



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.11.2016  
Pronounced on : 01.12.2016

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CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA  
Writ Petition (MD) No.10611 of 2016  
& W.M.P.(MD) No.8232 of 2016

Dr. B.Manivannan,  
Temporary Veterinary Assistant Surgeon,  
Veterinary Dispensary,  
Periyakannanur, Sivagangai District ... Petitioner

vs.

1. The Secretary to Government,  
Animal Husbandry Dairying and Fisheries Dept.,  
Secretariat, Chennai - 9
2. The Director of Animal Husbandry & Veterinary  
Services, O/o. The Directorate of Animal  
Husbandry & Veterinary Services,  
Central Office Buildings Block - II,  
Chennai - 6 ... Respondents

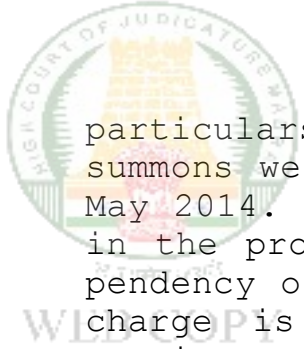
Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.48659-L2/2014, dated 03.06.2016 and to quash the same as illegal.

For Petitioner : Mr. Ajmal Khan, Sr. Counsel, for,  
M/s. Ajmal Associates  
For Respondents : Mr. B.Pugalenth, A.A.G., for,  
Mr. V.R.Shanmuganathan, Spl.G.P.,  
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#### O R D E R

The petitioner was appointed as Veterinary System Surgeon and his appointment was through Employment Exchange under Rule 10 (a) (i) of the Tamil Nadu State and Subordinate Service Rules (in short "the Rules"). At the time of appointment, the petitioner was directed to submit a proforma duly filled by the petitioner. The proforma did not contain any column required to be given by the candidates with regard to the pendency of the criminal case.

1.1. The second respondent issued a charge memo dated 25.09.2014 alleging that the petitioner suppressed the pendency of the criminal case to the Department. The petitioner submitted an explanation stating that he was not directed to give any



particulars regarding the pendency of the Criminal Case. The summons were issued in the Criminal Case only during the month of May 2014. The petitioner also explained that there was no column in the proforma enabling him to submit the details regarding the pendency of the Criminal Case. The Enquiry Officer held that the charge is proved. Thus, the petitioner was terminated from service on 03.06.2016.

2. Rule 18 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, (in short "the 1955 Rules") casts a duty on the Disciplinary Authority to give independent reasons and in the absence of the same, the order of punishment is liable to be set-aside.

3. The fact that the petitioner was in custody from 23.01.2010 to 11.02.2010 for a period of 20 days in connection with Crime No.5 of 2010 in C.C.No.110 of 2012 under Sections 406, 409, 420 and 477 IPC, for the alleged misappropriation of money to the extent of Rs.56 lakhs, while he was working in Kalanjium Tholilagam, is not under dispute.

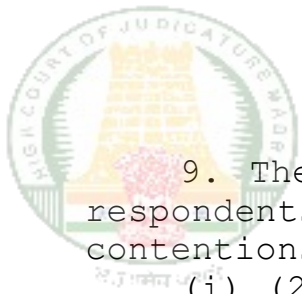
4. Whether the petitioner suppressed the information regarding the criminal case against him, at the time of his appointment and if so, whether the suppression is willful or on account of want of opportunity, are the issues in dispute.

5. A person, who was appointed under Section 10 (a) (i) of the Rules, is not entitled to any notice and his appointment is liable to be terminated without giving any reasons. However, it is alleged that in the case of the petitioner, a notice has been given and an opportunity of hearing has been provided and therefore, the order passed is valid.

6. The contention that the proforma did not contain any column enabling the petitioner to disclose the pending Criminal Case is not correct, as, in Sl.No.17, the title "any other remark", is available, in which, the petitioner could have disclosed that there is a criminal case pending.

7. The case of the petitioner is that he joined duty on 25.05.2012, but the charge-sheet was filed only on 11.07.2012 and he came to know about the filing of the charge-sheet only during July 2014 and therefore, there is no question of suppression in this case.

8. The contention of the learned AAG for the respondents is that under Rule 12 (b) (i), the character and antecedent of the petitioner for such service is important and therefore, the petitioner ought to have disclosed the pendency of the criminal case against him.



9. The learned Additional Advocate General appearing for the respondents relied upon the following decisions, in support of his contentions:-

(i) (2003) 3 SCC 437 (Kendriya Vidyalaya v. Ram):-

WEB COPY "The memorandum dated 7/8.4.1999 terminating the services of the respondent refers to column nos. 12 and 13 of the attestation form, the criminal case registered against the respondent on the basis of the report given to the appellants by IGI police, suppression of material information by the respondent while submitting attestation form and violating the clause stipulated under para 9 of the offer of appointment issued to him, O.M. dated 1.7.1971 of Cabinet Secretary, Department of Personnel, New Delhi, in which it is clearly mentioned that furnishing of false information or suppression of factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government and that as per clause 4 of offer of appointment, the respondent was on probation for a period of two years and that his services were liable to be terminated by one month's notice.

It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against column nos. 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. ....The requirement of filling column nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service. ...."

(ii) (2013) 9 SCC 363 (Devendra Kumar v. State of Uttranchal):-

"10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by





"15. To examine the veracity and legality of the above orders passed by the respondents, it is to be seen that a clear circumspection of the case would reveal that the impugned orders passed by the first and third respondent are a mere extraction of the enquiry officer's report and the same are also without any discussion on the part of the respondents and had been passed mechanically, without giving an independent findings. Though the enquiry officer's report had been placed before the disciplinary authority, yet each and every charge levelled against the petitioner-delinquent have not been discussed in detail by them. The charges have not been dealt with by the disciplinary authority 'in toto' and the findings of the enquiry officer, have not been analysed, and ultimately, the first respondent has come to the conclusion that 13 out of 23 charges having been proved, is a major factor to be taken into account before passing the order of punishment and without giving their own reasonings by passing a speaking order, orders have been passed by the respondents in a casual way. In 'stricto-sensu', it is the hallmark and ordained principle in the service law jurisprudence that the disciplinary authority, while dealing with the punishment, ought to have assigned appropriate reasonings, which is the heart-beat of the decision as may be rendered while arriving at a final conclusion in the disciplinary proceedings...."

(ii) 2014 (4) LLN 321 (DB) (Ajay Pratap Singh v. State of U.P.): -

"14. In the light of this ambiguity contained in column No.20 of the application form, the Court is of the opinion that the benefit of this ambiguity is required to be given to the petitioners. Since the petitioners are eligible for the post Designated Officer and they have obtained more marks than the cut-off marks depicted by the Commission, the Court is of the opinion that the candidates being eligible should be permitted to appear in the Mains Examination, which is going to be held on 1.7.2014. The Court has been informed that the last date for deposit of the fee for the Main Examination is 14.6.2014 and the last date for submission of the form is 23.6.2014."

(iii) 2006 (5) CTC 529 (Dr. A.Rajapandian v. State of Tamil Nadu): -

"19. It is pertinent to note that the earlier advertisement, a copy of which is produced at Page No.1 of the paper book, specifically requires the production of the Registration Certificate issued by the Veterinary



Council. No such requirement is stipulated in the present Notification / Advertisement. More over, it is not disputed by the Commission that the petitioners are duly registered Veterinary Assistant Surgeons under Tamil Nadu Veterinary Council prior to the date of Notification / Advertisement. The non-enclosure of the Registration Certificate issued by the Veterinary Council, which was not specifically required to be produced along with the application either in the Notification/Advertisement or in the Information Brochure or in the Check List cannot be put against the petitioners for rejecting their applications.

20. If there was any confusion created on the minds of the candidates, the blame squarely lies on the TNPSC. Far from helping the candidates, it had made mess for any reasonable candidate to understand as to what was their exact requirement. The TNPSC could have very well issued one simple and compendious booklet containing all these details rather than making the candidate to refer to several documents. Starting from paper notification, application, instructions to candidate, information brochure and finally a misleading check list in the OMR application makes it a jigsaw puzzle. ...."

(iv) (2009) 2 SCC 579 (Roop Singh Negi v. Punjab National Bank and Others):-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

....

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been



taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof...."

(v) (2008) 8 SCC 236 (State of Uttaranchal and Others v. Kharak Singh):-

"15. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

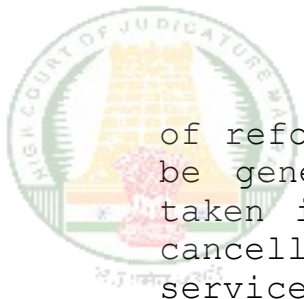
iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him...."

(vi) 2012 (3) LLN 116 (SC) (Krushnakant B. Parmar v. Union of India and another):-

"18. In a Departmental proceeding, if allegation of un-authorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct."

(vii) (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425 (Avtar Singh v. Union of India):-

<https://hcservices.ecourts.gov.in/hcservices/> 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.

38. 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:

38.1 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. 38.2. 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.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

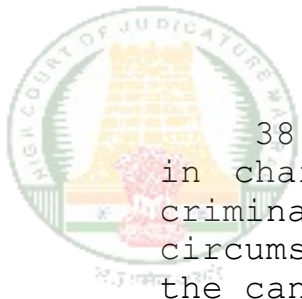
38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:-

38.4.1. 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.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. 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.

38.5. 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.



38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. 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. Whether there was suppression and if so, whether that suppression is material, ought to have been considered with objectivity, having regard to the facts of the case. What is the yardstick to be applied would once-again depend upon the nature of the duties / services and the impact of suppression on the suitability of the petitioner to the post. These aspects have not been considered either by the Enquiring Authority or by the Disciplinary Authority. To support this proposition, the observations of the Hon'ble Supreme Court, in the case of Avtar Singh, cited supra, is relied upon, which reads as under:-

"35. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered



right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. 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."

12. From the decisions relied upon by the learned counsel for the petitioner, it is evident that the Court has to analyze whether the Enquiry Officer has conducted the enquiry after following the principles of natural justice, whether the Disciplinary Authority has rubber stamped the report of the Enquiry Officer or he has applied his mind independently to find out whether there is suppression by the delinquent and if so, whether the suppression is willful and whether the suppression has an impact upon the job undertaken by the delinquent.

13. The learned Additional Advocate General appearing for the respondents would point out that it is within the knowledge of the delinquent that he is expected to disclose the pending criminal case in view of the undertaking given, while getting the order of appointment.

13.1. It is necessary to extract the undertaking given by the delinquent, at the time of receiving the order of appointment:-

"UNDERTAKINGS

I, Dr. B.Manivannan agree to abide this undertakings, that on verifications of the antecedents pertaining myself by the police authority, if anything found wrong, I may be ousted from Service.

Sd/-...

Signature of this Veterinary Assistant Surgeon".

13.2. The relevant paragraph connecting this undertaking form is found in paragraph No.7 of the appointment order of the petitioner, dated 17.05.2012, which has been communicated to the petitioner:-

"7. சம்பந்தப்பட்ட மண்டல இணை இயக்குநர் மேற்படி கால்நடை மருத்துவ பட்டாதாரியின் பெயரை காவல் துறைக்கு பரிந்துரைத்து அவர் மீது எதிர்மறை குற்றப்புகள் எதுவும் இல்லை (Antecedents of the selected candidates from the Police Department concerned) என்பதை உறுதிப்படுத்தப்பட வேண்டும். பிற்காலத்தில் அவர் மீது எதிர்மறை குற்றப்புகள் / குற்றவியல் வழக்குகள் எதுவும் நிலுவையில் இருப்பதாக காவல் துறையினரிடமிருந்து அறிக்கை பெறப்பட்டால் அவரை பணியிலிருந்து நீக்க நடவடிக்கை எடுக்க ஏதவாக வரையறுக்கப்பட்ட படிவத்தில் உறுதிமொழி பெறப்பட வேண்டும்."



13.3. From the combined reading of the above two documents, it cannot be said that the petitioner could not have understood that he is under the responsibility to disclose the pending criminal case against him.

13.4. That apart the combined reading of both provisions would go to show that there is a duty cast upon the Appointing Authority to get the antecedents of the petitioner verified by getting information from the Police and that in the case of the police reporting anything adverse against the petitioner, the appointment is liable to be terminated. In other words, if there is no direct duty cast upon the petitioner to disclose the pending Criminal Case, there is an implied duty on the part of the petitioner to have disclosed the pending criminal case, if those two clauses have been properly understood. Therefore, the primary documents, which are relied upon by the respondents, are the orders of appointment, the undertaking form obtained, the first information report filed, etc., A perusal of the Enquiry Report discloses that no document has been relied upon by the Enquiry Officer to arrive at the finding.

13.5. A perusal of the application for appointment, which seems to be a prescribed proforma, in column No.17, a clause is left open with the phrase "Any other Remarks". This column is not an open-ended column, but it is a close-ended column. In the sense that, column No.17 is with an appendage which reads "whether intimation received from the District Employment Officer, Tamil Nadu Provisional and Employment Exchange, Chennai-4; if yes furnish a Xerox copy of the intimation." There is nowhere a clue that he is expected to give details regarding the pending Criminal Case. But, as discussed already, at the time of appointment, the petitioner would have gained the knowledge that he has to disclose the pending criminal case. But, it is a matter to be ascertained, whether he wanted to suppress the information and if so, whether that suppression was willful.

13.6. The enquiry officer should have relied upon the appointment order and the undertaking letter obtained from the petitioner and should have given an opportunity to the petitioner to explain the circumstances under which the undertaking letter was given by the petitioner. The undertaking form uses the expression "anything found wrong". This phrase is capable of varied meanings leading to varied interpretations. Therefore, an opportunity should have been given to the petitioner to explain the same, which would have given a clue to the Appointing Authority as to whether the suppression could have been willful.

14. In view of the foregoing reasons, the impugned order passed by the second respondent dated 03.06.2016 is set-aside and the matter is remitted back to the second respondent for consideration of the matter afresh, taking into account the



documents that are referred to in this order and also to consider the issue as to whether there is "willful suppression" on the part of the petitioner. The consideration shall be made after affording an opportunity of hearing to the petitioner with specific response elicited from the petitioner as to the order of appointment, viz-a-viz., the undertaking letter furnished by the petitioner. The enquiry shall be concluded within a period of two months from the date of receipt of a copy of this order or on production of a copy of this order by the petitioner.

15. The writ petition stands disposed of. No costs. Consequently, the connected WMP is closed.

Sd/

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1. The Secretary to Government,  
Animal Husbandry Dairying and Fisheries Dept.,  
Secretariat, Chennai - 9
2. The Director of Animal Husbandry & Veterinary  
Services, O/o. The Directorate of Animal  
Husbandry & Veterinary Services,  
Central Office Buildings Block - II,  
Chennai - 6

+1CC to M/S.Ajmal Associates, SR.No. 79149

Order in

Writ Petition (MD) No.10611 of 2016  
& W.M.P. (MD) No.8232 of 2016

01.12.2016

srk

AM/PM PN/SAR-1/23.02.2017/12P/4C