

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.4213 of 2011

Nitin Dixit, S/o M.P. Dixit, aged about 32 years, Assistant Sub Inspector, State Police Academy, Chandkhuri, Raipur, Tahsil & Distt. Raipur (C.G.)

---- Petitioner

Versus

1. The Central Information Commission, Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066
 2. Deputy Secretary (Training) Appellate Authority, Sainik School Society, Ministry of Defence, New Delhi.
 3. The Principal, Through Public Relation Officer, Sainik School, Kunjpura, District Karnal (Haryana)
 4. Mr. Bhaskar Shukla, Teacher, at present posted Sainik School, Kunjpura, District Karnal (Haryana)
- Respondents

For Petitioner: Mr. Sanjay Patel, Advocate.

For Respondents No.2 and 3: -

Mr. Manish Nigam, Advocate.

For Respondent No.4: Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/11/2017

1. The petitioner made an application seeking certain service records of respondent No.4 Bhaskar Shukla, as respondent No.4 is working as Teacher in Sainik School, Kunjpura, District Karnal (Haryana). The petitioner is Assistant Deputy Director, State Police Academy, Raipur. The Public Information Officer as well as the appellate authority and finally, the Central Information Commission has rejected the application of the petitioner on the ground that the information sought is personal

information which cannot be granted to the petitioner. Feeling aggrieved and dissatisfied with the order of the Central Information Commission, this writ petition has been filed stating inter alia that such an order is unsustainable and bad in law.

2. Mr. Manish Nigam, learned counsel appearing for respondents No.2 and 3, would submit that the information sought by the petitioner is personal information that is covered under Section 8(1)(j) of the Right to Information Act, 2005 and therefore such information cannot be supplied. The Central Information Commission and the two authorities are justified in rejecting the petitioner's application.
3. In identical fact situation, in the matter of **Vijay Prakash v. Union of India and others**¹, the Delhi High Court has held that right to privacy of a public servant is of same order as that of private individual and the same is covered by Section 8(1)(j) of the Right to Information Act, 2005, and it has been held so in para 22 as under: -

“22. A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, which is afforded to the two classes – public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public

1 AIR 2010 Delhi 7

disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by [Section 8\(1\)\(j\)](#) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of [Section 8\(1\)\(j\)](#); the legislative intention in carving out an exception from the normal rule requiring no "locus" by virtue of [Section 6](#), in the case of exemptions, is explicit through the non obstante clause. The Court is also unpersuaded by the reasoning of the Bombay High Court, which appears to have given undue, even overwhelming deference to Parliamentary privilege (termed "plenary" by that Court) in seeking information, by virtue of the proviso to [Section 8\(1\)\(j\)](#). Were that the true position, the enactment of [Section 8\(1\)\(j\)](#) itself is rendered meaningless, and the basic safeguard bereft of content. The proviso has to be only as confined to what it enacts, to the class of information that Parliament can ordinarily seek; if it were held that all information relating to all public servants, even private information, can be accessed by Parliament, [Section 8\(1\)\(j\)](#) would be devoid of any substance, because the provision makes no distinction between public and private information. Moreover there is no law which enables Parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. If the reasoning of the Bombay High Court were to be accepted, there would be nothing left of the right to privacy, elevated to the status of a fundamental right, by several judgments of the Supreme Court."

4. The Supreme Court in the matter of **Justice K.S. Puttaswamy (Retd.) and another v. Union of India and others**² has held that right to privacy is a fundamental right, as right to life and personal liberty under Article 21 includes right to privacy as an integral part guaranteed under Part-III of the Constitution of

2 AIR 2017 SC 4161

India.

5. Likewise, in the matter of **Canara Bank Rep. by its Deputy Gen. Manager v. C.S. Shyam and another**³ it has been held by Their Lordships of the Supreme Court that disclosure of personal information of individual employee working in Bank is exempted under Section 8(1)(j) of the Right to Information Act, 2005 and non-disclosure of information is proper.
6. Following the principle of law laid down in the afore-cited cases (supra), the application submitted by the petitioner seeking service record of respondent No.4 is covered by Section 8(1)(j) of the Right to Information Act, 2005 and it would be violative of right to privacy of respondent No.4 and as such, I do not find any merit in the writ petition. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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3 AIR 2017 SC 4040