vs. Ram Ratan Yadav, 2003 (3) SCC 437* Supreme Court held that issue was not of a person being guilty of a criminal act but the issue was of giving information to the employer to judge the suitability of employment of a person. Para 12 of the judgment reads as under:-

“12. 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.”

6. In *A.P. Public School Service Commission Vs. Koneti Venkatswalu, 2005 (7) SCC 177* Supreme Court held that a person who obtains employment by suppression of fact does not deserve public employment.

Para 7 of the said judgment reads as under:-

“7. 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 *suppresso 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 *suppresso 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.”

7. Merely because the issue of concealment having effect on employment is referred to a larger bench of the Supreme Court in a case (details of case not given by the petitioner) will not mean that the existing judgments will not hold the field till they are set aside.

8. In view of the above, the original appointment itself of the petitioner has been found invalid, and therefore, the petitioner was accordingly rightly terminated from services. Issue of honesty of purpose is very important for employment in Courts with the respondent.

9. I thus do not find any merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY 26, 2013/b'nesh