

HON'BLE D. B.

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT APPEAL No. 331 / 2014

WRIT APPEAL UNDER SECTION 2 OF THE CHHATTISGARH
HIGH COURT (APPEAL TO DIVISION BENCH) ACT 2006

**APPELLANT/
PETITIONER:**

P.A.No. 331/14
Presented by Shri Alok K. Dandekar
dated 12.9.14

Virendra Kumar, S/o Shri Shiv Kumar,
Age 26 years, R/o Village Bindwalia,
Post Office Kaithwalia, District Ghazipur,
U.P. Earlier Posted as Constable under
Commandant, 9th Battalion, Ch. S. Bal,
Dantewada, Chhattisgarh.

VERSUS

RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary, Department of
Home, Ministry, Mahanadi Bhavan, New
Raipur, District Raipur, Chhattisgarh.
2. The Commandant,
7th Battalion, Chhattisgarh Arm Force,
Bhilai, District Durg, Chhattisgarh.
3. The Commandant,
9th Battalion, Chhattisgarh Arm Force,
Karli, District Dantewada, Chhattisgarh.

ARISING OUT OF ORDER DATED 01/08/2014 PASSED BY HON'BLE
SINGLE BENCH, IN WRIT PETITION (S) No. 3776 / 2014 (SMT. G.

VIRENDRA KUMAR

RAY VERSUS STATE OF CHHATTISGARH & OTHERS).

19/12/14

2630 / 2012

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HIGH COURT OF CHHATTISGARH AT BILASPUR

DB:- Hon'ble Shri Justice Navin Sinha, Acting Chief Justice &
Hon'ble Shri Justice P. Sam Koshy, J

Writ Appeal No. 331 of 2014

**Appellant/
Petitioner**

Virendra Kumar

VERSUS

Respondents

State of Chhattisgarh and others

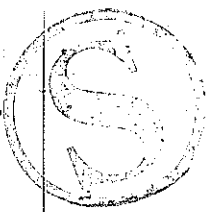
Present: Shri Alok Dewangan, counsel for the appellant.
Shri B. Gopa Kumar, Dy, AG for the State.

J U D G M E N T
(13th of January, 2015)

Per Navin Sinha, Acting Chief Justice

The present appeal arises from order dated 04.08.2014 dismissing WP(S) No.2630/2012. The learned Single Judge held that the discharge of the appellant who was a probationer by a non-stigmatic innocuous order, for non disclosure of pendency of a criminal case against him at the time of his appointment on 03.12.2009 required no interference.

2. Learned counsel for the appellant submits that the impugned order with allegations that he had mis-represented at the time of appointment has been passed in violation of the principles of natural justice. Had the respondents issued him a show-cause notice, he could have convinced them that on the date of his appointment 3.12.2009, a First Information Report with regard to him as a member of a mob had been lodged of which he was not even aware. No charge sheet had been submitted. Charge sheet was submitted on 11.3.2010 which *prima facie* demonstrates that there had been no concealment by him. It was always



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possible that after investigation, charge sheet may not have been submitted and therefore, the appellant committed no error or concealment as a criminal prosecution can be said to have been initiated only after the charge sheet is submitted. He has subsequently been acquitted for lack of identification. The possibility of false implication cannot be ruled out.

3. In the peculiar facts of the case, we are unable to sustain the order dated 31.3.2012 for discharge and the order under appeal dated 04.08.2014. The orders are set aside and the matter is remanded to respondent No.3 with liberty to represent for taking a fresh decision in accordance with law preferably within a maximum period of 12 weeks from the date of receipt and/or production of copy of this order.

4. The appeal is allowed.

Sd/-
Acting Chief Justice

Sd/-
P. Sam Koshy
Judge

सत्यमेव जयते