

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No. 767 of 2011 (O&M)
Date of Decision: 11.12 2015

Amandeep Singh

....Appellant

vs.

The State of Punjab & another

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Jaswant Singh, Advocate
for the appellant.
Mr. T.N.Sarup, Addl.A.G. Punjab

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment? yes*
2. *To be referred to the Reporters or not? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 29.07.2010, passed by learned Additional District Judge, Chandigarh, reversing the judgment and decree dated 30.07.2009, passed by learned Civil Judge(Junior Division), Chandigarh.

Brief facts of the case which are necessary for the

disposal of the present appeal are that plaintiff was appointed as a Fisheries Officer at Samrala through Punjab Subordinate Services Selection Board on 27.11.2001. He completed the probation period. His services were terminated on 09.07.2004 on the ground that he had not disclosed the fact that a criminal case is pending against him. The plaintiff challenged his termination.

The stand of the defendant is that as per the termination order dated 09.07.2004, plaintiff was relieved on 12.07.2004. He had accepted the term and conditions of the appointment at the time of joining. Since he did not fulfill the conditions number 2 and 5 of the appointment letter, hence he is not entitled for appointment and is precluded from challenging the action. It was further pleaded that he had not passed the departmental examination within the probation period and the maximum within two and half years of the appointment as provided under Punjab Govt. Common Services Rules, 1984. Therefore, his services are otherwise liable to be terminated in terms of letter dated 28.09.1992, as per the Punjab Government Common Service Rules, 1984.

The lower Court took the view that mere registration of a criminal case is not a dis-qualification and the services of the plaintiff could not be terminated. However, appellate Court reversed the findings.

I have heard learned counsel for the parties and have

also carefully gone through the file.

The short question arising for consideration before this Court is

“whether the services of the plaintiff can be terminated on the ground that a criminal case is pending against him”.

Matter was dealt by a Division Bench of this Court in Dinesh Kumar Vs State of Haryana & others, 2006(4) S. C. T. 429.

The facts of the case as extracted from the judgment are reproduced as under:-

“This petitioner challenges order dated 18.11.2005 (Annexure P-2) rejecting his claim for appointment as Constable-Driver on the ground that the petitioner could not be appointed because during verification of the character and antecedents it was found that he was arrested in case FIR No.168 dated 13.10.1994 registered at P.S. Kalanaur under Sections 323/ 324/ 34 Indian Penal Code. He was acquitted on 06.01.1998 by the Judicial Magistrate Ist Class, Rohtak. On the allegations that the petitioner had concealed these from the selection committee and did not furnish information in column Nos. 13(a) and 14 of the application form submitted by him for the post, he has not been offered appointment. The Police Department had advertised the posts of Constable-Driver and fixed the last date for submission of application as 13.12.2003. The petitioner had applied and his application was

registered at serial No.239/GC/DVR. He was selected as a Constable-Driver. In the application form column Nos. 13(a) and 14 were required to be answered. The petitioner had filed up those columns by inserting the word "No".

The Division Bench of this Court after considering the observations of Hon'ble Supreme Court of India in the case of Directorate of Enforcement v. Deepak Mahajan, 1994(1) RCR(Crl.) 690:1994(3) SCC 440 made the following observations:-

7. This Court has already taken the view that once a person is not convicted then non-disclosure of such an information does not amount to concealment of fact. In the case of Subhash V. State of Haryana, 1994(3) SCT 632 (P&H): 1994(4) SLR 525, this Court has observed as under:-

"Having heard the learned counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly hypertechnical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case, petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose this fact to the respondents at the time of his submitting application for recruitment to the police service. In any case, the fact stands that there is nothing

against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4.9.1989 Annexure P-1. Therefore, the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner.”

Therefore, this Court has taken the view that the mere registration of a criminal case is no ground to terminate the services.

In this case also, it comes out that in the criminal case registered against him pertaining to FIR No.24 dated 30.3.1993 under Sections 120B, 409, 420, 468, 471 IPC read with Section 13(1) (c) and (d) (i) & (ii) of the Prevention of Corruption Act read with Section 109 IPC, the plaintiff-appellant Amandeep Singh has since been acquitted by learned Special Judge Ropar, vide judgment dated 31.3.2009.

Before parting with the judgment, the Courts can not lose sight of the fact that there is a growing tendency in this part of the country where many times innocent people are roped in criminal cases. Therefore, unless and until a person is convicted of any offence and has earned a disqualification, his services could not be terminated on the ground that at the time of joining service, a criminal case was pending against him, in which, the trial is going on and that

the same was not disclosed, though in the form, the only query was put whether he has been convicted and sentenced in a criminal case and whether he was arrested in some criminal case?

It being so, I am of the view that the judgment passed by the learned Civil Judge(Junior Division), Chandigarh is well reasoned. Consequently, the judgment and decree dated 29.7.2010, passed by the learned Additional District Judge, Chandigarh is set aside and the judgment and decree dated 30.07.2009 passed by learned Civil Judge(Junior Division), Chandigarh is restored.

Consequently, the appeal stands allowed.

11.12.2015
gk

(Kuldip Singh)
Judge