

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 521 OF 2012

- Ratiram Bhagat, S/o Late Somra Ram Bhagat, age about 42 years, R/o Maheshpur, Thana- Patthalgaon, District Jashpur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Agriculture Department, D.K.S. Bhawan, Raipur (C.G.)
2. Director, Agriculture, Chhattisgarh, Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. K.P.S. Gandhi, Advocate.
For Respondents	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/11/2016

1. The present writ petition has been preferred by the Petitioner assailing the order dated 30.12.2011 (Annexure P-1) whereby the services of the Petitioner has been terminated forthwith on the ground that on police verification being conducted so far as his criminal antecedent is concerned it was revealed that he was an accused in Crime No. 63 of 1984 of Police Station, Bagbahara for the offence under Sections 323, 294, 506(B), 336, 341, 452, 427, 147, 107 and 116(3) of IPC and that he had admitted his guilt for the offence under Section 427 of IPC and he was let off with fine of Rs.200/-.

2. Counsel for the Petitioner assailing the impugned order submits that the said order is per se illegal on the ground that before issuance of the said order no show cause notice or a departmental enquiry whatsoever has been conducted by the Respondents. He further contends that it was necessary for the Respondents to have also taken into consideration the fact that whether the alleged act on the part of the Petitioner in committing the offence under Section 427 of IPC would fall within the ambit of moral

turpitude or not. According to the Counsel for the Petitioner, indisputably, the incident in which he was criminally prosecuted is of the year 1984 and in 1984 he was a young boy of around 15 years of age. The Counsel further submits that since the nature of the offence itself was so petty that the Court itself had only imposed fine on the Petitioner shows that the nature of the act was trivial and was not heinous or a grievous crime.

3. It was further contended by the Counsel for the Petitioner that subsequently he had applied for the post of Agriculture Extension Officer which was scrutinised and upon the Petitioner being found to be suitable he was granted an order of appointment vide order dated 7.5.2008 (Annexure P-2) on which post he immediately assumed his duties and was discharging the same till abruptly the impugned order dated 30.12.2011 (Annexure P-1) was passed. Counsel for the Petitioner also submitted that the Petitioner had already completed the two years of probation period and had put in more than 3½ years of service and therefore the respondent authorities ought to have at-least issued a show cause notice and also conducted an enquiry before the impugned order was passed. According to the Counsel for the Petitioner non-issuance of a show cause notice and also non-conducting of departmental enquiry amounts to clear violation of the principles of the natural justice inasmuch as the theory of *audi alteram partem* has not been followed by the Respondents.

4. Counsel for the Petitioner in support of his submissions has relied upon the decision of the Supreme Court rendered in the case of *Avtar Singh v. Union of India & Others* reported in AIR 2016 SC 3598. He drew the attention of the Court to the principles laid down by the Supreme Court in paragraph 30 of the said judgment and submitted that the authorities concerned are bound by the principles laid down, and therefore the impugned order (Annexure P-1) in the present case is per se contrary to

the law laid down by the Supreme Court in Avtar Singh (supra) and the same deserves to be set aside/quashed.

5. Counsel for the State however opposing the petition submits that the action does not warrant any interference for the reason that the impugned order has been passed in accordance with the clause in the appointment order itself. She refers to clause 4 of the order of appointment (Annexure P-2) wherein it has been clearly reflected that the credentials of the Petitioner would be subjected to verification and if it is found to be false the service of the Petitioner can be terminated without issuance of any notice. She further submitted that the Respondents in the instant case have precisely exercised clause 4 while issuing the impugned order and therefore the same cannot be said to be bad in law. Thus, prayed for the rejection of the writ petition.

6. Having considered the rival contentions put forth on either side and on perusal of the documents which have been filed what clearly reflects is that admittedly no show cause notice whatsoever has been served to the Petitioner before the issuance of the impugned order. Neither does it appear that the Respondents had conducted any departmental enquiry against the Petitioner before issuing the order of termination (Annexure P-1). It is also not disputed by the State Counsel that it is not a case against the Petitioner that he has suppressed the fact about his involvement in criminal case at any point of time. Therefore, it cannot be a case of suppression of fact in respect of criminal antecedent. Further, what is also to be seen is that though he was charged for a large number of Sections but he was found guilty only under Section 427 of IPC and to which also the Court below has only imposed fine. The act said to have been committed was trivial in nature and was not grievous and heinous in any manner.

7. At this juncture, it would be relevant to refer to the decision of the Supreme Court in the case of Avtar Singh (*supra*) wherein the Supreme Court in paragraph 23, 28 & 29 has very categorically held as under :

“23. ...In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

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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.”

8. After taking into consideration the aforesaid observations the Supreme Court in paragraph 30 has laid down the following broad principles to be taken note of by an employer in similar circumstances. For ready reference paragraph 30 is reproduced herein under :

“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.

(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.”

9. A perusal of the provisions of Clause 4(a) of paragraph 30 clearly reflects that in case if the nature of offence and the conviction recorded is in a trivial matter it would be the discretion of the employer to pass an appropriate order and ignore such suppression of facts or false informations by condoning the said lapse. Likewise in Clause 10 again the Supreme Court has held that in case if certain informations have been learnt by the employer subsequent to the order of appointment then the employer should keep in mind the nature of the offence and should pass an order in an objective manner considering the fitness of the employee for the said post that he has been appointed to.

The facts the case also reveal that it is not a case, where the Petitioner in any manner had suppressed any material from the employer. It is only these informations were never sought and he had not provided the same.

10. Following the judgment of the Supreme Court in Avtar Singh (*supra*), the coordinate Bench of this Court in Writ Petition (S) No. 6424 of 2010 (Dainy Singh Thakur v. State of Chhattisgarh & Others), decided on 4.10.2016, in somewhat similar circumstances has allowed a writ petition and has set aside the order of termination passed against the petitioner therein. A perusal of the two judgments, that is, the judgment passed in Avtar Singh (*supra*) and also the case of Dainy Singh Thakur, it is evidently clear that in the instant case also from the nature of allegation levelled it

does not appear to be a case where the nature of offence appears to be either grievous or heinous crime but it appears to be trivial in nature. Likewise, it is also reflected that it is only the order of fine which has been imposed upon the Petitioner which also suggests that it was only a petty act which was committed by him and for which after considering his age and the nature of the offence alleged after imposing fine he has been let off. In addition, it is also not in dispute that the Petitioner has not been given a fair opportunity to defend himself before the order of termination was passed inasmuch as neither a show cause notice nor an explanation or an enquiry in any manner was conducted by the Respondents before the impugned order (Annexure P-1) was passed.

11. In the foregoing circumstances, this Court has no hesitation in reaching to the conclusion that the impugned order dated 30.12.2011 (Annexure P-1) is bad in law and deserves to be and is accordingly set aside.

12. In the peculiar facts and circumstances of the case it is ordered that the Petitioner shall be forthwith reinstated in services without back wages, the intervening period shall be counted notionally for all other purposes except for grant of back wages.

13. The writ petition is accordingly allowed.

Sd/-
(P. Sam Koshy)
Judge