

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 10.02.2025
Pronounced on: 17.02.2025

WP(C) No. 289/2025
CM No. 578/2025

1. Union Territory of J&K Petitioner(s)
through Secretary to Government,
PW(R&B) Department,
Civil Secretariat, Jammu/Srinagar.
2. Chief Engineer, PWD(R&B), Jammu.
3. Chief Engineer, PWD (R&B), Batote.
4. Executive Engineer, PWD (R&B),
Division Bhaderwah.

Through: Mr. Ravinder Gupta, AAG.

Vs

Arsam Imtyaz Malik
S/O Late Imtyaz Hussain
R/O Nagar
Tehsil Bhaderwah District Doda.

..... Respondent(s)

Through: Mr. Sheikh Najeeb, Advocate.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

JUDGMENT

(PER: M A CHOWDHARY-J)

01. The petitioners, through the medium of this petition moved under Article 226 of the Constitution of India, seek quashment of the judgment/order dated 20.06.2024 (**'impugned order'**) passed by the Central Administrative Tribunal, Jammu Bench (**'the Tribunal'**) in Original Application (**'OA'**) No. 61/82/2024 titled **"Arsam Imtyaz Malik Vs. UT of J&K & Ors"** whereby the learned

Tribunal has allowed OA and set aside the order impugned therein dated 03.01.2024 whereby the petitioner No. 2 had withdrawn the appointment order issued in favour of the respondent under SRO 43, pursuant to his appointment order dated 05.12.2023 and joining order dated 06.12.2023 in PWD (R&B) Division Bhaderwah. The petitioners, however, have been authorized to proceed further on conclusion of the trial against the respondent.

- 02.** The petitioners have pleaded in their petition that the learned Tribunal while passing the impugned judgment/order had not taken into consideration this aspect of the matter that it is a settled proposition of law, buttressed by catena of judgments that a person is bound to disclose his antecedents to the appointing authority; that the respondent had not disclosed the fact regarding his involvement in criminal activities for which an FIR was already registered at Police Station Bhaderwah, at the time of submission of his joining report; that the learned Tribunal had wrongly relied upon the J&K Civil Services (Verification of Character and Antecedents) Instructions, 1997 and wrongly came to the conclusion that only conviction can bar a person from joining the Government services, whereas, the fact is that

Rule 17(d) of the Civil Services (CC&A) Rules, 1956 provides for subjective satisfaction of the appointing authority to weigh the past antecedents of the candidate with the service and whether the candidate can uphold the dignity of the post; that the respondent right from inception of his joining had not disclosed his past, with regard to pending trial in NDPS case and mere fact that the respondent is not convicted does not fulfill the subjective satisfaction of the appointing authority.

- 03.** The facts, as summarized before the learned Tribunal, are that the respondent came to be appointed under SRO 43 on account of death of his father, by the petitioners herein by virtue of Order No. CEJ/ADM/232 of 2023 dated 22.11.2023, in compliance to the approval conveyed by the Administrative Department; that pursuant to his appointment, the respondent came to be posted in PWD(R&B), Division Bhandarwah for further duties and the respondent joined at his place of posting on 06.12.2023; that the respondent swore an affidavit that he has not been convicted of any offence by any court of law and that he is facing trial in one case; that on 23.12.2023, the respondent No. 4-Executive Engineer, PWD(R&B), Division Bhandarwah vide his communication stated that the respondent had been

allowed to join in the Division after proper verification of the documents and on receipt of character/antecedent certificate from CID vide Form No. 55821 dated 17.05.2023; that the respondent had revealed that he was under trial in one case and said case has not been disposed of till date as such, instructions were sought for the withdrawal of the salary of the respondent by the petitioner No. 4-Executive Engineer, PWD (R&B), Division, Bhaderwah from the petitioner No. 3-Chief Engineer, PWD(R&B) Chenab Zone, Batote.

- 04.** The petitioner No. 2-Chief Engineer, PWD (R&B), Jammu vide his No. CEJ/ADM/01 of 2024 dated 03.01.2024, however, issued an Order withdrawing the appointment of the respondent with immediate effect vide communication No. 1123-27 dated 04.01.2024, on the sole consideration that the respondent was involved in a case registered under FIR No. 0087/2023 under section 8/21 of NDPS Act of Police Station, Bhaderwah.
- 05.** The respondent having been aggrieved of withdrawal of his appointment against Class-IV (MTS) challenged the Order No. CEJ/ADM/01 of 2024 dated 03.01.2024 passed by the petitioner No. 2, before the learned Tribunal on various grounds.

06. The petitioners, as respondents before the learned Tribunal, submitted that on the report of the District Magistrate, Doda received by the Administrative Department, instructions had been issued to withdraw the formal appointment of the respondent herein due to his involvement in a case registered under NDPS Act regarding which the fact has been concealed by him, as such, he was disqualified as per the provisions of Rule 17(d) of J&K CC&A Rules, 1956; that the earlier CID verification vide Form No. 55821 dated 17.05.2023 issued by the CID Headquarters stating that there was nothing adverse against the individual was prior to registration of FIR in NDPS case against the respondent, therefore, due to his latest status for involvement in a criminal matter which is under-trial for the offence as alleged against the respondent, the order impugned before the learned Tribunal was passed.

07. The learned Tribunal, after hearing both the sides at length and discussing the rules with regard to character and antecedents of the Government employees, held that no doubt the verification of the character and antecedents is one of the important criteria to test whether selected candidate is suitable to a post under the State but registration of a case simpliciter does not

automatically result in conviction of a person and it does not *per se* cause a stigma on the character of a person.

08. The learned Tribunal, taking notice of an admitted fact that the respondent himself by virtue of an affidavit, on being asked at the time of his joining, disclosed that an FIR had been registered against him which was pending disposal before the trial court, further held that the termination was in violation of principles of natural justice as before resorting to termination, a reasonable opportunity to show cause had not been accorded to the respondent which is implicit in Rules and has to be read as part and parcel thereof, if not specifically provided. The learned Tribunal has thus allowed the plea raised by the respondent herein and quashed the impugned order whereby the appointment order issued in favour of the respondent under SRO 43 as Class IV (MTS) had been withdrawn.

09. Learned counsel for the petitioners argued that the learned Tribunal has wrongly decided the matter as it had ignored the plea raised by the petitioners before the learned Tribunal that the respondent, who had been appointed on compassionate grounds vide SRO 43, was allowed to join on a report received from the CID that there is nothing adverse on the record of his character

and antecedents and asked to swear an affidavit in which he had not made any mention of the case registered against him under NDPS Act at Police Station, Bhaderwah and only mentioned that a criminal case was pending against him in a court and that the respondent being involved in a serious case of NDPS was not a fit person to be retained in the job as he had suppressed the fact that he was involved in a serious case of NDPS as Heroine had been recovered by the Bhaderwah police from the possession of his co-accused.

- 10.** It has been next argued that holding by the learned Tribunal that the services of the respondent could not have been dispensed with, without holding a regular enquiry or following the principles of natural justice was not attracted in view of the fact that the respondent was still on probation and his services had not been made permanent, therefore, no such enquiry was required.
- 11.** Mr. Gupta, learned AAG finally argued that in view of the involvement of the respondent in a serious case of NDPS, which the respondent had suppressed and not brought to the notice of the employer, the employment given to him though on compassionate grounds had been legally withdrawn and the learned Tribunal had committed a grave error in setting aside the order, whereby the

employment offered to the respondent had been withdrawn.

- 12.** Learned counsel for the respondent, ex adverso, argued that the respondent had been appointed on compassionate ground on account of death of his father while in service, in class IV (MTS) by the petitioners after the approval of the Administrative Department; that the respondent had been allowed to join his services by the petitioners after verifying his character and antecedents from the CID and also seeking other requirements including furnishing of an affidavit. He further submits that CID had given no adverse remarks with regard to the character and antecedents of the respondent and the respondent himself in his affidavit had deposed that he was facing trial in a criminal case, therefore, there was no question of suppressing any material fact from the petitioners, by the respondent. It was for the employer to ask further the respondent with regard to the details of the criminal case in which he was facing trial and merely that he had not referred the number of FIR or the details of the offences of which he had been charged does not mean that he had suppressed any material fact from the employer.

13. He has further argued that mere registration of a case against an individual does not mean that he had committed the offence until a conviction is recorded by the court. Chargesheet has been laid against the respondent and as is borne out from the FIR, the contraband was alleged to have been recovered from the co-accused-Mohd. Sohail who was driving the bike and the respondent was sitting as pillion rider.
14. The first and foremost question is as to whether the appointment order issued in favour of the respondent could have been withdrawn without affording him an opportunity of being heard. In **“Mangal Singh Vs. Chairman, National Research Development Corporation & Ors”** reported as 2009 SCC Online Del 2345, Hon’ble Delhi High Court, where the petitioner, an appointee on contractual basis had been terminated, by what he alleged was a punitive and stigmatic order, without a departmental enquiry, held in Para 20 as under:

“20. It is trite to say, that when an authority wants to terminate the services of a temporary employee, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it becomes idle to suggest that the order is a simple order of discharge. The test

in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.”

- 15.** Even our own High Court in a case titled **“Faheem Vs. Union of Kashmir & Ors”** reported as 2003 (Supp) JKJ 235 observing that where termination of temporary service on account of misconduct attaches a stigma and is punitive, it cannot be done without holding a proper enquiry, further held that wherever the temporary arrangement of temporary service or adhoc service or that of a probationer is required to be dispensed with, it can only be on account of unsatisfactory performance.
- 16.** In view of the law laid down as enunciated hereinabove, we are of the considered opinion that the services of the respondent, who though was on probation, could not have been dispensed with without affording an opportunity of being heard and without following the principles of natural justice which, in the case on hand, had not been resorted to by the petitioners.
- 17.** The second question required to be considered by this Court is with regard to the involvement of the respondent in a criminal case under NDPS and its bearing with

regard to his character and antecedents for joining a govt. service. Undoubtedly, it is expected in Govt. service that the persons having their character above board, free from any moral stigma, are to be employed. Verification of character and antecedents is a condition precedent for appointment to a Government service. The respondent, who has been facing trial in a case, whether could be deprived of his chance to serve the Government merely because a criminal case is pending against him for the commission of offence punishable under NDPS Act. The person convicted of an offence involving moral turpitude should normally be recorded as ineligible for Government services, however, the respondent has not been convicted so far for the alleged offences rather his trial is underway.

18. A three Judge Bench of the Apex Court in a case titled **“Avtrar Singh Vs. Union of India & Ors”** reported as **(2016) 8 SCC 471**, on a reference by a Division Bench of the Court, considering the cleavage of opinion in various decisions on the question of suppression of information or submitting false information, in the verification form, as to the question of having been criminally prosecuted, arrested or as to the pendency of a criminal case, summarized following conclusions in para 30:

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

19. The Apex Court in a case titled “**Pawan Kumar Vs. Union of India**” reported as (2023) 12 SCC 317 held that mere

suppression of material information or furnishing of false information in a given case does not mean that the employer can arbitrarily discharge/terminate employee, while following the law laid down in its earlier judgment in a case titled **“Avtar Singh Vs. Union of India”** reported as (2016) 8 SCC 471 wherein while summarizing the conclusion, a three Judge Bench of the Apex Court had laid down broad guidelines which have to be taken note of by the appointing/competent authority in dealing with the matters where there is suppression of material information or disclosure of false information and after reconciling the earlier judgments succinctly summarized the conclusions as under:

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. 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.

36. 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.

37. 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.

20. Since the respondent, who had been appointed as an MTS (Class IV), the question is whether his service can be terminated on the ground of a pendency of a criminal case. Unless a person is held guilty by conviction in a trial held by a court, the presumption of his innocence has to be construed as a basic principle of criminal jurisprudence. Merely involvement in a criminal case when the trial is still underway is not a mirror to reflect the character and antecedents of a person. The Apex Court in a case titled as **"State of Gujarat & Anr Vs. Suryakant Chunilal Shah"** reported as 1999(1) SCC 529

has made following observations regarding involvement in a criminal case on the basis of an FIR:

“The involvement of a person in criminal case does not mean that he is ‘guilty’. He is still to be tried in court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted.”

- 21.** Needless to mention that if a deserving person is denied appointment then even if later on he is acquitted by the trial court, there is very little scope for him to get the Government employment. The pendency of a criminal case cannot be construed as an impediment in appointment and performance of duties by such person.
- 22.** The learned Tribunal has rightly discussed the J&K Civil Services (Verification of Character and Antecedents) Instructions, 1997 notified vide Government Order No. 1918-GAD of 1997 dated 09.12.1997 which are to be kept in mind with regard to periodic verification of character and antecedents of Government employee. Herein in this case, the respondent had not concealed the fact of being accused in a criminal case and facing trial and the CID had also not reported any adverse remarks against him in verification report as such, the appointment of the respondent could not have been withdrawn on the basis of mere registration of a case and

pending trial and that too without affording him an opportunity of being heard, therefore, the learned Tribunal has rightly decided the case.

23. It appears that the petitioners had proceeded against the respondent pre-maturely without waiting for the outcome of his trial before a criminal court with regard to the charge framed against him. It was open to the petitioners to take a call on the matter in case the respondent would have been held guilty and the learned Tribunal has rightly observed that the petitioners herein shall be at liberty to proceed against the respondent in case he is convicted.

24. Having regard to the aforesaid discussion, we are of the considered opinion that the action of the petitioners in withdrawing the appointment of the respondent on the ground of pendency of a criminal case is unjust, arbitrary and unreasonable. The learned Tribunal has, thus, rightly concluded vide impugned judgment/order that the order impugned before the learned Tribunal, withdrawing the order of appointment in favour of the respondent, was not in accordance with law and thus, impugned judgment/order does not warrant any interference by this Court, invoking extraordinary writ jurisdiction.

25. Viewed thus, the petition is found to be devoid of any merit and substance and is accordingly dismissed. The impugned judgment/order dated 20.06.2024 passed by the learned Tribunal is upheld. The petitioners/employers shall, however, be at liberty to take a fresh decision on conclusion of trial of the respondent/employee, by the criminal court, of course in accordance with law on the subject.

26. The writ petition along with connected application(s) is thus, accordingly, dismissed. There shall be no order as to costs.

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
17.02.2025
Naresh/Secy.



Whether the order is speaking: Yes
Whether the order is reportable: Yes

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