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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6424 of 2010**

Dainy Singh Thakur, S/o. Late Rajendra Singh Thakur, aged about 26 years, R/o. Village-Gatauri, Post-Semartal, P.S.- Koni, Distt. Bilaspur (C.G.)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through its Secretary, Urban Administration & Development Department, D.K.S. Bhawan, Raipur (C.G.)
2. Commissioner/Director, Urban Administration and Development Department, Raipur (C.G.)
3. Joint Director, Urban Administration & Development Department, Bilaspur (C.G.)

---- **Respondents**

For Petitioner: Mr. Vinod Deshmukh, Advocate.
 For Respondents/State: Mr. Dhiraj Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/10/2016**

(1) Petitioner's father – Rajendra Singh Thakur died in harness on 18.04.2005. Petitioner's case for appointment on compassionate ground was considered and granted by respondents No. 2 & 3 on 02.01.2006 and the petitioner was appointed on the post of Peon for a period of two years on probation.

(2) During the continuance of service, respondents No. 2 and 3 directed the petitioner to submit his attestation form along with affidavit, which the petitioner submitted on 11.09.2009 in which he has omitted to mention the registration of criminal cases against him and his subsequent acquittal.

(3) On police verification, it was found that against the petitioner, Crime No. 167/2006 for offence punishable under Sections 294, 327, 506-B, 34 and 329 of the IPC was registered on 14.10.2006 in which he was acquitted by the Sessions Judge, Bilaspur on 25.07.2007; and also Crime No. 181/2003 for offence punishable under Sections 397, 392/34 of the IPC was registered against him on 28.08.2003 in which also the petitioner was acquitted on 26.02.2004 by the Third Additional Sessions Judge. Apart from that, registration of offence under Sections 151, 107, 116 and 110 of IPC has also been found against the petitioner.

(4) Enquiry report was submitted by the Superintendent of Police, Bilaspur to the Inspector General of Police, Raipur and ultimately respondents No. 2 and 3 issued show-cause notice to the petitioner on 06.10.2010 that upon verification he is found to be disqualified to continue in Government service, which was replied by the petitioner on 13.10.2010 and ultimately by impugned order dated 18.10.2010, petitioner's services were terminated holding that upon police verification he has been found unfit to continue in Government service.

(5) Impeaching legality, validity and correctness of the order of termination of the petitioner, this writ petition has been filed stating *inter alia* that his services were confirmed on the post of Peon, as he has successfully completed two years of service on probation and therefore, without holding duly constituted departmental enquiry against him, his services could not have been terminated by respondents No. 2 and 3 on the ground of suppression of submitting false information in verification form and therefore, impugned order deserves to be set aside.

(6) Return has been filed by the State/respondents opposing the writ

petition stating *inter alia* that the petitioner has deliberately omitted to mention the registration of Criminal Case Nos. 167/2006 and 181/2003 in attestation form submitted, by which he was prosecuted and later on he was acquitted in both the cases and therefore, services of the petitioner have rightly been terminated and the petitioner is not entitled for any relief in this writ petition and as such, it deserves to be dismissed.

(7) The petitioner has filed rejoinder controverting the fact mentioned in the return.

(8) Mr. Vinod Deshmukh, learned counsel appearing for the petitioner would submit that the impugned order passed by respondents No. 2 and 3 terminating the petitioner's services is *ex-facie* illegal and bad-in-law, as the petitioner was confirmed on the post of Peon and unless departmental enquiry is held and he is found guilty of suppression of submitting false information in the verification form, his services could not have been terminated and therefore, impugned order deserves to be set aside and the petitioner be reinstated in service alongwith back wages. He placed reliance upon the Judgment of the Supreme Court in the matter of **Avtar Singh Vs. Union of India & Ors.**¹, in support of his submission.

(9) On the other hand, Shri Dheeraj Kumar Wankhede, learned Government Advocate while opposing the submission made by counsel for the petitioner would submit that the petitioner has been charge-sheeted & prosecuted for the serious offences like robbery and criminal intimidation and he has clearly suppressed the material facts in the attestation form submitted and therefore, he has rightly been terminated from the services finding him unfit for Government service and therefore, impugned order deserves to be

¹ AIR 2016 SC 3598

upheld.

(10) I have heard learned counsel appearing for the parties and cautiously analyzed submissions made herein and also gone through the record with utmost circumspection.

(11) It is not in dispute that the petitioner was appointed on the regular post of Peon on probation of two years by order dated 02.01.2006; he has completed two years of probation successfully as no adverse order was communicated to him during the period of two years and he is continuing in service and his services has been terminated only by serving show cause notice dated 6.10.2010; and no departmental enquiry has been conducted against him before termination on the ground of suppression of information or submitting false information in verification form as the petitioner has suppressed his prosecution for the offences in Criminal Case Nos. 167/2006 and 181/2003 though he was later on acquitted in above stated criminal cases.

(12) The issue involved in the writ petition is no longer *res-integra*. Very recently, their Lordships of the Supreme Court in the matter of **Avtar Singh** (supra) have laid down the principle to be followed in case of suppression of information or submitting false information in verification form and clearly held that in case the employee is confirmed, holding of departmental enquiry would be necessary before passing order of termination on the ground of suppression of information or submitting false information in verification form.

Paragraph 30 of the report states as 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 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 suppression very or suggestion falsi, knowledge of the fact must be attributable to him.”

(13) Applying the ratio of law laid down by the Supreme Court in the above referred case **Avtar Singh**, sub-paragraph 9 (supra) in the present case, it is

quite vivid that a confirmed employee cannot be terminated from service on the ground of suppression of information or submitting false information in verification form unless departmental enquiry is held in accordance with relevant applicable rules against the said employee. Since in the present case, though the petitioner was found to have suppressed the material information in verification form i.e. prosecution in two criminal cases but since the petitioner was a confirmed employee, he could not have been terminated without holding Departmental Enquiry as held by their Lordships of the Supreme Court in the above referred case. (See paragraph 30.9).

(14) Consequently, the order of termination dated 18.10.2010 is liable to be and is hereby set aside and he is reinstated in service forthwith.

(15) The petitioner has also prayed for consequential benefits. The impugned order was passed on 18.10.2010. The petitioner has neither averred in the writ petition nor brought any material on record to hold that during this period i.e. from 18.10.2010 to 04.10.2016, he was not gainfully employed anywhere. The normal rule is, a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness (See *M/s. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others*²). Thereafter, in the matter of *M/s. Reetu Marbles v. Prabhakant Shukla*³. Their Lordships of the Supreme Court have emphasized the need for enquiry/material with regard to gainful employment before directing full backwages particularly when the award is being modified and their Lordships awarded only 50 percent of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and

² (1979) 2 SCC 80

³ (2010) 2 SCC 70

considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to the petitioner from the date of termination till the petitioner is reinstated in service.

(16) At this stage, Shri Dhiraj Wankhede, learned Counsel appearing for the State/respondents would submit that respondents No. 2 & 3 may be granted liberty to initiate departmental enquiry against the petitioner for such suppression/omission in submitting information in attestation form. Respondents No. 2 & 3 are at liberty to proceed against the petitioner in accordance with law on the aforesaid ground.

(17) The writ petition is allowed to the extent indicated above. No order as to cost (s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 6424 of 2010****PETITIONER**

Dainy Singh Thakur

Versus**RESPONDENTS**

State of Chhattisgarh & others.

HEAD NOTE

A confirmed government servant cannot be terminated without holding regular departmental enquiry on the ground of suppression of material information while submitting attestation form to his appointing authority.

एक स्थायी शासकीय सेवक को, नियमित विभागीय जाँच के बिना, नियोक्ता के समक्ष सत्यापन फार्म प्रस्तुत करते समय तात्त्विक जानकारी छिपाये जाने के आधार पर बर्खास्त नहीं किया जा सकता है ।