

**Central Administrative Tribunal
Principal Bench**

OA No.4448/2013

Order reserved on: 19.11.2016
Order pronounced on: 14.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Hemant Kumar,
S/o Sh. Ramesh Kumar
R/o 3/12, Old Rajinder Nagar,
New Delhi.

- Applicant

(By Advocate: Mr. Madhurendra Kumar)

Versus

1. North Delhi Municipal Corporation,
[Education Department (HQ)]
Through its Commissioner,
15th floor, Dr. Shyama Prasad Mukherjee,
Civic Centre, Minto Road,
New Delhi.
2. Asstt. Director (Education)
Class-IV, Branch (HQ),
North DMC,
15th floor, Dr. Shyama Prasad Mukherjee,
Civic Centre, Minto Road,
New Delhi.

- Respondents

(By Advocate: Mr. R.N.Singh)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

In this OA the applicant has challenged the office order dated 08.08.2013 by which the respondents have disengaged the applicant, who was working as Daily Wager – School Attendant in the Education Department of North DMC since 02.04.1997.

2. The facts in brief are that the applicant joined as a Daily Wager – School Attendant on 04.04.1997 in M.C.D. Primary School, Chuna Bhatti. In 2005 his case was put up for regularisation in accordance with the regularisation policy of erstwhile MCD. His case was sent to the Police for character and antecedents check on 13.10.2005. In the report dated 14.12.2005 received from the Police it was revealed that the applicant had two criminal cases against him –

- (i) FIR No.54/95 dated 09.03.1995 U/S 509 IPC and
- (ii) FIR No.146/99 dated 23.05.1999 U/S 509 IPC.

3. In the case relating to FIR No.54/95 the applicant had been acquitted while the case FIR No.146/99 was pending with the trial court. In the order dated 15.12.2008 the learned Metropolitan Magistrate passed sentence by imposing a cost of Rs.10,000/- on the applicant who was convicted of the offence. The appeal against the order of the learned Metropolitan Magistrate was dismissed by the learned Additional Sessions Judge on 21.02.2009. The applicant informed the respondents about the outcome of the case FIR No.146/99 and requested for his regularisation. After wavering over the issue for nearly 5 years the respondents passed the impugned order disengaging the applicant with immediate effect on the ground that the applicant had never disclosed the fact that there were two criminal cases pending against him.

4. Learned counsel for the applicant submitted that the applicant had disclosed about the pending criminal cases and that was the reason that he could not be regularised in the year 2004 when his other colleagues were regularised. However, this averment of the applicant in para 4.3 of the OA is not supported by any document. Learned counsel further submitted that the applicant has served the department for about 15 years with unblemished record and therefore, the respondents should not be allowed to deprive him of his livelihood. The learned Metropolitan Magistrate had also taken this factor into consideration while passing sentence in the case FIR No.146/99. In that order it was noted that the applicant was a Government servant and three other accused persons were married people having responsibilities. Under these circumstances the Court felt that ends of justice would be met if each of them were directed to pay Rs.10,000/-. According to the learned counsel the respondents failed to appreciate the spirit in which the order of sentence was passed by the Court as they did not consider the unblemished record of the applicant while serving the respondents. The impugned order was bad in law as it deprived the applicant of his fundamental right to livelihood and was passed without giving any opportunity to the applicant to make representation.

5. Learned counsel for the respondents denied the averments of the applicant that he had disclosed the fact of pending criminal

cases against him prior to the antecedent verification conducted by the department in the year 2005. The Department had examined his case keeping in view all the attending circumstances including the fact that he was the only bread earner of his family and his conduct at work. However, the crime under Section 509 IPC for which he was convicted was serious one and more so when the applicant was engaged as daily wager for work in a school. He also submitted that since the applicant was a daily wager and convicted by the competent court of law for a serious offence it was not required for the department to issue any further show cause notice to the applicant.

6. We have heard the learned counsel for the parties and perused the record. The short issue is whether the applicant could have been disengaged without notice only on account of conviction in the pending criminal case against him.

After the conclusion of the arguments from both sides, the learned counsels had sought opportunity to file relevant case laws by 22.11.2016. However, only the learned counsel for the respondents filed a list of two judgments of Hon'ble Supreme Court in support of his contentions.

7. It is not in dispute that the applicant was working as Daily Wager –School Attendant from 04.04.1997 to 08.08.2013 and from the records it does not appear any complaint about his

performance during this period. Thus, the only grounds for dispensing with his services are the fact of non-disclosure of pending cases at the time of his appointment and conviction in the criminal FIR No.146/99. The argument of the applicant that the learned Metropolitan Magistrate had taken a lenient view and refrained from sentencing him to imprisonment, and imposed only monetary fine with the intention not to affect his “Government service”, cannot be sustained. The offence under Section 509 IPC is a serious one and the applicant along with three others had been convicted for the same. The leniency shown by the Court while passing sentence does not dilute the seriousness of the offence. In **J. Jaishankar vs. The Govt. of India & anr.**, 1996 (6) SCC 204, the Hon’ble Supreme Court had occasion to consider case of a bank employee convicted of an offence under Section 509 IPC, who was sentenced to pay a fine of Rs.200/- and on that account he was discharged from service without retiral benefits. The Apex Court took a view that an offence under Section 509 IPC undoubtedly involve moral turpitude and it was impermissible for such an employee to continue in service in terms of Section 10 (1) (b) (i) of the Industrial Disputes Act, 1947. The judgment further observed that when a Government servant was dismissed from service on conviction by a criminal court involved moral turpitude it automatically led to removal from service without any enquiry. “Therefore, a worker could not be put at a higher pedestal than

the Government servant.” Relevant portion of the judgment is reproduced below:

“3. In view of the admitted position that the conviction of the petitioner for an offence under Section 509 Indian Penal Code had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a government servant is dismissed from service on conviction by a criminal court involving moral turpitude, it automatically leads to removal from service, without further enquiry. Can a worker be put on a higher pedestal than as a government servant? The obvious answer is 'No'. In view of the conviction for moral turpitude of the petitioner and due to conviction for an offence under Section 509 Indian Penal Code, the order of dismissal was rightly passed. The recommendation made by this court was made after noticing the trivial offences like traffic offences, municipal offences and other petty offences under the Indian Penal Code which do not involve moral turpitude. This court recommended to Parliament to step in and make necessary alteration in law so that consequence of the conviction and sentence would suitably be modulated and mitigated in the light of the judgment. That ratio is clearly inapplicable to the facts of this case. As a fact, on the basis of the concession made by the learned counsel for the respondents, the division bench of the High court modified the order of dismissal to one of discharge from service without consequential retiral benefits but with payment of gratuity in accordance with law. The learned Single Judge was obviously in error in directing reference to the Industrial tribunal. We do not, therefore, find any illegality warranting interference.”

8. In the present case the applicant was not a “Government Servant”. He was only a daily wager and in terms of the above mentioned judgment of Hon’ble Supreme Court, once an offence involving moral turpitude do get established by a Court, he could not be continued in service.

9. In **Avtar Singh vs. UOI & ors.**, 2016 AIR (SC) 3598, a three Judge Bench of Hon’ble Supreme Court considered the conflicting opinion on the question of suppression of information or submitting false information in the verification forms as to the question of having been criminally prosecuted or arrested, or as to

the pendency of the criminal case, and after noticing various decisions summarised a detailed guidelines to be followed in various possible situations that may arise in this context. One of the situations relevant in the context of present OA reads as follows:

“(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services, as appointment of a person against whom multiple criminal cases were pending may not be proper.”

10. The Hon’ble Supreme Court has thus held that appointment of a person against whom multiple criminal cases were pending may not be proper.

11. From the foregoing discussion, it is concluded that for the reason that the applicant suppressed the information of pending cases against him and that he was convicted for a serious offence under Section 509 IPC, there is no legal infirmity in the order passed by the respondents on 08.08.2013 disengaging him with immediate effect.

12. The OA is, therefore, dismissed as devoid of merit. No costs.

(V.N. Gaur)
Member (A)

‘sd’

14th December, 2016