HIGH COURT OF TRIPURA
AGARTALA

WA 30 of 2020

The Union of India and Others

----Appellant(s)

Versus

Sri Binoy Kumar Thakur

----Respondent(s)

For Appellant (s)	:	Mr. B. Majumder, CGC.
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharjee, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

16/12/2020

Heard Mr. B. Majumder, learned CGC appearing for the appellant and Mr. Kohinoor N. Bhattacharjee, learned counsel appearing for the sole respondent.

[2] By means of this intra-court appeal, the judgment and order dated 06.12.2019 delivered in WPC(C)302 of 2016 passed by learned Single Judge has been questioned. According to Mr. Majumder, learned CGC, while giving direction that the petitioner shall be reinstated in suppression of the order dated 21.02.2006 by which he was terminated, learned Single Judge has acceded the limit of the judicial review. Mr. Majumder, learned CGC has further submitted that the petitioner has filed three writ petitions consecutively. The second writ petition being WP(C) 88 of 2008 was

disposed of by a Division Bench of this court by the judgment and order dated 17.08.2015 on observing *inter alia* as follows:

> **"10. While deciding the earlier writ petition[WP(C) No.88 of 2008], this Court had observed thus:**
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> > **"Having surveyed those cases, it appears that while obtaining appointment, if the material information is suppressed in respect of the criminal antecedent or involvement in the criminal case, the apex court has uniformly held that suppression of such material information itself amounts to moral turpitude which is a separate and distinct „matter". In such a case service of the appointee concerned is liable to be dispensed with, even if on trial the person concerned stood acquitted/discharged. But the case in hand is premised differently. This Court has not found any record to indicate that the petitioner had knowledge of the police case before or on the day of filing the attestation form. The petitioner was enrolled on 20.07.2004. As such, it has to be assumedthat the attestation form was filed prior to 20.07.2004. There is no dispute that the police case was lodged on 25.05.2004. Even though knowledge is probable, since there is no record to indicate that the petitioner had knowledge of the said criminal caseno adverse inference can be drawn on „suppression". From the records produced by the petitioner amidst the hearing in terms of the order of this Court dated 23.03.2015 it has been revealed that the petitioner obtained the anticipatory bail from the Patna High Court on 07.04.2005. This information derived from the judicial record, from the order dated 07.04.2005 by the Patna High Court in Cr. Misc. No.11662 of 2005 and from the records of the first track court, the court of the Addl. District Judge, 2nd, Buxar in S.T. 251 of 2006, clinches the claim of the petitioner."**

[3] As a preface to the said observation, the Division Bench had made reference to **Commissioner of Police & Ors. vs. Sandip Kumar** reported in **(2001) 4 SCC 644**, where the apex court had occasion to observe that in the case of young people, having regard to their untamed passion, a lenient view be taken. Even if they are involved

in some rough act, then also they shall be permitted to continue with their life without unsurmountable hurdles. By the order dated 24.11.2015, the Commandant, 66 BN CRPF, Goaltore, West Midnapore, West Bengal has purportedly considered the direction of this court. Their views as taken earlier has been almost re-stated. They have observed as follows:

> **a)The furnishing of false information or suppression of any factual information in the Verification Roll would be a disqualification and is like to render the candidate unfit for employment under the Government.**
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> **b) If detained, convicted, debarred etc. subsequent to the completion and submission of this Form the details should be communicated immediately to the authority to whom the Verification Roll has been sent earlier failing which it will be deemed to be a suppression of factual information.**
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> **c) If the fact that false information has been furnished or that there has been suppression of any factual information in the Verification Roll comesto notice at any time during the service of a person, his services would be liable to be terminated.**

[5] Based on the facts and circumstances as recorded in the said order, the Commandant has observed that the petitioner had furnished false information in order to secure appointment. Moreover, he has suppressed the fact which the petitioner did without weighing the consequence. In view of the prevalent rule, the petitioner cannot be allowed to return to service. Thus his termination w.e.f 23.03.2006 has been held to be justified.

[6] It has been observed by the learned Single Judge that material records were not considered while passing the said order. Even the principle of **Sandip Kumar** (supra) was not given any weightage. It may be noted at this juncture that the petitioner was

fully acquitted from the criminal charge. The allegation as made against him that at the time of filing the attestation form, he did suppress the fact of a pending criminal case. In WP(C) 88 of 2008 it has been observed on scrutiny of the records as produced by the parties, that even if the knowledge is probable, since there is no record to indicate that the petitioner had the knowledge of the said criminal case, no adverse inference can be drawn for 'suppression'. From the records produced by the petitioner, amidst the hearing in terms of the order of this court dated 23.03.2015, it revealed that the petitioner obtained anticipatory bail from the Patna High Court on 07.04.2005. This information derived from the judicial records i.e. the order dated 07.04.2005 passed by the Patna High Court in Cr.Misc.11662 of 2005 and from the records of the Fast Track Court, the court of the Addl. District Judge, 2nd, Buxar in S.T. 251 of 2006.

[7] A Division Bench of this court, in that backdrop had observed that there is no document to show that the petitioner had any knowledge of existence of the said criminal prosecution before 07.04.2005. The petitioner was enrolled on 20.07.2004. Even the respondents could not file a piece of document to show that on the day of filing the attestation form, the petitioner had any knowledge of the criminal prosecution. Mr. Majumder, learned CGC has submitted further that suppression is substantive inasmuch it is improbable that someone would not know of existence of a criminal case against him. After the said specific observation made in the

judgment and order dated 17.08.2015 delivered in WP(C) 88 of 2008, the respondents No. 4 in the writ petition (the Commandant, 66 BN, CRPF, Kumarghat) ought not have set on appeal on the findings of the High Court. Whether they would be impacted by the spirit and principle of **Sandip Kumar** (supra), it was within their doman, but by the order dated 24.11.2015 the respondent No.4 sat on the appeal as it were against the finding of the High Court. Unfortunately, the Inspector General of Police, Tripura Sector CRPF had affirmed that finding which is evident from the communication dated 31.08.2015. Entire text of his observation has been extracted in the judgment which is under challenge in this appeal. Learned Single Judge has observed that the Commandant, 66 Bn CRPF, or the superior authority had maintained the termination order most superficially and without considering the finding of the High Court, as referred, that there is no clinching evidence on record that the petitioner had knowledge about the criminal case against him at the time of filling up the attestation form. As corollary, it has been held that no inference can be drawn on *suppression*.

[8] According to learned Single Judge, in the name of reading of the judgment of the High Court, adverse inference has been drawn which is contrary to the finding of the High court on its face. Hence, that finding is liable to be set aside and it has been set aside. In that perspective-fact, learned Single Judge has directed that the writ petitioner shall be reinstated within a period of thirty

days from the date of receipt of a copy of the order. We have found no reason to opine differently. If any material fact is suppressed from the appointing authority or any distorted or untrue fact is provided in the attestation form that can be treated as serious misconduct and for such act, someone can be terminated. But what has surfaced in this case is that the petitioner has consistently subscribed that he was not aware of the case when he had filled up the attestation form. When he came to know about the existence of that case, the writ petitioner obtained anticipatory bail from Patna High Court. Thereafter, he had faced the trial and secured acquittal unscathed.

[9] As stated earlier, the writ petitioner had been acquitted from the charge of robbery. In that circumstances, the principle laid down in **Sandip Kumar** (supra) is germane. Placing reliance on **Sandip Kumar** (supra), learned Single Judge did not commit any impropriety or irregularity.

Thus, we are of the considered view that this writ appeal is bereft of merit and it deserved to be dismissed. Accordingly, it is dismissed.

No order as to costs.

Pending application, if any, stands disposed of.

JUDGE **JUDGE**

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