

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : February 06, 2018

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Judgment Delivered on : February 13, 2018

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W.P.(C) 6136/2017

AKHILESH KUMAR

..... Petitioner

Through : Ms.Saahila Lamba &
Mr.T.S.Dager, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr.J.K.Singh, St.Counsel for
Railways with Ms.Madhulika
Aggarwal, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for quashing of the speaking order dated 11.05.2017, whereby he has been discharged and his candidature for appointment as a Constable in the RPF/RPSF has been cancelled.

2. Brief facts leading to filing of the instant writ petition are that in the year 2011, the respondents published an advertisement for the post of Constable in Railway Protection Force/Railway Protection Special Force. The petitioner applied for the said post and successfully qualified the

examinations. Thereafter he was sent for training at RTC, CISF Bhilaie (CG) for being appointed as a Constable in the Railway Protection Special Force. On 11.06.2014 the petitioner filled an attestation form mentioning therein that no criminal case was registered against him. However, when the attestation form filled by the petitioner was sent to the District Magistrate, Ghazipur for police verification, it was revealed that a case bearing FIR No.752/2010 under Sections 323/325/506/504 IPC was registered against him. On the basis of said police verification report, the respondents passed an order dated 29.07.2015, discharging the petitioner from training with immediate effect for suppression of facts.

3. Aggrieved by the order dated 29.07.2015, the petitioner filed W.P. No.52198/2015 before High Court of Allahabad which was allowed vide order dated 22.12.2016 and the impugned order dated 29.07.2015 discharging the petitioner was quashed giving liberty to the respondents to reconsider the matter and pass a fresh appropriate order, in terms of the observation made in Avtar Singh vs. Union of India & Ors. reported as **2016 (8) SCC 471**.

4. In compliance of the order passed in the Writ Petition No.52198/2015, the representation dated 21.02.2017 filed by the present petitioner was considered and rejected vide speaking order dated 11.05.2017, *inter alia* on the following grounds:-

(i) While filling the attestation form on 11.06.2014, in column No.12 he did not mention about registration of police case No.752/2010 under Sections 323/325/506/504 IPC, thus violated para 03 of the attestation form which provided :

"If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice would be liable to be terminated."

(ii) On the date of filling the attestation form, the Criminal Case No.752/2010 was pending against him though he has been subsequently acquitted in the said case on 18.08.2014.

(iii) The attestation form is unequivocally clear, specific and not vague in nature and also bilingual i.e. in Hindi and in English.

(iv) The consequence of suppression of the fact/information are reiterated in numerous paras of the attestation form, hence it is not a case to be treated as a case of ignorance/lack of understanding/error.

(v) The petitioner was to serve in uniformed service and any deliberate statement of omission regarding vital information from a member of a disciplined force is liable to be judged on a higher pedestal.

(vi) The matter of suppression regarding the registration and pendency of a criminal case against him was deliberate and not due to any misconception, thus rendering him unfit for appointment in the force.

5. On behalf of the petitioner, Ms.Saahila Lamba, Advocate has sought quashing of the order impugned mainly on the ground that on the date of registration of FIR No.752/2010 under Sections 323/325/506/504 IPC against the petitioner and his family members, he was a juvenile, thus entitled to protection under the provisions of Juvenile Justice (Care & Protection) Act, 2000.

6. Mr.J.K.Singh, learned counsel for the respondent/RPSF opposed the

prayer of the petitioner contending that the plea of juvenility was not taken in the representation dated 21.02.2017. The petitioner has admitted that the omission to mention about pendency of the criminal case was deliberate and the registration of the criminal case against him came to the notice of the respondent only during the police verification conducted to verify his antecedents. Learned counsel contended that suppression of the factum of his prosecution and that too while signing a declaration that the information furnished by him is true and correct and being fully aware of the consequences of non-furnishing vital information or suppressing the same, the petitioner has been rightly discharged by cancelling his candidature and the writ petition may be dismissed.

7. The facts are not in dispute to the extent that the petitioner has claimed his date of birth to be 30.05.1993. The Criminal Case No.752/2010 was registered against the petitioner and his other family members i.e. his father Ram Sewak, his mother Santra Devi and his brother Indel Yadav in respect of a quarrel that had taken place on 20.07.2010 at 7.30 pm, with the complainant Pappu Yadav who was repairing the handpump in front of his house. All the four accused persons including the petitioner were acquitted vide judgment dated 18.08.2014 as the complainant did not make any incriminating statement against the petitioner and his other family members i.e. his parents and brother.

8. In the case of Pratap Singh vs. State of Jharkhand & Anr. reported as **(2005) 3 SCC 551**, a five Judges Bench of Apex Court has held that the reckoning date for the determination of the age of the juvenile is the date of the commission of the offence and not the date when he is produced before the competent authority or court.

9. The petitioner though juvenile, was tried alongwith adult co-accused persons in a regular Court, thereby denying him the benefit of Juvenile Justice (Care & Protection) Act, 2000 (hereinafter referred to as "the J.J.Act"). Section 19 of the J.J.Act provides as under:-

"19. Removal of disqualification attaching to conviction.-

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be."

10. Clause (2) of Section 19 the J.J.Act has to be read with Rule 99 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 which reads as under:-

"The records or documents in respect of a Juvenile or a child or a Juvenile in conflict with law shall be kept in a safe place for a period of seven years and no longer, and thereafter be destroyed by the officer-in-charge or Board or Committee, as the case may be."

11. In the decision, Ashok Sharma vs. Union of India reported as **2010(1) Crimes 596 (MP)**, it was observed as under:-

"From the aforesaid, it is quite clear that the Petitioner/Appellant was charged with an offence under Section 452, 323, 325/34 of IPC with certain other persons. It is equally established that he was prosecuted, whose non-disclosure in routine course could have been treated as suppression or

concealment attracting disciplinary proceeding for misconduct. However, an important factor of this case is that the date of birth of the Petitioner is 5.3.1979, as revealed in the record of Union of India Itself (i.e. employer) and the Petitioner/Appellant was aged less than 16 years at the time of occurrence of the alleged criminal incidence. Appellant according to the record of the Union of India itself, was a juvenile and he could not have been prosecuted except by a Juvenile court. Thus, prosecution of the Petitioner by court of regular magistrate was without jurisdiction. Impact of Juvenile Justice Act, 1986 was not taken into consideration by the disciplinary authority while imposing punishment of dismissal. Since this point was not raised before the learned Single Judge, it could not come up for consideration. In order to impart justice, we invited both the counsel to address on the effect of the provisions of The Juvenile Justice Act 1986 (for brevity 'Act of 1986') and The Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 'Act of 2000').

Learned Assistant Solicitor General of India for Respondents vehemently opposed on the ground that the plea that the Petitioner was juvenile and could not have been prosecuted by a regular magistrate is not taken at all neither in the writ petition nor in the writ appeal. Therefore, such a new plea can not be permitted to be raised for the first time in the writ appeal. Reliance has been placed on MANU/SC/0650/2004 : (2004) 7 SCC 708 (Sayed Muhammed Mashur Kunhi Koya Thangal v. Badagara Jumayath Palli Dharas Committee and Ors.), MANU/SC/4815/2008 : (2009) 1 SCC 308 (Assistant Commercial Taxes Officer v. Bajaj Electricals Limited), MANU/SC/8451/2008 : 2009 (3) SCC 141 (G. Jayashree and Ors. v. Bhagwandas S. Patel and Ors.), MANU/SC/0327/2009 : (2009) 3 SCC 285 (Bangalore Metropolitan Transport Corporation v. Padma and Ors.).

We are not impressed with this contention. It is true that while drafting and preparing the writ petition as well as Writ Appeal no such ground has been taken in specific. However, it

can not be ignored that according to the record of Union of India itself as revealed in Annexure R/1, the date of birth of the Petitioner/Appellant is 5.3.1979. According to the record of enquiry, the alleged criminal incidence occurred on 18.5.1994. Thus, the Petitioner at the relevant time was unquestionably a juvenile. No factual dispute is involved in entertaining the said plea. On the contrary, the provisions of the Act of 1986 and the Act of 2000 are to be necessarily taken into consideration while imparting justice in the case of a juvenile against victimization in contravention of the provisions of the said Acts....."

12. Learned counsel for the respondent/RPSF concedes that as per the date of birth furnished by the petitioner, on the date of his involvement in case FIR No.752/2010, he was under 18 years of age. Hence, he had to be treated as a juvenile in conflict with law.

13. The contention of the respondent/RPSF raised herein that the omission to mention his criminal antecedents needs to be viewed seriously as he was required to serve in a uniformed force, has to be rejected in view of the decision of the Division Bench of this Court in Ex.Gnr.Ajit Singh vs. Union of India reported as **2004 CriLJ 3994 (Del)** wherein it was held that the provisions of Juvenile Justice (Care & Protection) Act, 2000 are equally applicable to a juvenile in the army. Thus, there is no reason for not invoking the said provisions in the case of those recruited in the RPF/RPSF.

14. The object of Section 19 of the J.J.Act is to give an opportunity to the juvenile to lead a life with no stigma and to wipe out the circumstances of his inglorious past. It is for this reason that Section 19 provides that a juvenile shall not suffer any disqualification.

15. The issue involved in this petition is no longer *res integra* in view of a recent decision of this Court in Writ Petition (C) No.6062/2017 titled as

Mukesh Yadav vs. Union of India dated 14.12.2017 (authored by one of us, Hima Kohli, J.). In the said writ petition, a criminal case No.65/2000 under Sections 147/148/149/323/324/504/307 IPC was registered in District Gopal Ganj, Bihar against the petitioner and ten other accused persons. He was also selected to the post of a Constable in the RPSF. While submitting the attestation form, the petitioner did not mention about the pendency of the criminal case which came to the notice of the respondent only when the attestation form was sent for verification. The petitioner, who was undergoing training by then, was issued a discharge order dated 29.07.2015 stating that since he had suppressed the fact of the pendency of the criminal case against him while filling the attestation form, he was being discharged as per the conditions mentioned in para 3 of the attestation form.

16. In the above noted writ petition also, the contention raised on behalf of the respondents was that it was the duty of the petitioner to have furnished the relevant details of the criminal case pending against him at the time of filling up the verification form. But he failed to do so and the pendency of the said case came to the notice of the respondents only upon undertaking necessary police verification regarding his antecedents. The above writ petition was allowed for the following reasons:-

"7. We have heard learned counsel for the parties and examined the documents on the record. The facts of the case are undisputed inasmuch as there is no quarrel with regard to the plea of the learned counsel for the petitioner that on the date of the alleged offence i.e. on 9th October, 2000, the petitioner was twelve years five months old. It is also not disputed that on the date the petitioner had applied for appointment to the post of a Constable in the year 2011, a case was pending against him before the Juvenile Justice Board and same was the position on

25th May, 2014, when the petitioner was called upon by the respondents to submit an attestation form. The said criminal case attained finality by virtue of the judgment dated 3rd August, 2015, passed by the Juvenile Justice Board, District Gopalganj. However, less than a week prior thereto, the respondents passed the order of discharge against the petitioner, on the ground of withholding material information.

8. Having regard to the legal position, which shows that the petitioner was undoubtedly, a juvenile on the date when the alleged offence had been committed and, therefore, he was required to be dealt with under the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred to as the "Act") which declares that all criminal charges against individuals, who are described as "juvenile in conflict with law" must be initiated and decided by the authorities constituted under the Act by the Juvenile Justice Board. Even if a conviction is recorded by the Juvenile Justice Board, Section 19(1) of the Act, stipulates that the juvenile shall not suffer any disqualification attached to the conviction of an offence under such law. Further, as noted hereinabove, Section 19(2) of the Act contemplates that the Board must pass an order directing that all the relevant records relating to such a conviction, be removed after the expiry of the period of appeal or within a reasonable period as prescribed under the rules, as the case may be.

9. In the present case, the record reveals that the Juvenile Justice Board had acquitted the petitioner for the offence in question and, therefore, this was even otherwise, not a case of conviction for any offence. It is also noteworthy that Section 21 of the Act prohibits publication of the name of the "juvenile in conflict with law", the underlying object of the said provision being to protect a juvenile from any adverse consequences on

account of the conviction for an offence, committed as a juvenile.

*10. Given the aforesaid position, the contention of the respondents is that petitioner was under an obligation to have disclosed the information relating to the pendency of the criminal case against him in respect of an incident that had taken place when he was all of twelve years, would run contrary to the very spirit of the Act. **Keeping in mind the fact that the object of the Act is to ensure that no stigma is attached to a juvenile in conflict with law, in our view, once the juvenile has been extended a protective umbrella under the said enactment, there was no good reason for the respondents to have insisted that the petitioner ought to have disclosed the information relating to the allegations against him pertaining to an offence that was committed during his childhood where he was tried by the Juvenile Justice Board, and subsequently acquitted. We may add here that even when police verification in respect of the petitioner was being conducted on the directions of the respondents, the concerned police officials ought to have refrained from revealing the information pertaining to the petitioner in the case in question, since he was a juvenile at that point in time. This was in fact a gross breach of confidentiality contemplated under the Act.***

11. For the aforesaid reasons, the impugned order dated 11th May, 2017, is unsustainable and is quashed and set aside. The respondents are directed to reinstate the petitioner within a period of twelve weeks from today along with all the consequential benefits, excluding backwages." (Emphasis added)

17. Thus, in view of the above facts and the legal position, the factum of prosecution of the petitioner in case FIR No.752/2010 under Sections 323/325/506/504 IPC could not have been taken into consideration by the

respondent/RPSF on his omission to mention the same in the attestation form on account of his status as a juvenile in conflict with law on the date of commission of the alleged offence. We cannot ignore or overlook the beneficial provisions and the socially progressive statute of the Juvenile Justice Act, 2000.

18. It is accordingly held that the impugned order dated 11.05.2017, is not sustainable in law and is set aside. The respondent/RPSF is directed to reinstate the petitioner within 8 weeks from the date of this order, with all consequential benefits, except for back wages.

19. The writ petition is disposed of on the above terms.

20. No costs.

PRATIBHA RANI
(JUDGE)

HIMA KOHLI
(JUDGE)

FEBRUARY 13, 2018
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