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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 18.12.2015

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W.P.(C) 10263/2015

PARSURAM

.....Petitioner

Through: Ms. Saahila Lamba, Advocate.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Sh. J.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present petition challenges the Memorandum dated 29.07.2015 issued by the respondents whereby, the petitioner was discharged from his services as Constable under the Railway Protection Force.

2. The brief facts are that the petitioner applied for the post of Constable pursuant to an advertisement published by the respondents in the year 2011. Along with appearing for the examination, the petitioner was also called upon to fill and submit an attestation form, where one of the questions was 'Have you ever been prosecuted?' To this question the petitioner answered in the negative.

3. Subsequently on 05.10.2014, the respondents issued a selection letter to the petitioner stating that he has been provisionally selected for the post.

However, soon thereafter on 28.05.2015 and 06.06.2015, the respondents issued communications to the effect that the petitioner be discharged from service as the attestation form submitted by him contained false answers, inasmuch as a police case under Sections 323/294/325 and 34 of the Indian Penal Code, 1860 was registered against him. Finally, on 29.07.2015 the respondents issued the impugned memorandum discharging the petitioner for suppression of the registration of a criminal case against him.

4. Learned counsel for the petitioner submits that the police case which has formed the basis of his dismissal is false, it being filed by two women in connection with a petty dispute regarding cattle grazing in their fields. Thereafter the matter was compromised and applications filed before the learned Judicial Magistrate seeking to compound the case in view of the compromise arrived at between the parties. As a result, the learned Judicial Magistrate by judgment dated 04.04.2013 acquitted the petitioner and his co-accused (s). It is further submitted that non-disclosure of this was in no manner a calculated decision to conceal such fact, but merely an inadvertent mistake. Learned counsel argues that what becomes material in such cases is whether the offence in focus is one which involves moral turpitude. If it does not, a lenient view must be taken and should ordinarily not result in a denial of public employment. He also alludes to the circumstances prevalent in most rural disputes where ordinary, petty quarrels, essentially acts of indiscretion committed by young people, often result in FIRs which exhibit a seriousness far removed from actual fact. In support of this cited *Commissioner of Police and Anr. v. Sandeep Kumar* 2011 (4) SCC 644 and the decision of this Court in *Govt. of NCT Delhi & Anr. v. Robin Singh* [W.P. (C) No. 2068/2010 decided on 25.08.2010].

5. Learned counsel for the respondents submits that the attestation form is categorical in its terms. It is required for the express purpose of verifying the antecedents of an applicant and suppression of any information that is elicited in the form defeats such purpose. Moreover, the respondents point out that it is not the nature of the offence or the acquittal of the petitioner which is relevant. That circumstance was in no manner a factor which influenced that the issuance of the impugned order. As is evident from the above discussion, the petitioner is not denying that he did not tender the information. What he has urged, on the other hand, is that the Court should adopt a graded approach in considering that such behaviour, i.e., as to whether the concerned candidate is accused of a grave or serious offence or a minor one. As part of this argument, it is highlighted that often young boys are involved in altercations in rural areas.

6. We have considered the submissions. In *Jitender v. Union of India* [W.P.(C) 7034/2015, decided on 31.08.2015], this Court had observed as follows:-

“We notice that in Sandeep Kumar’s case (supra) as well as Naveen Kumar Mandiwal’s case (supra) (the latter view being confirmed by the Supreme Court which rejected Special Leave Petition subsequently), the Courts took a relaxed standard into consideration and held that where the criminal charges are not serious and appeared to have levelled at the stage when the applicant was a youth (though of tender years), the fact that omission to disclose these particulars ought not to be used so strictly so as to deprive the public employment altogether. A somewhat similar approach was indicated in Ram Kumer vs. State of Uttar Pradesh (2011) 14 SCC 709 when the Court held that mere fact that a criminal charge had been levelled at some stage in the past cannot be a solitary ground for refusal of public employment when the larger issue of suitability is involved.”

7. The decision in *Sandeep Kumar* (supra) and several judgments of the Supreme Court starting with *Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar* (1996) 11 SCC 605; *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* AIR 2003 SC 1709; *A.P. Public Service Commission v. Koneti Venkateswarulu* AIR 2005 SC 4292; *State of Haryana & Ors. v. Dinesh Kumar* AIR 2008 SC 1083 and *R. Radhakrishnan v. Director General of Police & Ors.* AIR 2008 SC 578 was considered in a later judgment delivered after *Sandeep Kumar* (supra), i.e., *Davender Kumar vs. State of Uttaranchal and Others* (2013) 9 SCC 363. The Supreme Court highlighted that the question of suitability is one which lies in the exclusive domain of the executive, i.e., the public employer and that as to the criminal nature of the charge levelled against the employee is not something which the Court in exercise of judicial review would be concerned with. The Court held

“the purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.”

8. This Court is of the opinion that the petitioner's arguments cannot be accepted. Apart from what is emphasized by the Supreme Court in *Davender Kumar* (supra), this Court in *Praveen Kumar v. Ministry of Railways and Anr.* [W.P.(C) NO. 5291/2015, decided on 17.11.2015] has held as follows:

“...another material circumstance is that there is every likelihood that other candidates placed similarly (like the petitioner who might have been arrayed as accused, but later acquitted) disclosed the true facts and were excluded from employment. Allowing leniency, especially by the Court, in cases where there is deliberate suppression of information, is not only unfair to those who disclosed antecedents and were thus rejected at the very outset, but also akin to facilitating a backdoor entry, thereby subverting the entire process. The public employer’s exercise of discretion in determining that such individuals are unsuitable for being continued in employment is a factor which the Court cannot ignore and make a distinction on the basis of which offence is more grave and the litigant before has not been charged for a grave offence. Such distinctions undermine the discretion of the public employer altogether in view of the subsequent acquittal—a factor which is irrelevant given the nature of information elicited at the relevant stage.”

9. The case before us today is no different from the one above. For the above reasons, this Court finds no reason to interfere with the impugned order. The writ petition is dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 18, 2015