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R. RADHAKRISHNAN

v.

THE DIRECTOR GENERAL OF POLICE AND ORS.

OCTOBER 12, 2007

B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

*Service Law:*

C

*Appointment of Fireman—Provisionally selected candidate required to disclose in verification roll if he had been involved in criminal case and non-disclosure would render him liable to dismissal—Non-disclosure by selectee on the pretext that he was ultimately acquitted—Selection not made—Challenge against—Held: He was rightly not selected as he suppressed material facts—In such situation, question of exercising equitable jurisdiction in his favour would not arise—Equity.*

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E

The appellant filed an application for the post of Fireman on 5.1.2000. He was provisionally selected whereafter he submitted a verification roll. The verification roll contemplated that in case the statement furnished by the selectee is found false, it would render him liable to dismissal. In the clauses as to whether selectee has been concerned in any criminal case as accused, or whether any civil or criminal cases pending against him or whether had been arrested or convicted and sentenced to undergo imprisonment or pay fine in any criminal or other offence, the appellant had answered in negative.

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He however, was involved in an incident which occurred on 15.04.2000, and was proceeded against under Section 294(b) of the Indian Penal Code. He was arrested but was released on bail. He was acquitted of the said charge on 25.09.2000. He was not selected on the premise that he had made false statement in his verification roll, in regard to the pendency of the aforementioned case.

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He filed OA before Administrative Tribunal which was allowed on the ground that as he had been acquitted in the criminal case and hence there did not exist any reason denying appointment to the post of Fireman. The employer-respondent successfully filed writ petition before the High Court. Hence the present appeal. A

Dismissing the appeals, the Court B

HELD: 1. Indisputably, Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed. [Para 10] [457-B, C] C D

2. The appellant had suppressed a material fact. In a case of this nature, question of exercising an equitable jurisdiction in his favour would not arise. [Para 13] [461-B] E

*T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre and Ors.*, [1988] Supp SCC 795, distinguished.

*Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar*, [1996] 11 SCC 605, referred to. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4874 of 2007.

From the final Judgment and Order dated 21.1.2004 of the High Court of Judicature at Madras in W.P. No. 13357/2002. G

WITH

C.A. No. 4875/2007

A V. Prabhakar, V. Subramani, Revathy Raghavan and Ramjee Prasad for the Appellant.

R. Venkatramani, V.G. Pragasam, S. Joseph Aristotle and S. Prabhu Ramasubramanian for the Respondent.

B The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

2. Appellant, aggrieved by and dissatisfied with judgments and orders dated 21.01.2004 and 27.04.2006 passed by the High Court of Judicature at Madras in Writ Petition No. 13357 of 2002 and R.A. No. 68 of 2005 respectively, is before us.

3. Pursuant to or in furtherance of an advertisement dated 29.12.1999 having been issued in that behalf, the appellant filed an application for appointment to the post of Fireman on 05.01.2000. He was provisionally selected whereafter he submitted a verification roll, the relevant part whereof reads as under:

E "I realize that if I am enlisted and my statement which has been made by me is found to be false, I shall render myself liable to be dismissed for obtaining service under false pretences.

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F 15. Have you ever been concerned in any criminal case as accused? No

16. Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, No

G give details with C.C. No. and Court.

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18. Are there any civil or criminal cases pending against you? If so, details. No"

H 4. It now stands admitted that he, however, was involved in an

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incident which occurred on 15.04.2000, and was proceeded against under Section 294(b) of the Indian Penal Code. He was arrested but was released on bail. He, however, was acquitted of the said charge on 25.09.2000. *Inter alia* on the premise that he had made false statement in his verification roll, in regard to the pendency of the aforementioned case, he was not selected. A

5. He filed an original application before the Tamil Nadu Administrative Tribunal. The learned Tribunal by reason of a judgment and order dated 4.03.2002 opined that as he had been acquitted in the criminal case, there did not exist any reason as to why he should be denied an appointment to the post of Fireman. A writ petition preferred thereagainst by the respondent herein was allowed by reason of the impugned judgment. B

6. Mr. V. Prabhakar, learned counsel appearing on behalf of the appellant, in support of this appeal, raised a short question, viz., having regard to the fact that the appellant signed the application prior to the date when the alleged accident took place and also stood acquitted when he filled up the verification roll, he cannot be said to have wilfully suppressed any material fact warranting denial from appointment in service. C

7. The learned counsel would contend that in a case of this nature, the High Court ought to have taken a sympathetic view and should not have allowed the writ petition of the respondent only on the ground that he had suppressed the factum of his involvement in a criminal case. D

8. Mr. R. Venkatramani, learned senior counsel appearing on behalf of the respondent, on the other hand, would submit that *bona fide* or otherwise on the part of the appellant cannot be a criteria for determining the issue. The learned counsel submitted that had the relevant fact, viz., involvement in a criminal case and that too a cognizable offence under Section 294(b) of the Indian Penal Code, been disclosed, the appointing authority could have verified his character and suitability for appointment. E

It was pointed out that the persons similarly situated against whom criminal cases had been instituted had not been selected. F

9. The learned counsel furthermore submitted that in view of the fact H

A that the appellant knew that he would be liable to be dismissed in service if the statement made in the verification roll was found to be false cannot now be heard to say that he omitted to mention the pendency of the criminal case under a *bona fide* belief or otherwise.

B 10. Indisputably, Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information.  
C The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

D 11. The question came up for consideration before this Court in Delhi Administration through its *Chief Secretary and Ors v. Sushil Kumar*, [1996] 11 SCC 605 wherein it was categorically held:

E “3...The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the  
F Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent  
G record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted....”

H 12. Mr. Prabhakar has relied upon a decision of this Court in *T.S.*

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*Vasudavan Nair v. Director of Vikram Sarabhai Space Centre and Ors.*, [1988] Supp SCC 795. The said decision has been rendered, as would be evident from the judgment itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent. A

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise. B

14. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs. C

D.G.

Appeals dismissed.