

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5325 of 2014

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1. Mukesh Kumar S/O - Sri Sabura Singh R/O - At & P.O. - Emirita, P.S. -
Suryapura, District – Rohtas Petitioner

Versus

1. The State Of Bihar
 2. The Director General of Police, Bihar, Patna
 3. The Superintendent of Police, Supaul, District - Supaul
 4. The Superintendent of Police, Rohtas, District - Rohtas.... Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, advocate

For the Respondent/s : Mr. A. K. Rastogi, AAG 10
Mr. Parijat Saurav, AC to AAG 10

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 04-08-2017

Heard both sides.

2. The petitioner filed this writ petition for quashing the order, as contained in memo No. 2044 dated 21.12.2013, issued by the Superintendent of Police, Supaul (Annexure-1), whereby the Superintendent of Police terminated the service of the petitioner from the post of Constable with effect from 01.11.2013.

3. The facts relevant for disposal of the writ petition are that in pursuance of an advertisement No. 01/2012 on 31.05.2012 the petitioner was appointed on the post of Constable in the district of Supaul, after having passed through the physical efficiency and written test vide memo No. 386 dated 02.06.2013 (Annexure-5). The petitioner submitted his joining on 03.07.2013. The petitioner was asked to fill up a form in the month of September, 2013 disclosing certain information about the criminal antecedents but the petitioner did not fill up the column with regard to criminal incident. Thereafter, vide memo No. 1952 dated 06.12.2013 show cause was issued to the petitioner asking him to explain about the criminal antecedent and, accordingly, petitioner was terminated



from services.

4. The learned counsel for the petitioner submits that, of course, the petitioner has got criminal antecedent but due to ignorance he did not fill up the form. The criminal cases pending against the petitioner are of petty nature and the omission of petitioner, mentioning about criminal antecedent, should not have been viewed seriously and the employer should have condoned such unintentional suppression.

5. The learned counsel for the petitioner, in support of his submission, placed reliance upon paragraph 8 of the judgement of the Supreme Court in the case of *Commissioner of Police & ors. V. Sandeep Kumar* reported in *(2011) 4 SCC 644*. The learned counsel for the petitioner further submits that in the case of *Avtar Singh v. Union of India* reported in *(2016) 8 SCC 471* decided by three Judges bench, on being referred on the basis of conflict of opinion of different division benches of the Supreme Court, the Supreme Court has held that in case of minor offences if it is found that the employee has committed such offence and did not mention the facts in the prescribed form, such omission can be condoned. He placed reliance upon paragraphs 18, 22 and 28 of the judgement of *Avtar Singh v. Union of India* reported in *(2016) 8 SCC 471*.

6. Per contra, the learned counsel for the State submits that petitioner failed to disclose the facts about his criminal antecedent in the form to be filled by him and the petitioner has suppressed material facts with regard to his character and his suitability to remain in police service and on this ground alone the service of the petitioner is liable to be terminated. It is further submitted that petitioner has got three criminal cases and this fact itself shows that petitioner was habitual offender before entering into uniform service, such as, Constable in Bihar Police and the employer has rightly, after getting information from the police



verification about the criminal antecedent of the petitioner, terminated the service of the petitioner. The learned counsel for the State placed reliance on the judgement of Supreme Court reported in the case of *Daya Shankar Yadav v. Union of India (2010) 14 SCC 103*.

7. On consideration of submission of both the sides, the question falls for consideration as to whether the employer should have condoned the suppression of facts to be given by the petitioner with regard to his criminal antecedent and the criminal cases against the petitioner are of such petty nature that the employer should continue the petitioner in service instead of terminating his service on the ground of suppression of material facts.

8. Paragraph 8 of the judgement of the Supreme Court in the case of *Commissioner of Police v. Sandeep Kumar* (Supra) on which the learned counsel for the petitioner placed heavy reliance reads thus:-

“We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives”.

9. Paragraphs 18, 22 and 28 of the judgement of the Supreme Court in the case of *Avtar Singh v. Union of India* (supra) on which the learned counsel for the petitioner placed reliance is as follows:-

“18. In *A.P. Public Service Commission v. Koneti Venkateswarulu and Ors.* [MANU/SC/0519/2005](#) : (2005) 7 SCC 177 there was suppression of the information regarding the employment and the explanation offered that



he inadvertently filled the form was not accepted”.

“22. 16. This Court has also held that query in verification form has to be very clear, specific and unambiguous. This Court has observed thus: (Daya Shankar case SCC p 113 para 121)

21. If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may.

However, on facts this Court held that the employee was not misled and made a false statement. As such CRPF was justified in dispensing with his services for not being truthful in giving material information.”

“28. This Court has also opined that before a person is held guilty of suppression of a fact it has to be considered whether verification form is precise and is not vague, and what it required to disclose. In *Daya Shankar* (supra) it was held that in case verification form is vague no fault can be found on the ground of suppression. However, facts which have come to knowledge it has to be determined by employer whether antecedents of incumbent are good for service, to hold someone guilty of suppression, query in the form has to be specific. Similarly, in *B. Chinnam Naidu* (supra) when column in verification form required to disclose detention or conviction, it did not require to disclose a pending criminal case or fact of arrest, removal on the ground of material suppression of pending case and arrest was set aside as that was not required to be disclosed”.

10. In the case of *Daya Shankar Yadav v. Union of India* (Supra)

the Supreme Court has held that once a candidate withheld or suppressed material



information, his service can be terminated but where non furnishing of material information is due to absence of clarifying the question or due to the candidates not being aware of the said information it cannot be said that he had suppressed material facts or made false statements.

11. In the case of Avtar Singh v. Union of India (supra) the matter was referred to a larger bench when the Supreme Court found divergent views in some cases, such as, *Sandip Kumar v. Commissioner of Police* (supra), *Daya Shankar Yadav v. Union of India* (supra) and other cases. The larger bench of the Supreme Court considering all the conflicting views summed up the conclusion in paragraph 38 of the judgement, which reads as follows:-

“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.

38.11. Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him”.



12. In *Avatar Singh* case it has been held that employee has to give information about his conviction, acquittal or arrest or pendency of criminal case, whether before or after entering into service, and the information must be true and there should be no suppression or false mention of required information failing which the employer can terminate service of the employee. While considering the termination of service 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. The employer shall take into consideration the Government orders, instructions, circulars applicable to the employee at the time of taking the decision. In case of suppression or false information of involvement in criminal case whether conviction or acquittal has already been recorded before filing of the application and such fact later comes to knowledge of employer the employer can look into the matter and in a case of trivial nature or the employee had committed petty offence the employer in its discretion ignore such suppression of fact or false information by condoning the lapse but when conviction has been recorded in a case which is not of trivial nature, the employer may cancel the candidature or terminate the service of an employee. If the acquittal has already been recorded in a case involving mortal turpitude or offence is 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 incidents, and may take appropriate decision as to the continuance of the employee. When 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. In a case when fact has been truthfully declared in character verification form



regarding pendency of a criminal case of trivial nature the employer in the facts and circumstances of the case in its discretion may appoint the candidate, subject to decision of such case but in a case of deliberate suppression of facts with respect to multiple pending cases such false information by itself will assume significance and the employer may pass appropriate order cancelling the candidature or terminating the service of a person against whom multiple criminal cases were pending. Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him.

13. In the case in hand it is admitted that petitioner was provisionally appointed on the post of Constable and he was asked to fill up a form disclosing about his criminal antecedent. In the form to be filled up by the petitioner the petitioner was to give certain information including the information with regard to pendency of criminal cases and there is no ambiguity in any question to be filled up in the form. The petitioner very categorically stated that he is not accused in any criminal case but from the police verification report received from the Superintendent of Police, Rohtas at Sasaram it transpires that three criminal cases, such as, Suryapura P.S. case Nos. 51 of 2007, 63 of 2009 and 98 of 2011 are pending against the petitioner and, therefore, besides the fact that petitioner has got criminal antecedent and there are multiple criminal cases pending against him and the petitioner is apparently guilty of suppressing material facts after his appointment. In all the cases the petitioner had already appeared and, therefore, the question that the petitioner has no knowledge about the criminal cases pending against him is not available to him.

14. Considering the facts aforesaid and in view of law laid down by the Supreme Court in the case of *Avtar Singh v. Union of India* (supra), I find that the petitioner has intentionally suppressed the facts with regard to his criminal



antecedent and the petitioner has got multiple criminal cases pending against him, therefore, the employer has rightly cancelled the provisional appointment of the petitioner on the post of Constable.

15. Accordingly, I do not find any reason to interfere with the order, terminating the service of the petitioner. This writ petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
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