

Court No. - 34

Case :- WRIT - A No. - 13156 of 2020

Petitioner :- Gyandhar Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vikram Yadav, Manoj Kumar Yadav, P.K. Upadhyay, Shivam Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Shivam Yadav, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. Petitioner who was an applicant for the post of Constable in PAC in the Recruitment Examination, 2018 and made it to the merit list successfully was denied appointment on the ground of implication in a criminal case. It is an admitted position between the parties that petitioner had disclosed the criminal antecedents in connection with Case Crime No.149 of 2017 under Sections 323/504/506/325/392 of the Indian Penal Code. Charge-sheet was submitted under sections 323/504/506 IPC whereas during investigation police did not find any case to be made out under sections 325/392 IPC. However, when the candidature of the petitioner for the post in question was withheld, petitioner approached this Court for a direction to the respondent No.4 to consider the candidature of the petitioner in light of the judgment of the Supreme Court in the case of ***Avtar Singh vs. Union of India & ors; 2016 (8) Supreme (SC) 471***. It is pursuant to the directions issued by this Court that the petitioner made a representation and the matter came to be examined by the District Commandant 34 Battalion PAC, Varanasi and in his ultimate analysis he passed an order that petitioner being implicated in a serious crime like *loot* would amount to moral turpitude and, therefore, in his discretion, petitioner did not deserve appointment.

2. Now, this order impugned has been questioned in this petition on twin grounds: firstly, on a factual background which has been a subsequent event in the form of acquittal of the petitioner in connection with the said case crime number under the order passed by the trial court on 24.05.2022, copy whereof has been brought on record as Annexure-SA-1 to the first supplementary affidavit dated 20.02.2023, which has not been further appealed against;

and secondly, on the legal premise as laid down by the Supreme Court in **Avtar Singh's** case, as according to him, the respondent has not correctly appreciated the legal principles enunciated in the said judgment by way of the guidelines for considering the suitability of a candidate who has criminal antecedents to his credit.

3. Learned counsel for the petitioner has relied upon a recent judgment of this Court in the case of **Beer Bahadur Singh vs. State of UP & ors (Writ-A No.1392 of 2022) decided on 21.09.2023.**

4. Counsel for the petitioner has further drawn the attention of the Court to another first information report which was lodged by one Sita Kumari against hotel manager where she had stayed for appearing in an examination scheduled to be held at Banaras Hindu University. In the midnight hours, the hotel manager, as alleged, knocked at the door continuously until the victim opened the door of the hotel room and then he entered the room and tried to outrage her modesty. This first information report was lodged on 05.05.2017 at 09:45 AM in the morning. Since the complainant was in close acquaintance to the petitioner, as he had managed the hotel room booking for her, as a counterblast to the first information report, the hotel manager implicated the petitioner and two other persons to have assaulted him on the fateful day at around 06:00AM in the morning. However, this first information report came to be lodged later on in the evening only on 07.45 PM on the same day.

5. Counsel for the petitioner submitted that ultimately all the parties entered into a compromise that resulted in acquittal of the hotel manager in connection with earlier Case Crime No.147 of 2017 and also of petitioner, his friend and one another person in connection with Case Crime No.149 of 2017. Both the acquittal orders namely of the petitioner dated 24.05.2022 compounding the offence and granting acquittal and the order of acquittal of hotel manager dated 15.06.2022, have been brought on record by means of two supplementary affidavits.

6. It is, thus, submitted that petitioner's implication in the criminal case was only as a result of a counter blast to the first information report lodged by hotel manager and that is the reason why police, during investigation, did not get any offence to have been committed under sections 325/392 IPC. He, therefore, submits that the very observations and findings coming in the order impugned that the conduct of the petitioner and his implication in connection

with case crime number under relevant section 392 IPC would amount to moral turpitude, is absolutely misplaced one. He submits that except this ground, there is no other ground available with the respondent to non suit candidature of the petitioner. Sri Yadav, further submits that it is well within the discretion of the appointing authority to refuse appointment to a candidate involved in a criminal case in view of sub-paragraphs (5) and (6) of paragraph 30 of the guidelines in the Supreme Court's judgment in **Avtar Singh's** case (*supra*).

7. Having heard learned counsel for the respective parties and having perused the record, it is necessary to notice that there is no dispute about the facts stated hereinabove between the parties. It is more appropriate to look into the correctness of the findings returned by the concerned respondent while rejecting candidature of the petitioner. In order to appreciate this, it would be appropriate first to go through the relevant guidelines laid down by the Supreme Court in the backdrop of what has been observed vide paragraphs 27 to 30 of the judgment of **Avtar Singh** (*supra*) which are reproduced as under:

"27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(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.

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

(3) 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 recourse appropriate to the case may be adopted : -

(a) 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.

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

(c) 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.

(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.

(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.

(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.

(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.

(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.

(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.

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

(emphasis added)

8. Looking to the observations made in paragraphs 29, 30(1) and 30(3)(c) of the judgment, there is no dispute about the *ratio* in the judgment that the candidature of a candidate seeking appointment by authority cannot be outrightly rejected merely because of criminal antecedents being found there to his credit. Even in cases where there is no disclosure and the implication in the criminal case appears to be trivial in nature, the authorities are advised to exercise discretion taking pragmatic view. What is observed in paragraph 29 if is taken into consideration and is seen in light of the facts as discussed hereinabove in this case, I find that the implication of the petitioner *prima facie* to be absolutely false. Admittedly, the hotel manager was the accused in one case in which the FIR was lodged in the morning and in the evening he came to implicate petitioner also, who had managed the booking with the hotel for victim, on the ground that he was physically assaulted by the persons implicated in the case including the petitioners. He raised serious question as to why the manager acted so late and why the manager implicated the petitioner. There is nothing on record to demonstrate, nor the respondents have really gone into the question as to whether petitioner had any booking in the hotel or not. The manner in which the compromise has been reached and the petitioner has been acquitted in the criminal case lodged by hotel manager proves it beyond doubt that implication was nothing but a counterblast to the first information report lodged against the hotel manager.

9. It is in this backdrop of above facts that I find implication of a young person like petitioner being quite false and so the authority was not justified in rejecting his candidature on the ground that involvement under Section 392 IPC would amount to moral

turpitude. This finding also cannot be countenanced in the face of the fact that petitioner was not charge-sheeted under Section 392 IPC. While it is a settled legal position that it remains open for the employer to give employment to such person or not but the manner in which the findings have come to be returned rejecting the candidature of the petitioner on the ground of implication in a particular section and the conduct of the implicated person would amount to moral turpitude, is rendered baseless for the reasons that there was no charge-sheet under Section 392 IPC and the Court did not proceed to frame any charge.

10. As on date petitioner stands acquitted in the said case and there is no further criminal antecedents to the credit of the petitioner and, therefore, it will be too harsh to deny the appointment in non suiting the candidature of the petitioner in the given facts and circumstances of the case. In a recent judgment in **Beer Bahadur Singh's** case (*supra*), this Court following various judgments of the Supreme Court as also of this Court, vide paragraph 15 has held thus:

"15. Following the principles in Avtar Singh (supra), the Division Bench of this Court allowed appeal of one Umesh Chand (supra). The Court emphasised the principle as contained in para 38.3 and 38.6 of the judgment in Avtar Singh (supra). In so far as in the case of Chetan Jeff (supra) is concerned, there I find to be history of criminal antecedents to the credit of the petitioner and then acquittal in one of the cases was only on the basis of the compromise. While in other case, he was though convicted but was given benefit of Probation of Offenders Act, 1958. Paragraphs 7 & 8 of Chetan Jeff (supra) runs as under:

"7. Applying the law laid down by this Court in the aforesaid cases, it cannot be said that the authority committed any error in rejecting the candidature of the original writ petitioner for the post of constable in the instant case.

8. Even otherwise it is required to be noted that subsequently and during the proceedings before the learned Single Judge as well as the Division Bench, there are three to four other FIRs filed against the original writ petitioner culminating into criminal trials and in two cases he has been acquitted on the ground of compromise and in one case though convicted, he has been granted the benefit of Probation of Offenders Act. One more criminal case is pending against him. Therefore, the original writ petitioner cannot be appointed to such a post of constable."

11. In view of the above, the order passed by the authority concerned namely the Commandant 34th Battalion, PAC, Varanasi dated 06.10.2020 is hereby quashed. The respondents are directed to pass appropriate orders giving suitable appointment to the petitioner as per his order of merit if there is no other legal impediment in the matter. Appropriate order shall be passed within

a period of thirty days of production of certified copy of this order.

12. Writ petition succeeds and is allowed in above terms.

Order Date :- 28.10.2023

P Kesari