

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.305 of 2016**Judgment Reserved on : 11.8.2016Judgment Delivered on : 24.8.2016

Mangal Chandra, son of Banspati Sonman, aged about 41 years, resident of Village Cher, P.S. and Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Appellant**versus**

1. State of Chhattisgarh, through the Secretary, Home & Police Affairs, Mahanadi Bhawan, New Mantralay, District Raipur, Chhattisgarh
2. The Superintendent of Police, District Korea (Baikunthpur), Chhattisgarh
3. Principal, Government Polytechnic, Korea, Baikunthpur, District Korea, Chhattisgarh

--- Respondents

For Appellant	:	Shri Prakash Tiwari, Advocate
For State/Respondents	:	Shri Y.S. Thakur, Deputy Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C.A.V. Judgment**Per Deepak Gupta, Chief Justice**

1. The short question involved in this appeal is whether the State was justified in terminating the services of the Petitioner/Appellant on the ground that the Petitioner/Appellant was guilty of withholding material information in his verification form for verifying his antecedents.
2. The admitted facts are that the Petitioner/Appellant was appointed as a Plumber on 13.6.2013 and joined as such on 17.6.2013 in Government Polytechnic, Korea. When he joined the service, he was required to submit a verification form. Column No.12 of the verification form, as translated into English, reads as follows:

“12(A) Whether you have ever been arrested, whether you have ever been prosecuted, whether you have ever been detained or you have ever furnished a bond, whether you have ever been sentenced with fine, whether you have ever been convicted for any offence by a Court of law, or whether you have ever been prevented/restricted from appearing in any examination for selection conducted by the Public Service Commission or have ever been held ineligible therefor or whether you have ever been prevented/restricted from appearing in any examination or have ever been expelled by any University or any other educational authority/institution?

(B) Whether while filling-up this verification form any case is pending against you in any Court, University or in any educational authority/institution?

If your answers are in yes to the questions asked in (A) or (B) then while filling-up this verification form you should disclose the nature of the case in which you were arrested and the nature of the case which is pending against you before any Court, University, educational authority etc. In addition to this information, the following information, wherever applicable, will also be submitted by you :-

- (1) Crime/Charge
- (2) Name of the Police Station in which the crime is registered
- (3) If charge-sheet has been filed in any Court then name of the Court
- (4) Number of case, date of disposal of the case by the Court
- (5) Particulars of sentences imposed
- (6) Whether you have been acquitted of
- (7) Whether the acquittal was based on benefit of doubt or the case was withdrawn?”

3. A bare perusal of the above-quoted column/question makes it

apparent that a Government servant is duty bound to inform his employer whether he has ever been arrested, ever been detained, ever been directed to submit a security bond, ever been sentenced to fine and/or whether he has ever been convicted etc. etc. In case, the employee answers 'Yes' to any of the questions, he is required to submit details regarding number of the case, the police station, the Court where the trial, if any, was conducted, the date of judgment and the nature of punishment awarded etc. etc.

4. The Petitioner/Appellant, while submitting the verification form, answered 'No' to all the questions/columns, meaning thereby that he had never been tried, prosecuted etc. for any offence. Later on, the State/Respondents came to know that the Petitioner/Appellant had been punished for an offence under the Public Gambling Act and he was also tried for an offence under the Essential Commodities Act but was acquitted of the charge. It has also been found that in two cases the Petitioner/Appellant was involved in offence under Section 107 read with Section 151 Cr.P.C. and, therefore, was required to furnish a bond.
5. The main submission of Shri Prakash Tiwari, Learned Counsel appearing for the Petitioner/Appellant is that the Petitioner/Appellant has never been involved in any offence involving moral turpitude. According to him, the offence of gambling does not fall within the offence involving moral turpitude in view of the instructions issued by the State Government. He also submits that the Petitioner/Appellant was acquitted of the charge framed under the Essential Commodities Act. The Petitioner/Appellant should not have been dismissed from the service. Strong reliance has been placed by Learned Counsel for the Petitioner/Appellant on the judgment of the Apex Court in

Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644.

6. It would be pertinent to mention that there are various conflicting authorities, but the Apex Court, in its latest judgment delivered on 21.7.2016 in **Avtar Singh v. Union of India**, Special Leave Petition (Civil) No.20525 of 2011, has, after discussing the entire law on the subject, summarized its finding in the following terms:

“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."

7. We have to decide the instant writ appeal in light of the aforesaid law. The Learned Single Judge has rightly held that the question is not whether the offence involves moral turpitude or not. The issue

is whether the Petitioner/Appellant withheld material information from the employer. In the instant case, we are not dealing with a case where the official had one odd case pending against him. There were 4 criminal cases against the Petitioner/Appellant. In two cases, under Sections 107/151 Cr.P.C. the Petitioner/Appellant had been directed to furnish bonds. In one case under the Public Gambling Act, he had been convicted and in other case under the Essential Commodities Act, he had been prosecuted, but he had been acquitted of the charge. A bare perusal of the verification from which we have extracted hereinabove clearly shows that the Petitioner/Appellant had to inform to his employer that he had been tried in 4 cases. He had also to inform his employer that he had been sentenced to fine under the Public Gambling Act and he had been convicted under the said Act. He had also to inform his employer that he had furnished bonds in two cases. He was also required to give details of the criminal cases and the Courts in which the criminal cases were pending etc. etc. The question in the verification form is unambiguous and leaves no manner of doubt about the information to be supplied by the employee.

8. In our opinion the Petitioner/Appellant has withheld the material information from his employer and it violates the first condition of paragraph 30 of **Avtar Singh case** (supra) that the information given to the employer must be true that there should be no suppression or false information. The discretion, no doubt, is given to the employer whether to take strict action or not, but this discretion is with the employer and not with the Court unless it is shown that this discretion is exercised in an arbitrary or discriminatory manner. Sub-para 7 of paragraph 30 of **Avtar Singh case** (supra) clearly lays down that in case of deliberate

suppression of facts with respect to multiple criminal cases such false information by itself becomes significant and the employer is empowered to cancel the candidature or terminate the services of the employee.

9. In view of the above discussion, we are of the view that the Petitioner/Appellant has given false answers to the questions of the verification form and these false answers are not trivial in nature and, therefore, we find no merit in the writ appeal.

10. The writ appeal is consequently dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE