

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL No.837 OF 2016

JUDGMENT: (*Per Hon'ble Sri Justice V. Ramasubramanian*)

The appellant, whose probation was terminated by the Deputy Inspector General, Central Industrial Security Force, on the ground that there was suppression of facts in the application form, has come up with the present appeal challenging an order of the learned single Judge dismissing her writ petition.

Heard Mr. P. Sridhar Rao, learned counsel for the appellant, and Mr. B. Narayana Reddy, learned Assistant Solicitor General, appearing for the respondents.

Pursuant to a notification, dated 09.01.2013, issued by the Staff Selection Commission, the appellant applied for selection to the post of female constable. It is relevant to note that the notification, though issued in common, was for recruitment to various States depending upon the vacancies arising therein. The appellant applied as against the vacancies in Telangana, and she appeared for written test on 12.05.2013. She belongs to the Scheduled Tribe (Erukala) Community. She was eventually selected for appointment and by an order, dated 28.02.2015, she was appointed and directed to undergo training.

The appellant reported for training on 11.12.2015. But, within eight months of her joining service, she was served with an order of termination, dated 30.07.2016. It was an order of termination of probation simplicitor.

Challenging the said order, the appellant filed a writ petition No.26683 of 2016. The learned Judge held that the writ petition was not maintainable in view of the fact that the order of termination was passed in Madhya Pradesh, where the appellant was undergoing training, and that this Court does not have jurisdiction.

Nevertheless, the learned Judge went into the contentions raised on both sides and held that since it was a case of termination of probation simplicitor, on the ground of non-disclosure of true and material facts in the application form, the order of termination did not call for any interference. Aggrieved by the said order, the appellant is before us.

At the outset, we have to point out that once the Court holds that there is no jurisdiction to entertain a writ petition, it is not necessary to go into the merits of the case. This is in view of the fact that a Court, which has no jurisdiction, is not bound to decide a *lis* on merits.

Insofar as the question of jurisdiction is concerned, it is true that the appellant joined training at Madhya Pradesh on 11.12.2015 and her probation was terminated by the order, dated 30.07.2016, passed by the Deputy Inspector General at Madhya Pradesh. But, it does not mean that the entire cause of action for the appellant arose only at Madhya Pradesh. As rightly pointed out by the learned counsel for the appellant, the notification was for recruitment to the Central Industrial Security Force throughout country, but the selection was done State wise. This is how the appellant herself was selected for appointment to the cadre in the State of Telangana. She took the examination in Hyderabad, the order of appointment was served on her at Warangal and, hence, a portion of the cause of action arose within the jurisdiction of this Court. Whether one calls the order of appointment as the genesis of a contract or of status, the

genesis happened in a place within the jurisdiction of this Court. Therefore, this Court cannot be said to have no jurisdiction at all, to entertain the writ petition, especially in view of the fact that the appellant was selected as against a vacancy in the State of Telangana. She was merely undergoing training in Mahdya Pradesh after which she was to be posted in Telangana subject however to other conditions. Hence, the finding of the learned Judge, that this Court has no jurisdiction, does not appear to be correct. Therefore, we hold that this Court has jurisdiction to entertain the writ petition.

Coming to the merits of the case, one important aspect that has to be taken note of is that, the appellant was, admittedly, born on 28.07.1992. There is no dispute with regard to her date of birth as 28.07.1992. This is the date reflected in her Secondary School Leaving Certificate. The reason as to why the probation of the appellant was terminated was that in the application form, she did not indicate her involvement in a criminal case. Therefore, the respondents have taken a stand that the appellant was guilty of suppression of material facts in the application form and that, therefore, the appellant cannot continue in service as a member of the uniformed services.

As we have indicated earlier, the date of birth of the appellant was 28.07.1992. It appears that a criminal complaint was lodged in Crime No.68 of 2007 on 10.04.2007 as against the appellant, her sister and her parents. The complaint was lodged by a neighbour for alleged offences under Section 324 read with Section 34 of I.P.C.

Therefore, on the date of occurrence, namely 10.04.2007, the appellant was actually 14 years of age. We do not know how the prosecution proceeded as against a juvenile without taking note of this

fact. As a matter of fact, the appellant had completed her S.S.L.C. only in March, 2009. Therefore, on the date of occurrence, she should have been in VIII standard. Therefore, the appellant cannot be expected to make note of this and fill up the application form so scrupulously. It is no doubt true that the appellant was a major at the time when she filled up the application form. But, that does not wipe out the fundamental fact that she was a minor at the time of the alleged commission of the offence.

In any case, it appears that before the Lok Adalat, both the neighbouring families compounded the matter and the appellant as well as her sister and parents were acquitted by the Award of the Lok Adalat dated 05.11.2011.

On the question as to how suppression of facts in the application forms have to be treated, the law laid down by the Supreme Court in ***Avtar Singh Vs. Union of India and others***¹, is very clear. The relevant portion of the decision of the Supreme Court in ***Avtar Singh***, which provides a complete answer to the question on hand, is extracted as follows:

“(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:-

¹ 2016 (8) SCC 471

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him."

The criminal case registered against the appellant, was at the instance of a neighbour and the appellant was a girl of 14 years at the time when the F.I.R. was registered. The appellant was cited as accused along with her sister and her parents. Therefore, the case, as against the appellant, should be treated as trivial in nature falling within Para 4(a) of the portion of the decision in **Avtar Singh**, extracted above, and as a consequence the alleged suppression of information should actually be ignored.

Moreover, it is seen that there is no clarity with regard to the columns contained in the application form. In column No.12 of the application form, there are any number of questions one of which is, '*Have you ever been prosecuted?*'. It is perhaps the answer '*No*' given by the appellant to the said question that has brought to her this fate. But, the same would fall within the ratio laid down in Para 4(a) of the relevant portion of the decision in **Avtar Singh**, which we have extracted above. Therefore, we are of the considered view that the order of termination of probation deserves to be set-aside. Accordingly, the writ appeal is allowed. The order of the learned Judge is set-aside and the writ petition will stand allowed. No order as to costs.

As a sequel to dismissal of the writ appeal, miscellaneous petitions, if any, pending in this writ appeal, shall stand dismissed as infructuous.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 03-11-2016.
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(Judgment of the Division Bench delivered by
Hon'ble Sri Justice V. Ramasubramanian)

Date. 03-11-2016

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