

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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WRIT PETITION No.16418 OF 2005

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking Writ of Certiorari questioning the orders of the respondents 1 to 3 dated 15.06.2000, 21.09.2000 and 23.04.2001 respectively, by and under which, the petitioner was removed from service, and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents. Perused the record.

3. The brief facts of the case are as under:

The petitioner was selected and joined as Constable in CRPF on 04.03.1997 and undergone training at Hamama in Jammu Khashmir and was sent to Baramulla for refresher course in Jammu & Kashmir. After training he was joined in 63 BN of CRPF at Srinagar. Subsequently, the entire 63 BN was transferred to Hanamkonda, Warangal District, the petitioner was also transferred to Hanamkonda. While so, the 1st respondent issued charge sheet to the petitioner on 10.12.1999 which was served on 12.12.1999 stating that the petitioner had concealed the fact of pending a criminal case against him. The petitioner submitted his reply to the show cause notice on 16.12.1999. However, the 1st respondent, vide orders dated 04.01.2000 ordered a departmental enquiry against the petitioner. The Enquiry Officer submitted his report on 29.05.2000 finding guilty on the part of the petitioner, for which, the petitioner submitted his reply on 02.06.2000. The 1st respondent passed orders on 14.06.2000 vide Order No.P.VIII-II/99-63-EC-2 imposing penalty of removal from service on the petitioner. The petitioner preferred appeal before the 2nd respondent, but the same was rejected on 21.09.2000. The petitioner also preferred a revision before the 3rd respondent, the said revision was also

dismissed vide orders dated 23.04.2001. Earlier, the petitioner filed W.P.No.22265/2001 which was withdrawn at the advice of his counsel to file it before Allahabad High Court, as the petitioner belongs to State of Uttar Pradesh. The petitioner filed W.P.No.21074/2001 before the High Court of Allahabad. The said writ petition was dismissed vide orders dated 06.04.2005 on the ground of jurisdiction. Thereafter, the petitioner filed the present writ petition.

4. The respondents filed counter denying the contentions of the petitioner. It is stated that the petitioner was appointed as constable on 04.03.1997. At the time of his enlistment in CRPF a criminal case registered by Police Tihar, Shahjhapur District, Uttar Pradesh vide FIR No.169/1995, registered under sections 147/354/324/323/504/506 IPC was pending against him and others, which was later charge sheeted vide Charge sheet No.173-A, dated 30.09.1995. The petitioner deliberately concealed the said fact while he was selected. It is also noticed that the petitioner was also charged with plural marriage and he married another girl during subsistence of his first marriage. As a result of departmental enquiry, the petitioner was removed from service. The appellate Authority as well as the Revisional Authority has not considered the request of the petitioner and confirmed his termination order. It is stated that one Smt.Kanya Devi, said to be the wife of the petitioner, filed a complaint against the petitioner on 03.02.1999, seeking maintenance from the petitioner. She stated that the petitioner had contracted a second marriage with one Baby when she was alive and no divorce has been obtained from the Court of law. It is stated that entering into plural marriage while first wife was alive and even without getting proper divorce from competent court is misconduct, punishable under Section 11(1) of CRPF Act, 1949. It is also stated that concealment about involvement in criminal case and furnishing false information in Verification Roll (CRPF Form No.25) is a serious misconduct, which is punishable under section 11(1) of CRPF Act, 1949. In the enquiry, it is found that the petitioner committed the said two misconducts and hence he was removed from service as per CRPF Rules, which cannot be interfered with.

5. The contention of the learned counsel for the petitioner is that the petitioner belongs to SC community and in his community, child marriage is common, and the marriage of the petitioner with Kanyadevi was performed while he was

at the age of 16 years, and as there was no proper understanding between the spouses, they mutually agreed for divorce and divorced mutually on 10.12.1994 before the Village Panchayat and hence the petitioner has not committed any offence. The learned counsel further contended that the criminal case in CC.No.169/1995 on the file of the Senior Civil Judge, Tilhar, Sahajanpur, Uttar Pradesh has already been disposed of and the petitioner was acquitted vide judgment dated 05.11.2001 and at present no civil or criminal cases are pending against the petitioner, and hence the issuance of termination orders by the respondents is illegal and is liable to be set aside.

6. The learned counsel for the respondents submits that at the time of selection, the petitioner filled the application form stating that there no cases filed and pending against him and he is not involved in any criminal case, though there is a criminal case filed by his first wife is pending against him before his selection, which amounts to misconduct as per CRPF Rules and therefore, the respondents rightly terminated the petitioner from service after following due procedure.

7. The point for consideration is as to whether the writ petitioner is entitled to the relief as prayed for in the writ petition?

8. **Point:-** At the outset it may be stated that the writ petitioner having filed the writ petition in the year 2005 for reinstatement into the service with all consequential benefits has since died on 02-11-2008. Therefore, virtually the substantive relief that is sought for in the writ petition for reinstatement becomes redundant. However, Smt.Kanya Devi, the wife of the deceased writ petitioner came on record, but, however, even her status of wife is in dispute. Admittedly, the deceased writ petitioner while working as a Constable in CRPF has married one Baby. According to the deceased writ petitioner he having been born on 08-01-1973 married Kanya Devi in the year 1987, during his minority as was the custom prevalent and subsequently, before the Village Panchayat and elders, he divorced Kanya Devi on 10-12-1994 and thereafter married Baby. As a matter of fact, one of the charge alleged against the writ petitioner was that he has committed misconduct by contracting second marriage with Baby. It is also specifically contended by the deceased writ petitioner that when he was alive, after divorce in between Kanya Devi and the writ petitioner, the said Kanya Devi married one Rakesh. If that be so, Kanya

Devi coming on record as the wife of the deceased writ petitioner cannot be taken as correct for being entitled to get the benefits if any that were payable to the deceased Constable of CRPF.

9. Be that as it may, what is required to be seen is as to whether the order dismissing the writ petitioner from the uniformed service is tenable or suffers from any irregularity or illegality warranting interference.

10. The admitted fact is that the writ petitioner along with others was appointed as Constables in CRPF on 04-03-1997 and undergone training at Hamama in Jammu & Kashmir and subsequently was working at Srinagar. Thereafter, he was transferred to Hanamkonda, Warangal District along with the 63 Battalion of which he was part.

11. The 1st charge against the writ petitioner was that he was involved in a criminal case before he entered into service and this information is suppressed in his application for verification of antecedents. It is not disputed that the writ petitioner was one of the accused in Cr.No.169 of 1995 of P.S.Tihar registered under Sections 147, 345, 324, 323, 504 and 506 IPC., and subsequently a charge sheet was filed in the jurisdictional Court, which was numbered as 173-A on 30-09-1995. It is also on record that the writ petitioner surrendered himself before the jurisdictional Magistrate in that case and obtained bail. Thereafter, that case ended in acquittal in view of the compromise entered into between the parties on 05-11-2001. The fact, however, remains that in the year 1997 when he joined as a Constable, the criminal case against him was pending trial. Admittedly, he has not divulged the said information about the pendency of the case at the time when he entered the service as a Constable in CRPF. This, according to the Department, was in contravention of the Service Rules and he is guilty of having suppressed the material information and therefore do not deserve to be part of the Uniform service.

12. Learned Counsel appearing for the writ petitioner submits that since the case ended in acquittal after having compromised that cannot be taken as a ground for dismissing the writ petitioner from the service. In support of his contention, learned Counsel relied upon the decisions of the single Judges of Gauhati High Court and Jammu and Kashmir High Court reported in **SHARFRAJ KHAN v. UNION OF INDIA** and **ANGREZ SINGH v. UNION OF**

INDIA. But there is a Full Bench decision of our High Court (in which I presided as one of the members) rendered as recently as on 27-11-2015 is squarely covered the case in hand. The Full Bench in its Judgment in W.P.No.3004 of 2005, on the question being referred by a Division Bench, answered the reference and paras 11, 11.1, 12 and 13 are relevant which read as under:-

“11. In this backdrop, we would now like to deal with the question that falls for our consideration. Suppression of information by the candidate regarding his involvement in a criminal case is one-thing and whether to appoint or to terminate such person after the information of his involvement in a criminal is surfaced is another. Similarly, whether to appoint such person, who has fairly disclosed the information of his involvement in a criminal case in the application form, is also a question, which the appointing authority has to decide. In other words, it is for the employer/appointing authority to take a call and decide whether such person should be appointed having regard to various factors that could be taken into consideration.

11.1 In the present case, we are considering a situation where there was suppression of information relating to involvement in a criminal case by the candidate. Keeping that in view and having regard to the judgments of the Supreme Court and the principles culled out therein, we are of the opinion, if a candidate were to suppress the information relating to his involvement in a criminal case and if it is surfaced before appointment or at the stage of verification of antecedents, more particularly when such an information was specifically sought for, it is open to the appointing authority to deny appointment to or terminate such employee.

12. Verification of character and antecedents is one of the important features in service jurisprudence so as to find out whether a selected candidate is suitable to the post. Having regard to the antecedents of a candidate, if appointing authority finds that it is not desirable to appoint such person, in particular to a discipline force, it can deny employment or even terminate such person, if appointed, within the shortest possible time from the date of verification of character and antecedents. This has to be scrupulously followed in case of recruitment in police force, it being a disciplined force. As observed by the Supreme Court in *COMMISSIONER OF POLICE, NEW DELHI v. MEHAR SINGH (2013) 7 SCC 685*, people repose great faith and confidence in the police force, and therefore, the selected candidate must be of confidence, impeccable character and integrity. A person having criminal antecedents is, undoubtedly, not fit in this category, more particularly when he has suppressed the information about his involvement in criminal case(s) irrespective of the fact whether the case was pending or he was acquitted.

13. It is common practice that in the application form, a specific information relating to involvement in a criminal case, conviction or detention, irrespective of acquittal, is sought for and if a candidate keeps relevant columns blank or answer the columns in negative, when in fact he was involved in criminal case, that would undoubtedly amount to suppression of information relating to his involvement in criminal case. In a given case, if such a candidate was acquitted long back, for instance, more than 5 to 10 years before, and that too of a petty offence, it may be for the employer to decide whether to appoint him or to terminate his service having regard to his performance and other relevant factors. However, such a decision should be fair. In other words, such a decision should not be arbitrary and mala fide. As observed by the Supreme Court in *PAWAN KUMAR v. STATE OF HARYANA (1996) 4 SCC 17*, if the conviction or involvement was in traffic, municipal and other petty offences under the Indian Penal Code, committed at an young age, such conviction or involvement could, in a given case, be ignored by an employer. The candidate, however, is expected to disclose all such information leaving it open to the appointing authority to decide whether to appoint such person having regard to gravity of the offence allegedly committed and proximity of time having regard to the nature of job for which he is being considered or to be appointed. While considering such candidate, who in all fairness has disclosed such information, the employer should not act mechanically to deny employment or reject application of such a candidate at threshold. In any case, a candidate having suppressed the information and/or giving false information in respect of his character and antecedents, cannot, as of right, seek an order of appointment contending that he has been acquitted of the case. If such a candidate is selected and appointed and if at the stage of verification of antecedents, any information is gathered or surfaced, which would amount to misrepresentation and fraud on the employer or suppression of information, it would not create equity in his favour or any estoppel against the employer while resorting to his termination. Such candidate cannot claim any right to continue in service and the employer, having regard to the nature of employment as well as other relevant factors, has a discretion to either reject his candidature or not to appoint such candidate or to terminate his services, if he was appointed, on the basis of the information received at that stage (i.e. verification of character and antecedents). In short, the candidate, who suppressed material information and/or given false information regarding his antecedents and character, cannot have any right of appointment or continuity in service. It is, however, always open to the employer/appointing authority to exercise its discretion in the facts and circumstances of each case keeping in view the principles laid down by the Supreme Court.”

13. In view of the above authoritative pronouncement, the writ petitioner cannot be heard saying that he cannot be held guilty of having suppressed the material

information entailing in his dismissal from service.

14. The other charge against the deceased writ petitioner was that he committed an act of misconduct in his capacity as a member of the Force under Section 11(1) of the CRPF Act, 1949 having contracted a marriage with another girl by name Smt.Baby, D/o.Babu Ram, while his first wife Smt.Kanya Devi is alive. To this article of charge, the defence of the deceased writ petitioner was that it is no doubt true that he married Kanya Devi during his minority in the year 1987, but however, in December, 1994, there was a customary divorce. He also admits that no divorce was obtained through any legal process. According to the writ petitioner, the divorce in between Kanya Devi and himself was approved by the Panchayat according to the customs prevailing in his community. However, the deceased writ petitioner failed to prove that there was a custom of divorcing a wife by dissolving the marriage in the presence of Panchayat or the elders. In the absence of there being any proof of the existence of any custom, the writ petitioner cannot be heard saying that having given divorce to Kanya Devi in the panchayat, he married Baby and therefore it does not amount to plurality of the marriage.

15. Both the articles of charges were held against the writ petitioner by the Enquiry Officer and he was unsuccessful in his appeal and revision.

16. Learned Counsel appearing for the writ petitioner submits that as per Section 11(1) of the Central Reserve Police Force Act, 1949, he is liable to be punished only when he is found to have committed the alleged misconduct in his capacity as a member of the Force. According to the learned Counsel, furnishing the information prior to appointment withholding the information of the pendency of criminal case against him was prior to his becoming a member of Force and therefore he cannot be punished. This contention of the learned Counsel is wholly devoid of substance for the reason that even before becoming the member of Force, an applicant is required to give the information honestly and correctly. If he is found to have suppressed the material information at that time, he is liable to be punished for his act of suppressing the information and therefore it cannot be said that since he furnished the information even before he became the member of the Force, he cannot be punished cannot be countenanced.

17. Similar contention is raised with regard to the second charge viz., contracting second marriage during the subsistence of the earlier marriage.

18. The deceased writ petitioner who intended to serve the Nation by being a member of the disciplined CRPF is expected to conduct himself in the manner befitting the disciplined service. Both the imputations levelled and proved against the writ petitioner were such that his continuance in the CRPF was untenable. Both the acts of the writ petitioner namely suppressing the vital information about the pendency of the criminal case even though he was very much aware thereof, having surrendered himself and obtained bail even prior to submitting the application form and secondly, for having married Baby during the subsistence of earlier marriage with Kanya Devi amounts to an act which is pre-judicial to good order and discipline and the punishment of removal from service cannot be said to be disproportionate. In view of the foregoing discussion, I find no reason to interfere with the termination order of the deceased writ petitioner, and the writ petition is liable to be dismissed.

19. It is, however, submitted that after the death of the writ petitioner, his son applied for a job in the CRPF and he may be directed to be appointed on compassionate grounds. I do not think that such a direction can be issued to appoint the son of a dismissed deceased employee on compassionate grounds. However, it is open to the authorities to consider the case of the son of the deceased writ petitioner in his individual capacity.

20. In the result, the writ petition fails and the same is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .12.2015

Dsr/Smr