

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Arindam Sinha
and
The Hon'ble Justice Suvra Ghosh

FMA 2034 of 2016
With
I.A. no.CAN 1 of 2016

Santosh Kumar Singh.
Versus
Union of India & Ors.

For Appellant : Mr. Achin Kumar Majumder.

For Union of India : Mr. Narendra Prasad Gupta.

Heard On : 18.02.2021, 04.03.2021 and 09. 03 2021.

Judgment on : 9th March, 2021.

Arindam Sinha, J.:- The appeal was heard on 18th February, 2021 when Mr. Gupta, learned advocate appearing on behalf of Union of India handed up attestation form filled up and submitted by appellant at time of spot recruitment of, inter alia, constable recruits. He had submitted, the attestation form says furnishing false information or suppression of any factual information would be a disqualification and likely to render the candidate unfit for employment under the Government. The form

was signed by appellant on 27th January, 2009. There was an incident, by which appellant's wife died. The incident and death happened on 16th February, 2009. Mr. Gupta had pointed out that the police had made endorsement on 21st December, 2009 in the form. The noting in Hindi was read out by him. We understand that information of a criminal investigation against, inter alia, appellant was given along with further information that appellant was absconding. Mr. Majumdar, learned advocate appearing on behalf of appellant, did not dispute the attestation form. We by our order dated 4th March, 2021 said that we treat the attestation form, an admitted document, as additional evidence in the appeal, to enable us to pass judgment.

The facts are, the attestation form was signed by appellant on 27th January, 2009. The incident and death of appellant's wife took place on 16th February, 2009. As such, there cannot be said to be any false information or suppression by appellant as in the attestation form, filled up before the incident. The endorsement was made on 21st December, 2009. Appellant having had successfully undergone training was awaiting appointment to the force when by order dated 23rd April, 2010, he was discharged. It appears that he surrendered soon after he received said order discharging him. The criminal investigation culminated in trial and judgment dated 23rd September, 2015, passed by Court of Additional Sessions Judge, Saran at Chapra. Appellant was in custody and by the judgment, acquitted and directed to be released.

Order dated 23rd April, 2010 refers to rules 52.2 and 67.2 in Railway Protection Force Rules, 1987. Rules 52.1, 52.2 and 67.2 are reproduced below:-

“52.1 As soon as a recruit is selected but before he is formally appointed to the Force, his character and antecedents shall be got verified in accordance with the procedure prescribed by the Central Government from time to time.

52.2 Where after verification, a recruit is not found suitable for the Force, he shall not be appointed as a member of the Force.

67.2 A direct recruit selected for being appointed as enrolled member, till such time he is not formally appointed to the Force, is liable to be discharged at any stage if the Chief Security Commissioner for reasons to be recorded in writing, deems it fit so to do in the interest of the Force.”

Mr. Majumdar relied on judgments of Supreme Court.

- (i) **Ram Kumar vs. State of U.P.** reported in **AIR 2011 SC 2903**, paragraphs 8 and 9.
- (ii) **Mohammed Imran v. State of Maharashtra** reported in **AIR 2018 SC 4895**, paragraphs 10 and 11.

He submitted, the decisions are pat on the point.

Mr. Gutpa relied on impugned order dated 6th April, 2016 to submit, it is a well-reasoned order and should not be interfered with. He also handed up communication dated 27th February, 2021 made by

Security Commissioner / HQ to appellant, dealing with his representation dated 8th January, 2016. A copy was handed over to Mr. Majumdar and we treat this document also as additional evidence in the appeal, to enable us to pass judgment.

Additional facts are that upon being acquitted by judgment dated 23rd September, 2015, appellant had made representation dated 8th January, 2016. The writ petition was supported by affidavit, thereafter affirmed on 18th March, 2016. The writ petition was dealt with at motion stage on 6th April, 2016. These additional facts are necessary for purpose of our adjudication on one of the reasons for dismissal of the writ petition, relied upon by respondents, being delayed challenge mounted. We quote below the reason given in impugned order:-

“It was open to the petitioner to challenge the order of discharge on the same grounds as canvassed today. The order of discharge was passed when the petitioner was merely an accused in the commission of a perceived crime, but the petitioner had not been convicted of the offence. Upon the petitioner not complaining within reasonable time of the order dated April 23, 2010 being passed, the petitioner is deemed to have accepted the same.”

We have already noticed that appellant absconded on happening of the incident. There does not appear to be any dispute that on his receipt of order dated 23rd April, 2010, he surrendered and was

taken into custody. He remained in custody till after judgment by the Sessions Court, delivered on 23rd September, 2015. He made representation dated 8th January, 2016 and filed the writ petition in March, 2016. We had required Mr. Gupta to show us authority on similar facts, of delay in mounting challenge. Nothing was shown. We looked at **Ram Kumar** (supra) and **Mohammed Imran** (supra) regarding facts in those decisions for guidance on the question of delay.

In **Ram Kumar** (supra), the advertisement for recruiting constables was dated 19th November, 2006. Appellant had submitted affidavit in proforma verification roll wherein he had stated that no criminal case was registered against him. He was selected. Concerned police station submitted report dated 15th January, 2007 regarding criminal case against appellant. The criminal case had earlier been disposed of on 18th July, 2002, whereby appellant was acquitted. On receipt of said report dated 15th January, 2007, order dated 8th August, 2007 was made cancelling the selection and appointment. The writ petition was filed in year 2007. The decision of Supreme Court was rendered on 19th August, 2011, directing appellant to be taken back in service. In **Mohammed Imran** (supra), order dated 4th June, 2010 was passed cancelling appointment of the judicial officer. The cancellation was on ground of moral turpitude regarding a criminal case, in which by judgment dated 28th October, 2004 he had been acquitted, much before the officer cleared the examination for appointment, in year 2009.

Judgment of Supreme Court was on 12th October, 2018 directing relief to the officer, to reconsider candidature of appellant in making it clear, the relief would not include seniority. Going by facts in this case, in context of **Ram Kumar** (supra) and **Mohammed Imran** (supra), we do not find that appellant is guilty of any laches that can be attributed to denial of relief to him.

Mr. Gupta also relied on following reasoning in impugned order, based on which there should not be interference.

“It appears from the order of discharge of April 23, 2010 that the petitioner may not have disclosed the incident pertaining to his wife or the criminal complaint lodged against him. When an appointment to any public service is obtained by deceit or subterfuge or by suppression of any material fact, such appointment is liable to be annulled on such ground alone. The judgment cited by the petitioner pertains to a criminal charge that ran its course upon the acquittal of the candidate prior to the application being made. In that case a criminal charge pertaining to a minor incident culminated in an acquittal, and such fact was not mentioned in the subsequent application for the post. Surely, the dictum in such a fact situation would not apply to the present case where, the petitioner’s wife

met an unnatural death and a criminal complaint was lodged against the petitioner prior to the petitioner commencing his training course.”

We have already said that there was only information given by endorsement on the attestation form. The attestation form cannot be said to have concealed information as the incident happened after the attestation form was submitted. The additional evidence is of the form and it was the basis for the discharge order. It, therefore, appears to us that this is not a good reason given by impugned order.

The next reason in impugned order relied on by Mr. Gupta is as follows:-

“The petitioner’s acquittal in the criminal case was upon the informant turning hostile to the prosecution. Such order of acquittal cannot be cited by the petitioner to undo an order of discharge passed more than five years earlier on grounds that may have no nexus with the acquittal of the petitioner.”

We cannot sustain this reason on basis of said judgment dated 23rd September, 2015 of the Sessions Court. We set out paragraph 19 from the judgment:-

“I have carefully gone through the evidence of the prosecution witnesses. On careful scrutiny of the statements of father (P.W.5), brothers of the deceased

(P.W.4 and 6). I find that none of them has stated that deceased died due to cruelty committed by the accused persons for demand of dowry else they have stated that the deceased died in accident while she was preparing food then fire caught in her body and she died during course of treatment. They have also stated the accused persons never demanded any dowry and they had kept the deceased with full honour and dignity. Other witnesses, i.e. P.W.1 Damodar Singh, P.W.2 Braj Kishore Singh and P.W.3 Sabha Singh have stated nothing about the occurrence.”

In both **Ram Kumar** (supra) and **Mohammed Imran** (supra), respective appointing authorities later discovered information of prior concluded criminal cases against the appointees. In this case, we had by our order dated 18th February, 2021 enquired of learned advocates appearing for the parties regarding from time to time prescribed procedure by Central Government on police verification. Nothing was shown to us. Nevertheless, endorsement of information made on the attestation form cannot pass as verification of antecedents of appellant. Nothing has been disclosed, by way of police verification, to show appellant had questionable antecedents on or prior to his submitting the attestation form. As such, invocation of rules 52.2 and 67.2 appears to be without basis. We have looked at said

communication dated 27th February, 2021 (additional evidence) disposing of appellant's representation dated 8th January, 2016. Following from it is reproduced below:-

*“It is seen that you had intentionally concealed the fact of criminal charges u/s 304(B)/34, 498(A)/34, 201/34 IPC and 3 and 4 D.P. Act registered against you vide G.R. No.p493/09 in Police Station Mashrak on 15.02.2009, in the attestation form submitted by you in which at Sr. No. 12.(I)(i) you declared ‘no’ against **‘is any case pending against you in any court of law at the time of filling up this attestation form?’** Hence, it is clear that you willfully gave false information before joining for initial training. Therefore, under the provisions of RPF Rules 52.2 and 67.2 you were discharged.”*

It is clear that concerned authority missed sequence of the facts.

The appeal is allowed on reversing impugned order. As appellant had successfully completed training and there does not appear to be any other reason given in said communication dated 27th February, 2021, of any other Court of ineligibility, we direct respondents to appoint appellant in the force within four weeks from date of communication of this judgment.

The appeal is allowed as above and disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)

ns.
No.30