

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 5374 of 2018

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is taken up for disposal at the admission stage itself with the consent of the learned counsel for both the parties.

The writ petition is filed assailing the order dated 30.10.2017 in Review M.A.No. 172 of 2017 in O.A.No. 7353 of 2014 passed by the A.P. Administrative Tribunal.

The case of the respondent-applicant is that his father Sri G.Venkataiah, while working as Watchman in ISRMCD No.5, Vijayawada, expired on 26.03.2013. Thereafter, the respondent made a representation to the 3rd respondent – District Collector to consider his case for appointment on compassionate grounds. Subsequently, the respondent was allotted to the District Treasury, Machilipatnam, Krishna District, for the post of Junior Accountant on compassionate grounds. In view of his allotment, the 4th petitioner – Deputy Director, District Treasury, issued Memo dated 04.03.2014 directing him to submit original documents for verification so as to issue appointment orders. Accordingly, the applicant submitted all the original documents and the 4th petitioner issued proceedings dated 29.03.2014 appointing him as Junior

Accountant on compassionate grounds on conditional basis subject to acquiring Computer courses within a period of two years. The applicant joined in the post on 17.04.2014.

The further case of the respondent is that earlier, the police registered a case against him in Cr.No. 29 of 2013 of Suryaraopet P.S., Vijayawada for the offence punishable under Section 332 read with 34 IPC wherein he was shown as accused No.3. He was bound over before Urban Tahsildar, Vijayawada vide Cr.No. 89 of 2014 under Section 110(e) Cr.P.C. of the same police station in connection with Municipal Elections and a suspect sheet (No.4/2013) was opened against him on 29.01.2013. Subsequently, the 4th petitioner, on the ground that the respondent was involved in the above-mentioned cases and arrested on 25.01.2013 and his character and antecedents are not found to be satisfactory, issued Proceedings dated 10.12.2014 terminating his services. Challenging the proceedings of termination, the respondent filed O.A.No. 7353 of 2014, and the A.P. Administrative Tribunal, Hyderabad, after considering rival contentions of the parties, dismissed the O.A. vide order dated 19.01.2017.

Thereafter, the respondent filed Review M.A.No. 172 of 2017 in O.A.No. 7353 of 2014 stating that the order dated 19.01.2017 is contrary to the law laid down by the Apex Court

in the cases of State of Madhya Pradesh v. Rama Shankar Raghvanshi¹ and Avtar Singh v. Union of India². Keeping in view the aforesaid judgment, the learned Tribunal opined that as per the termination proceedings dated 10.12.2014, upon verification of "Character and Antecedents" of the respondent, he was found involved in the afore-mentioned crimes. A suspect sheet No. 4/2013 was opened against him on 29.01.2013 in Suryaraopet Police Station, Vijayawada. These cases are trivial / petty cases. Even if the respondent has not stated anything about those cases in the attestation / revised attestation form, as per the observations of the Apex Court in the cases cited supra, the disclosure of the information by the respondent will not render him unfit for the post, and in such cases, the employer has discretion to condone the lapse of suppression of fact. Accordingly, the order dated 19.01.2017 in O.A.No.7353 of 2014 filed by the respondent was recalled and Review M.A.No. 172 of 2017 was allowed. Consequently, the petitioners were directed to continue the respondent in service as Junior Accountant.

The learned Government Pleader for Services appearing on behalf of the petitioners, to buttress her contention, has relied upon the latest judgment rendered by the Supreme

¹ AIR 1983 SC 374

² (2016) 8 SCC 471

Court in Union of India v. Amit Singh³ whereby, the Apex Court, while considering the case of Avtar Singh (2nd cited supra), held as under:

“Having regard to the facts and circumstances of the case, we are of the view that this is a case where the respondent should be permitted to file an appropriate representation before the appointing authority. Ordered accordingly. In the event if such a representation is filed, in the light of the judgment referred to above and in particular para 38.4.1 of the judgment read without any other relevant instructions, a speaking order on the representation shall be passed after affording an opportunity for hearing to the respondent, within four months.

We make it clear that while passing the orders, as above, the appointing authority will also verify whether there was involvement of the respondent in any other criminal case, his age at the time of incident, his conduct during the period of service and also the fact that he has served for around five years under the CRPF.”

It is an undisputed fact that while terminating the services of the respondent, vide proceedings dated 10.12.2014, the petitioners-authorities did not issue Show Cause Notice to the respondent, therefore, he had no opportunity to put forth his version before the authorities. Non-issuance of notice and not affording an opportunity to the respondent to explain his grievance, amounts to violation of principles of natural justice. Though the Tribunal has recorded that it is the discretion of the Department to condone the lapse, however it is to be taken note of that it is

³ (2018) 1 SCC 293

also the discretion of the Department to consider the representation made by such candidate and pass appropriate orders thereon.

Admittedly, in the present case, no show cause notice was issued to the respondent nor his explanation was called for. Therefore, this Court, keeping in view the fact that the respondent was appointed on compassionate grounds, is of the considered opinion that let the petitioners issue Show Cause Notice to the respondent who shall submit explanation thereto. Thereafter, the petitioners shall consider his explanation in the light of the judgment of the Apex Court (3rd cited supra) and the fact that the respondent was appointed on compassionate grounds.

For the foregoing reasons, the order dated 30.10.2017 in Review M.A.No. 172 of 2017 in O.A.No. 7353 of 2014 passed by the Tribunal, is hereby set aside. However, till show cause notice is issued to the respondent calling for his explanation and decision is taken by the petitioners on the explanation that may be submitted by the respondent, the petitioners shall continue the respondent in service. Consequently, the termination proceedings dated 10.12.2014 issued by the 4th petitioner, are set aside. No order as to costs.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

20.02.2018

ABHINAND KUMAR SHAVILI, J

bcj

