

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos.39749 & 29795 of 2015

COMMON ORDER

Both the writ petitions are disposed of by this common order as they are filed by the same petitioner challenging the original order of termination and the appellate order confirming the said termination order respectively.

The petitioner was appointed as Constable in C.R.P.F Battalion. After completion of one year period of training in the year 2013, the respondents have taken all the original certificates of his educational qualification. When the petitioner received a letter terminating his services with effect from 16.3.2015, he enquired with regard to the reason and came to know that that he suppressed the information relating to registration of Cr.No.4 of 2010, against him, which occurred prior to his joining duty. The petitioner challenged the order of termination by filing W.P.No.10350 of 2015 and the same was dismissed for want of territorial jurisdiction. However, it was observed that if the 2nd respondent being the appellant authority entertains any appeal, then the cause of action would arise within the territorial limits. After disposal of the writ petition, the petitioner preferred an appeal in the month of April, 2015, which

was received by the 2nd respondent on 27.4.2015. When no orders were passed in the appeal, he filed W.P.No.29795 of 2015 challenging the original order of termination. When the said writ petition is pending, the second respondent passed an order on 16.11.2015, confirming the order of termination. Challenging the same, the petitioner filed W.P.No.39749 of 2015.

Counter-affidavit is filed on behalf of the respondents stating that the petitioner was enlisted as constable/general duty in CRPF on 25.03.2013. After completion of basic training, he was allotted to 227 Battalion CRPF from 229 Battalion CRPF *vide* proceedings dated 19.09.2014. Verification roll of the petitioner was forwarded to the Collector & District Magistrate, Guntur District(AP) for verification of character and antecedents, who, in turn, *vide* letter dated 1.12.2014, informed that as per the report of the Superintendent of Police, Guntur Rural District, the petitioner was shown as A2 in C.rNo.4 of 2011 registered under Section 324 read with 34 IPC of Tsadayapalem Police Station, but he was acquitted of the said offence *vide* C.C.No.108 of 2011 on 22.3.2013 and that nothing adverse has come to the notice of the authorities and the same was verified with the information provided by the petitioner. On verification, it was noticed that in Col. No.12 (a to k), he stated “Yes”, but in the duplicate he mentioned “No”.

Accordingly, the matter was taken up with Range Taralu vide letter dated 23.1.2015 for further guidance and a decision was taken to terminate his services in view of suppression of fact. The termination was made by relying on sub-rule (1) of rule 5 of Central Civil Service (Temporary Service) Rules, 1965. Since the petitioner was a temporary Government servant, the appellate authority considered the appeal preferred by the petitioner and thought it fit to dismiss the appeal by confirming the order of termination.

Learned counsel appearing for the petitioner submits that the petitioner disclosed the correct information in the original, but by mistake he has stated “No” in the duplicate form, which was not intentional. He further states that though the petitioner was involved in the alleged crime before joining the service, later he was acquitted. Learned counsel placed reliance on the decision of the Supreme Court in Avtar Singh vs. Union of India & ors dated 21.7.2016 referred in SLP Nos.4757/2014 and 24320/2014.

In the case on hand, the petitioner stated “Yes” in the original form, but in the duplicate he stated “No”. Obviously, the petitioner was in double mind. The Supreme Court considered the cases where the information was suppressed initially and furnished later and also the age when the crime was alleged to have been committed. It was also observed that the

employer has to consider the effect of non-disclosure of fact before issuance of appointment order, and ultimately, the Supreme Court concluded as follows:

“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 *supppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him.

In view of the same, the impugned orders passed by the second respondent and the original order passed by the 4th respondent are set aside and the matter is remanded to the 4th respondent for consideration of the case of the petitioner in the light of the observations made by the Supreme Court as above, within a period of three months from the date of receipt of a copy of this order.

Subject to the above, the Writ Petitions are allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

4th August, 2016

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