

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Partha Sarathi Sen

MAT 1079 of 2024

With

CAN 1 of 2024

National Council of Science Museums (NCSM) & Ors.

-Vs-

Sk. Hasanuzzaman & Ors.

For the Appellants: Mr. Biswaroop Bhattacharyya, Adv.,
 Mr. Victor Chatterjee, Adv.,
 Mr. Sourjya Roy, Adv.

For the writ petitioners: Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
 Mr. Sudipta Dasgupta, Adv.,
 Mr. Sondwip Sutradhar, Adv.

Hearing concluded on: 18.06.2024.

Judgment on: 21.06.2024.

PARTHA SARATHI SEN, J. : –

1. In this intra-court appeal the order dated May 7, 2024 as passed in WPA No.12460 of 2024 has been impugned. By the impugned order the learned Single Judge while allowing the said writ petition has set aside the office memo no.SCCY-13016/13/1318 dated April 10, 2024 as issued by respondent no.4 herein whereby and whereunder the offer of appointment

of the writ petitioner/respondent no.1 herein for the post of Technical Assistant 'A' (Computer Science) at Science City, Kolkata was cancelled and withdrawn.

2. The respondents of the said writ petition felt aggrieved and thus preferred the instant appeal.

3. For effective disposal of the instant appeal the facts leading to filing of the aforementioned writ petition before the learned Single Judge is required to be discussed in a nutshell.

4. The appellant no.1/Authority published advertisement no.04/2023 for the recruitment of Technical Assistant 'A' (Computer Science) and the last date for submission of online application pursuant to such advertisement was November 30, 2023. The writ petitioner who is the respondent no.1 herein at that material time was and is still in service in the post of Junior Peon in Presidency University submitted his online application with the appellant no.1/ authority. Based on his performance in the written/skill test as held on March 11, 2024 the writ petitioner /respondent no.1 was offered appointment on such terms and conditions as has been mentioned in the memorandum dated March 15, 2024, a copy of which has been annexed with the stay petition at page

nos.47 and 48. It is pertinent to mention herein that in the said memorandum dated March 15, 2024 the writ petitioner was directed to produce some original documents for verification at the time of joining together with self attested copies of the said documents out of which one document is of ‘ No Objection Certificate/ Relieving Letter’ from the present employer wherever applicable.

5. At the time of verification it has been noticed by the appellants more specifically the appellant no.1/ authority that the writ petitioner had suppressed the information pertaining to his present employment at the Presidency University in his online application and according to the appellant no.4 such suppression is in violation of Clause no.4 of the said advertisement no.04/2023 and amounts to adverse character antecedent and thus the offer of appointment which has been issued in favour of the writ petitioner was cancelled and withdrawn with immediate effect. As discussed earlier the said order of cancellation dated April 10, 2024 was the subject matter of the writ petition before the learned Single Judge.

6. In course of hearing Mr. Biswaroop Bhattacharyya, learned counsel appearing on behalf of the appellants at the

very outset draws our attention to the aforementioned advertisement as published from the office of the appellant no.1. Drawing attention to Clause 4 of the guidelines/instructions of the said advertisement it is contended by Mr. Bhattacharyya , learned counsel appearing for the appellants that it has been specifically mentioned in the said Clause that in the event any information provided by the candidate is found to be false or the material facts are concealed by the candidate at any stage i.e. during processing of the application or even after his/her joining in the Council the candidature shall be cancelled forthwith and his/her service shall be terminated, if appointed.

7. Drawing attention to page no.39 of the stay petition being the last page of the said advertisement it is submitted by Mr. Bhattacharyya that in the said advertisement the appellants/authorities had made it mandatory for the candidates working in the Government, Semi-Government, Public Sector Undertaking and Autonomous Organizations to apply through proper channel along with a 'No Objection Certificate (NOC)' from their present employer at the time of written/skill test.

8. It is further submitted by Mr. Bhattacharya, learned counsel for the appellants that the writ petitioner/respondent no.1 herein neither applied for the said post through proper channel nor furnished 'No Objection Certificate' from his present employer and on the contrary in his online application he had deliberately furnished a wrong and incorrect information stating inter alia that he was not employed in any Government, Semi-government or Autonomous Organization at the time of submitting such application. It is thus submitted by Mr. Bhattacharyya, learned counsel appearing on behalf of the appellants that for the aforesaid reason by issuing the aforesaid office memo dated April 10, 2024 the offer of appointment in the name of the writ petitioner was rightly cancelled by the appellant no.4 clearly disclosing the ground(s) of cancellation.

9. Drawing attention to the impugned judgement, Mr. Bhattacharyya, learned counsel appearing on behalf of the appellant further submits before us that the learned Single Judge while passing the impugned judgement though noticed such material suppression by the petitioner of his previous employment but even then learned Single Judge wrongfully

held that such suppression cannot be considered to be so serious to raise question of his honesty and render him untrustworthy. Mr. Bhattacharyya, learned counsel appearing on behalf of the appellants further submits that learned Single Judge while passing the impugned judgement has failed to appreciate the true spirit of reported decisions of ***Avtar Singh vs. Union of India*** reported in ***(2016) 8 SCC 471*** and thus came to hold that the issues involved in the reported decision of ***Avtar Singh (supra)*** and ***Rajasthan Rajya Vidyut Prasaran Nigam vs. Anil Kanwariya*** reported in ***(2021) 10 SCC 136*** are restricted to certain issues which are distinguishable from the facts and circumstances as involved in the instant lis.

10. Mr. Bhattacharyya in course of his submissions places his reliance upon an unreported decision of the Supreme Court in ***Civil Appeal no.7353-7354 of 2009 dated November 11, 2021 (Rajesh Kumar Vs. Union of India through Chief Of Army Staff and Ors.)***.

11. Mr. Bhattacharyya, learned counsel for the appellants thus submits that for the reasons stated hereinabove the

instant appeal may be allowed by setting aside the order impugned.

12. Per contra, Mr. Bikash Ranjan Bhattacharyya, learned senior counsel appearing on behalf of the writ petitioner/respondent no.1 herein at the very outset draws attention of ours to paragraph no.3 of the writ petition wherein according to Mr. Bhattacharyya, learned senior counsel, the writ petitioner has specifically stated the reason which compelled the writ petitioner to apply for the said post without any 'No Objection Certificate' from his employer since the writ petitioner was verbally told by his employer that such 'No Objection Certificate' cannot be given to him since according to the prevailing convention of the employer of the writ petitioner such certificate is given normally to an employee thrice a year and the writ petitioner had already been given three such 'No Objection Certificates' for participating in different recruitment process in the self same year.

13. Drawing attention to page no.49 being Annexure P5 of the stay application it is contended further by Mr. Bhattacharyya, learned senior counsel for the writ petitioner that after his selection the writ petitioner obtained such 'No Objection

Certificate' on March 28, 2024 from his employer, Presidency University and the same was submitted with the appellants but the appellants for reasons best known to them did not pay any heed to such 'No Objection Certificate'. Mr. Bhattacharyya, learned senior counsel for the appellant submitted further that the learned Single Judge has duly considered the nature of the alleged suppression by the writ petitioner and rightly held that such unintentional suppression cannot be equated with a suppression of past criminal antecedents as held in the reported decision of ***Avtar Singh (supra)*** and the learned Single Judge thus rightly distinguished the case of ***Avtar Singh (supra)*** and ***Rajasthan Case (supra)*** from the facts and circumstances of the case as pending before the learned Single Judge. Mr. Bhattacharyya, learned senior counsel for the writ petitioner further submits that the unreported decision of ***Rajesh Kumar (supra)*** as cited from the side of the appellants is also distinguishable from the facts and circumstances as involved in the instant appeal.

14. Mr. Bhattacharyya, learned senior counsel thus submits that it is a fit case for dismissal of the instant appeal.

15. We have meticulously perused the entire materials as placed on behalf of the appellants and respondents. We have also gone through the reported and unreported decisions as cited from the Bar. We have given our anxious consideration over the submissions of the learned advocates for the contending parties.

16. On perusal of the relevant advertisement as published from the office of the appellant no.1 it appears that Clause 4 of the internal page no.2 of such advertisement is very much pertinent for effective disposal of the instant appeal and the same is reproduced hereunder in verbatim:-

“4. In case the information provided by candidate is found to be false or the material facts are concealed by the candidate at any stage i.e. during processing of application or even after his/her joining in the Council, the candidature shall be cancelled forthwith and his/her service shall be terminated, if appointed.”

Clause no.6 of internal page no.3 of the advertisement in our considered view is equally important for effective adjudication of the instant appeal and the same is also reproduced herein in verbatim:-

“6. The candidates presently working in Government, Semi-Government, Public Sector Undertaking and Autonomous

Organizations must apply through proper channel. They should furnish the “No Objection Certificate (NOC)” from their present employer at the time of Written/Skill test.”

17. On perusal of the aforesaid two clauses/conditions of the aforementioned advertisement it appears that while publishing such advertisement the office of the appellant no.1/authority made it clear that in the application the information to be provided by a prospective candidate must be correct and in the event the same is found to be false and/or in the event some materials facts have been concealed by the said prospective candidate, the candidature of such candidate would be cancelled forthwith and his service would be terminated, if appointed. Clause 6 of the said advertisement made it obligatory for the candidates who are/were in Government, Semi-Government, Public Sector Undertaking and Autonomous Organizations to apply through proper channel along with ‘No Objection Certificate’. It does not appear that the aforesaid two conditions as imposed by the office of the appellant no.1 is in any way prejudicial to the prospective candidates and it is also nobody’s case that the aforesaid two conditions are contrary to the recruitment rules of the appellants/authorities. On close scrutiny of the aforesaid two conditions it also does not

transpire that such conditions are in any way violative of Part III of the Constitution of India.

18. In order to assess the conduct of the writ petitioner it appears that while submitting his online application the writ petitioner deliberately concealed his previous employment and prior to appearing in the written and skill tests for recruitment of the aforementioned post he had not communicated to the appellants regarding his inability to collect 'No Objection Certificate' from his employer despite his best effort in order to show his bona fide and further such plea was first taken while filing the writ petition when his offer of employment was cancelled and withdrawn by the appellant/authority.

19. In view of such we have no hesitation to hold that the suppression of information on the part of the writ petitioner was intentional and deliberate. In order to decide as to whether such conduct of the writ petitioner would disqualify him in the recruitment for the aforementioned post it appears that sufficient materials have been placed before this Court on behalf of the appellants that the writ petitioner has not only violated the conditions of recruitment but also his action by way of suppression of material facts clearly indicates towards

his immoral character, untruthful attitude and dishonest intention leading to disqualification for getting employment in view of the reported decision of **Avtar Singh (supra)** and the unreported decision of **Rajesh Kumar (supra)**.

20. In the reported decision of **Avtar Singh (supra)** the Hon'ble Apex Court in a similar circumstance expressed the following view:-

“32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.”

21. In the subsequent unreported decision of **Rajesh Kumar (supra)** the Hon'ble Apex Court had again occasion to deal with similar such case in the light of the decision of Avtar Singh case and in doing so the Hon'ble Apex Court expressed the following view:-

Further, it is also the case of the respondents that in the attestation form which was duly filled by the appellant in his own handwriting at the time of entry into service, in column no.10, he has mentioned as Not Applicable (NA). It is the case of the respondents that though the appellant has joined Army service in 1992, he has not disclosed about his earlier employment in Army and suppressed the said information in the attestation form in column No.10 by not furnishing correct information.

Before the declaration of probation, on the ground that the appellant has not disclosed particulars of earlier employment, it is always open for the respondents to terminate his temporary service without issuing any notice.”

22. In view of the discussion made hereinabove it thus appears to me that sufficient case has been made out on behalf of the appellants that the writ petitioners/respondent no.1 herein had deliberately suppressed the information of his previous employment and he had violated the conditions of the advertisement by not providing the ‘No Objection Certificate’ from his employer and that he had not applied for the said post through proper channel which in considered view of me makes him disqualified for the service for which he applied.

23. In view of such the instant appeal succeeds. The impugned order dated May 7, 2024 as passed in WPA

No.12460 of 2024 by the learned Single Judge is hereby set aside.

24. WPA No. 12460 of 2024 is dismissed.

25. Consequently, the above memorandum dated April 10, 2024 as issued by appellant no.4 is revived and is hereby held good and in accordance with law.

26. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

[PARTHA SARATHI SEN, J.]

27. I Agree.

[DEBANGSU BASAK, J.]