

*** HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

+ Writ Petition No. 26683 of 2016

% Dated 24.08.2016

N. Kalyani

...Petitioner

Vs.

**\$ The Central Industrial Security Force,
(Ministry of Home Affairs) rep. by its
Director General (Training) Head Quarters,
New Delhi and others.**

...Respondents

! Counsel for the Petitioner: Sri P. Sridhar Rao

^ Counsel for the Respondents: Sri B. Narayan Reddy

< Gist :

> Head Note:

? Cases Referred:

1. (2007) 11 SCC 335
2. (1873) 8 CP 107

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** * * ***

Writ Petition No. 26683 of 2016

Between:

N. Kalyani

....Petitioner

and

The Central Industrial Security Force
(Ministry of Home Affairs) rep. by its
Director General (Training) Head Quarters
New Delhi and others.

....Respondents

JUDGMENT PRONOUNCED ON

: 24.08.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 26683 of 2016

Order:

The petitioner claims that she belongs to Scheduled Tribe (Erukala) Community and native of Warangal District, Telangana State. She passed SSC Examination held in March 2009 in first division. She applied for the post of female constable pursuant to a notification issued by the Staff Selection Commission on 09.01.2013. She appeared for written test on 12.05.2013. She was provisionally selected by proceedings dated 28.02.2015 of the third respondent. She was sent for training to CISF RTC Barwaha, Post – Daria Mahal, District Khargaon, Madhya Pradesh. She was put on probation for a period of two years. She reported for training on

11.12.2015. While she was undergoing training she was issued an order of termination on 30.07.2016 on the ground that she is not fit for permanent appointment in the post. Challenging the said order of termination dated 30.07.2016 the present Writ Petition is filed.

2. This Court, by an order dated 09.08.2016, directed the learned Assistant Solicitor General to obtain instructions and on the basis of the instructions, he submits that the order of termination was passed for furnishing wrong information in the verification form submitted by the petitioner at the time of training.

3. Learned counsel for the petitioner submits that though the petitioner was involved in CC No.977 of 2008 as an accused, the same was compromised by compounding the offence before the Lok Adalat on 26.11.2011 i.e., much before the application for the post and in those circumstances she did not disclose the fact of her involvement in the said offence. He relied on a decision of the Hon'ble Supreme Court in **Avtar Singh v. Union of India** (SLP (c) No.20525 of 2011, dated 21.07.2016). He also relied on a decision of the Hon'ble Supreme Court in **Raj Kumar v. Director of Education** (Civil Appeal No.1020 of 2011, dated 13.04.2016). He further submitted that the impugned order of termination was passed contrary to Rule 25 of the Central Industrial Security Force Rules, 2001 (for short "CISF Rules, 2001").

4. Learned Assistant Solicitor General, on the other hand, submitted that no part of cause of action arose within the jurisdiction of this Court and the Writ Petition is liable to be dismissed on that ground. He placed reliance on a decision of the Hon'ble Supreme Court in **Alchemist Ltd., v. State Bank of Sikkim**^[1]. He also placed reliance on a decision of the High Court of Delhi, at New Delhi in **Rajesh Singh v. UOI and others** (WP (C) No.1049 of 1997, dated 26.04.2011) and on the decision of the High Court of

Judicature for Rajasthan, at Jodhpur in **Raju Ram v. Commandant, CISF and others** (SB Civil Writ Petition No.11305 of 2011, dated 23.04.2014).

5. In reply, learned counsel for the petitioner submitted that the petitioner hails from Warangal District of Telangana State and she would be appointed in Telangana State as per the order of appointment dated 28.02.2015.

6. On the point of jurisdiction, it is clear that the petitioner belongs to Warangal District of Telangana State and she may be allotted to Telangana State after completion of training. But, the present issue is with regard to order of termination which was passed by the Deputy Inspector General of Police who is situated in Madhya Pradesh, while she was undergoing training in Madhya Pradesh.

7. So far as the order of termination is concerned, which is challenged in the present Writ Petition, the said cause of action did not arise within the jurisdiction of this Court. The verification form was also submitted by the petitioner before joining the training and reporting to the Principal of Training College which is situated in Madhya Pradesh.

8. In **Alchemist Limited's case** (1 supra), the Hon'ble Supreme Court was considering the case of a Company having its registered and corporate office at Chandigarh. When the State of Sikkim issued an advertisement inviting offers for strategic partnership for transfer of management of 49% of its equity capital, the Company submitted its proposal. Ultimately, when the Board of Directors of the Bank short listed two companies including the Company situated in Chandigarh. The Chairman and Managing Director of the State Bank of Sikkim visited Chandigarh for further negotiations and asked the appellant to deposit a sum of Rs.4.50 Crores. The said sum was

deposited in the State Bank of India, Chandigarh and photo copies of the receipt were handed over to the executives of the Bank at Chandigarh. The Bank communicated its acceptance of proposal in principle subject to approval of the Government of Siikkim. However, when the Government of Sikkim did not approve the proposal, the earlier acceptance was withdrawn. In those circumstances, the Company at Chandigarh filed a Writ Petition before the High Court of Punjab and Haryana. The High Court dismissed the Writ Petition only on the ground of lack of territorial jurisdiction and when the matter went to the Supreme Court, the Hon'ble Supreme Court examined the affect of amendment made to Article 226 by the Constitution (Fifteenth Amendment) Act, 1963. It also considered the earlier decisions and upheld the decision of the High Court in dismissing the petition. The Hon'ble Supreme Court considered the definition of the expression "cause of action" which was found in **Cooke v. Gill**^[2], and the observations of Lord Brett are as follows.

“ ‘cause of action’ means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

The Supreme Court, ultimately, held as follows.

“37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material, essential, or integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than that.

38. In the present case, the facts which have been pleaded by the Appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of 'cause of action' within the meaning of [Article 226\(2\)](#) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition.”

In the instant case, the material facts relate to the furnishing of information in the verification form and the consequential termination of services of the petitioner. The domicile of the petitioner and her likelihood of being appointed to the State of Telangana is of no consequence and does not form part of cause of action for entertaining the present Writ Petition. In the circumstances, the decision relied on by the learned Assistant Solicitor General in **Alchemist Limited's case** (1 supra) is applicable and the Writ Petition is not maintainable. The other cases relied on by the learned Assistant Solicitor General in **Raju Ram v. Commandant, CISF and others** and **Rajesh Singh v. UOI and others** are based on the facts of those cases and they do not relate to the territorial jurisdiction.

9. With regard to non-compliance with Rule 25 of the CISF Rules, 2001, the said Rule reads as follows.

“25. Probation - (1) Every member of the Force except those appointed on deputation/absorption, shall be on probation for the period specified in relevant column of the Recruitment Rules:

Provided that in the absence of a specific order of confirmation or a declaration of satisfactory completion of probation, a member of the Force shall be deemed to be on probation:

Provided further that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed in respective recruitment rules.

(2) If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him or terminate the services from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department as the case may be.

(3) On successful completion of probation by a member of the Force, the appointing authority shall pass an order confirming the member of the Force in the grade in which he joined the Force.”

The contention of the petitioner is that no notice of one month or pay in lieu of such notice was issued and hence the impugned order of termination is vitiated. The relevant portion of the order of termination reads as follows.

“Now, therefore, in exercise of power conferred upon the undersigned by virtue of Rule 25 and Rule 26 of CISF Rules 2001, I hereby terminate the service of CISF No.150808547 L-CT/GD(UT) Nadigadda Kalyani daughter of Shri Nadigadda Krishnamurthy forthwith and direct that she shall be entitled to claim a sum equivalent to the amount of her pay plus allowances for the period of notice at the same rate at which she was drawing them immediately before the termination of her service or, as the case may be, for the period by which such notice falls short of one month.”

A reading of the above extract makes it clear that the pay and allowances for the period of notice was offered to the petitioner and it is a sufficient compliance with Rule 25 of the CISF Rules 2001 and it cannot be held that the said Rule was not complied with. **Raj Kumar's** case relates to the application of the provisions of Section 25F of the Industrial Disputes Act and Section 8(2) of the Delhi School Education Act. The contention in the said case was that the notice required to be sent to the appropriate Government in the prescribed form as provided under Section 25F(a) and (c) of the Industrial Disputes Act was not sent. The Hon'ble Supreme Court noticed that the notice was not served upon the Delhi State Government and accordingly held that the provision was not complied with. In this case, a perusal of the order of termination shows that the petitioner was offered the pay for the period of notice and she was held to be entitled for the same. Hence, the ratio in the said case is not applicable to the facts of the present case.

10. The third point that remains for consideration is with regard to reason for the impugned order of termination. The impugned order of termination does not indicate any reason except stating that the

petitioner is not fit for permanent appointment in the post. It appears that the petitioner is aware of the reason for termination and hence she filed the copy of the award of the Lok Adalat compounding the offence in CC No.977 of 2008 on her own along with the Writ Petition. She admitted in her affidavit filed in support of the Writ Petition that on oral enquiries she came to know that her termination was based on an information furnished in Column No.12(b) against the question "Have you ever been prosecuted", she stated as "NO". The Hon'ble Supreme Court in **Avtar Singh's** case (supra) laid down the following principles and this Court is of the opinion that the competent authority had took the relevant facts into consideration.

"(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."

11. Since the post pertains to Security Force, a greater scrutiny is required and the competent authority thought it fit to terminate the services of the petitioner. In view of the same, the ratio decided in **Avtar Singh's** case (supra) relied on by the learned counsel for the petitioner is complied with.

12. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

13. As a sequel thereto, the miscellaneous applications, if any, pending in this Writ Petition shall stand closed.

A.
Date: 24.08.2016

RAMALINGESWARA RAO, J

Note:
Issue in one week
(B/O)
Nsr

[\[1\]](#) (2007) 11 SCC 335

[\[2\]](#) (1873) 8 CP 107