

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

WRIT PETITION No.30257 of 2010

ORDER: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 4th February 2010, passed in O.A.No.12058 of 2009, whereby, the application filed under Section 19 of the Administrative Tribunals Act, 1985 by the 1st respondent herein, has been allowed.

2. Learned counsel appearing on behalf of petitioners submits that the 1st respondent has applied for the post of Stipendiary Cadet Trainee (SCT) Police Constable (Civil) (Men). He was successful in the physical test, written test and medical test. It is admitted that the 1st respondent had furnished the Attestation Form, mentioning about his involvement in a criminal case. However, in the application form, he did not mention about his involvement in criminal case and stated as "No" in the relevant column, which indicates that he was not involved in any criminal case at any time. Thus, at the time of submission of application form, he had suppressed the information about his involvement in the said criminal case, which he was bound to declare.

3. Learned counsel for petitioners further submits that it is immaterial whether the case is compoundable or not, but it is

mandatory on the part of 1st respondent to mention in the relevant column in the application form, about his involvement in the criminal case, which was not done by him. However, the learned Tribunal has ignored this fact and allowed the petition filed by the 1st respondent.

4. We have heard learned counsel for the parties.

5. There is no dispute that the 1st respondent has applied to the post of Police Constable in pursuance of the notification issued by the State Level Police Recruitment Board. It is also not in dispute that the 1st respondent was successful in physical test, written test and medical test. His selection was rejected only on the ground that he has not disclosed in the relevant column of application form, about his involvement in the criminal case.

6. It is the admitted case of the petitioners herein in the counter affidavit filed before the Tribunal that in Column No.16 of the Attestation Form submitted on 26th February 2009, the 1st respondent herein has mentioned about his involvement in the criminal case. However, the petitioners contended that the 1st respondent should have mentioned in the application form itself, about his involvement in the criminal case. Thus, it amounts to suppression of fact. Therefore, he is not entitled for recruitment into the disciplined force.

7. The undisputed fact is that the 1st respondent was involved in criminal case with regard to an incident that occurred on 3rd February

2002 when he was just 13 years of age. Charge sheet was filed before the V Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.908 of 2004. Ultimately, the learned Magistrate came to the conclusion that the prosecution had failed to establish the guilt of 1st respondent. Thus, the Court found him not guilty of the offence under Section 338 of IPC and acquitted him on 25th January 2007 under Section 255(1) Cr.P.C.

8. Case of the petitioners is that though the 1st respondent was acquitted of the charges, an acquittal or conviction in a criminal case is not relevant. For selection to a disciplined force, one should have a good character and conduct and he should not have been involved in any criminal case. As the 1st respondent failed to mention in the application form about his involvement in the criminal case and suppressed such fact, he is not entitled for selection.

9. To strengthen his argument, the learned counsel for petitioners has relied upon the judgment of this Court in the case of **The State Level Police Recruitment Board v. P. Vinay** in W.P.No.19473 of 2017 and batch, dated 10.11.2017. In the said judgment, it is held that if the candidate has suppressed any information, the employer has a right to remove him from service.

10. We note that in the case in hand, the FIR against the 1st respondent was lodged in 2002 for the offence punishable under

Section 338 of IPC. At that time, the 1st respondent was aged 13 years. No doubt, though he was acquitted from the said case before submitting the application form, the 1st respondent should have mentioned about said case in the relevant columns of the application form, however, he had not done so. Thereafter, he mentioned in the Attestation Form that he was involved in the criminal case and was acquitted of the charge under Section 338 of IPC. Thus, the case cited by the petitioners relates to a candidate who did not disclose at all about his involvement in the criminal case, whereas, in the present case, the 1st respondent has disclosed in the Attestation Form regarding registration of case and his acquittal therefrom.

11. In addition to above, in similar circumstances, W.P.No.28118 of 2005 came up before this Court and was disposed of vide order dated 17th June 2008. In the said case also, the respondent therein did not disclose in the proforma application about his involvement in criminal case. However, in the Attestation Form, he disclosed that he was involved in a criminal case and the same ended in acquittal vide judgment in Sessions Case No.467 of 2004, dated 23rd September 2004. The said order, as stated by the counsel at Bar, was not challenged before the higher Court, thus attained finality.

12. It is not in dispute that in Column Nos.16 and 17 of application form, candidates are required to furnish full details regarding their involvement in criminal cases, if any. But, the 1st respondent, by

inadvertence, did not divulge the requisite information. The same, in our considered opinion, may not amount to willful suppression or concealment of facts, because, immediately thereafter, in the Attestation Form, the 1st respondent disclosed that he was involved in a criminal case. The said case does not relate to moral turpitude, as was registered for the offence under Section 338 of IPC.

13. This Court, in a case registered for the offence under Section 498-A of IPC, wherein, the wife was complainant, held that the offence of 498-A IPC does not come under the category of moral turpitude, however, it was because of family dispute. In the present case, the case registered against the 1st respondent was for the offence under Section 338 of IPC, which also does not come under the category of moral turpitude. Moreover, the respondent has disclosed said fact in Attestation Form, therefore, there is no suppression on his part.

14. Accordingly, finding no merit in the present writ petition, the same is dismissed confirming the order dated 04.02.2010, passed by the Tribunal in O.A.No.12058 of 2009. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

8th August, 2018

ABHINAND KUMAR SHAVILI, J

ajr