

Court No. - 10

Case :- WRIT - A No. - 51283 of 2007

Petitioner :- Uma Shankar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Vijay Gautam, Atipriya
Gautam, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C., K.S. Kushwaha

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Vinod Kumar Mishra, learned counsel for the petitioner, learned Standing Counsel for the State and perused the record.

2. The case of the petitioner is that he was appointed on the post of Constable in Civil Police on 13.9.2005, however, after a period of about two years, by the order impugned dated 18.8.2007, the Senior Superintendent of Police, Etawah has cancelled the selection/appointment of the petitioner only on the ground that while filling up of the form at the time of entering into service, the petitioner had concealed institution of a criminal case registered against him at Crime No. 8 of 2005 under Section 323, 324, 504 IPC.

3. It is contended by Sri Mishra that petitioner had no knowledge about the registration of a Non Cognizable Report (NCR) and even during the course of investigation, the petitioner's involvement in the said criminal case was found to be false. He has referred to the recital contained in the Charge sheet dated 17.2.2005 in this regard.

4. Apart from the aforesaid, it is contended that no opportunity of hearing was provided to the petitioner before cancelling his appointment even otherwise, respondents failed to follow the decision of the Supreme Court in the case of **Avatar Singh Vs. Union of India and others reported in 2016 (8) SCC page 471.**

5. On the other hand, learned Standing Counsel submits that while entering into service pendency of criminal case must have been disclosed and the petitioner has admittedly failed to give the details of the said case.

6. As regard the judgment of the Apex Court in Avatar Singh (supra), it is contended that the order impugned was passed in the year 2007 and at that time there was no specific guidelines as laid down by the Apex Court in the said judgment and the

department was functioning as per the applicable circulars/guidelines which mandated true disclosure of pendency of criminal case.

7. Having heard learned counsel for the parties, I find that though the judgment in the case of Avatar Singh (supra) was pronounced in the year 2016, it is well settled that law declared by the Supreme Court under Article 141 of the Constitution of India is deemed to be the law of the land for all time and merely because the judgment was pronounced after about nine years from the date of the order impugned, the ratio laid down in the said judgment cannot be ignored at this stage.

8. The Apex Court in the case of Avatar Singh (supra) has laid down as under:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. 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.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

9. The Apex Court, apart from various other aspects, has clearly observed that in a case of a dispute of trivial in nature; such as shouting slogans at young age or for a petty offence which, if disclosed, would not have rendered an incumbent unfit for the post in question, the employer may, in his discretion ignore such a suppression of fact or false information, by condoning the lapse.

10. Various categories of conviction/acquittals have been discussed by the Apex Court and after perusing the ratio laid down and in the light of the fact that petitioner was not found to be involved at all in the criminal case in question, cancellation of his selection/appointment is found to be in teeth of the decision of the Apex Court.

11. The writ petition succeeds and is allowed.

12. Order impugned dated 18.8.2007 passed by the Senior Superintendent of Police, Etawah **is quashed.**

13. S.S.P., Etawah is directed to pass a fresh order in the light of the ratio laid down in the case of Avatar Singh (supra) within a period of three months from the date a certified copy of this order is produced before him.

14. The consequences shall follow the decision of the S.S.P., Etawah.

Order Date :- 30.11.2023

Kumar Manish.