



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) .No.753 of 2015

M.P. (MD) .No.2 of 2015

1. The Senior Commandant
O/o.The Senior Commandant
Central Industrial Security Force (CISF)
Ministry of Home Affairs,
6th Battalion, DEOLI
Tonk, Rajasthan.

2. The Commandant,
O/o.The Ch.Pt.Chennai,
Central Industrial Security Force (CISF),
Ministry of Home Affairs,
Chennai.

... Appellants/ Respondents

Vs.

M.Jam Singh

... Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 16.09.2014, made in W.P.(MD).No.5651 of 2012.

Prayer in WP(MD) . 5651/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI, calling for the records relating to the impugned order passed by the 1st Respondent in his proceedings No.E-42099/CISF/6th RB/O.O./11-5394, dated 06-12-2011 and quash the same as illegal.

For Appellants	: Mr.K.R.Laxman
For Respondent	: Mr.K.P.Narayana Kumar

JUDGMENT

[Judgment of the Court was delivered by **M.M.SUNDRESH, J**]

This appeal is directed against the order of the learned Single Judge who after considering the entire materials on record was pleased to set aside the order passed by the appellants by which the services rendered by the respondent/writ petitioner was terminated on the ground that he was convicted by the learned Judicial Magistrate, Padmanabhapuram in STC No.1552 of 2009, which

was undergone by him by paying a fine of Rs.500/-.

2. The learned counsel for the appellant would submit that the law has been well settled by the recent judgment of the Hon'ble Supreme Court in **Avatar Singh v. Union of India, reported in (2016) 8 SCC 471**. As the writ petitioner has not placed on record the factum of conviction undergone by him, even assuming it is a trivial offence, it is a matter of discretion to be exercised. Therefore, writ appeal will have to be allowed.

3. The learned counsel appearing for the respondent/writ petitioner would submit that the conviction was rendered on a complaint given for the offence under Section 75 of Tamil Nadu City Police Act. On the date of filing of the charge sheet itself, the writ petitioner was asked to pay a fine of Rs.500/-, which he has complied with. He did not know that it was a conviction under the criminal jurisprudence. Incidentally, it is submitted that the complainant in S.T.C.No.1552 of 2009 now is the writ petitioner's wife and there are two children born out of the wedlock. It is an inter-caste marriage. The writ petitioner belong to Scheduled Caste as against his wife belong to Backward Community. Even she is without any job. Even according to the appellant the performance of the writ petitioner is satisfactory. Hence, no interference is required.

4. The Hon'ble Apex Court in Avtar Singh v. Union of India (cited supra) culled out the principles governing the cases involved in suppression of materials facts, such as conviction rendered by the Criminal Court etc., It also taken note of non declaration of pendency of the criminal cases. The following is the direction given by the Apex Court finally:-

"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.

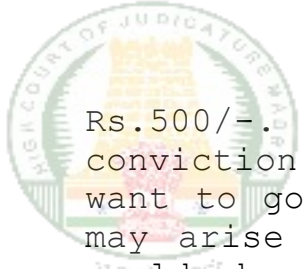
38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

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."

5. In the case on hand, the writ petitioner was admittedly involved in a trivial case. Furthermore, on a perusal of the records we find that he has not ticked the column as yes with respect to involvement of criminal case and the First Information Report. As rightly submitted by the learned counsel for the writ petitioner, it is not a case of willful suppression. It has come out of ignorance, otherwise he would have tick the column as yes, which raised question as to whether the applicant is convicted or not, apart from pendency of the criminal case. One more thing has to be seen that the complainant in the criminal case has become his wife. The conviction is only with respect to payment of



Rs.500/-.. Even on the date of filing of the charge sheet, the conviction was rendered on payment. The writ petitioner did not want to go through the Trial without knowing the implication that may arise in future. The affidavit filed by the writ petitioner would show that he is in penury having married the lady who given the complaint. After giving the complaint, not only the writ petitioner, even the complainant is suffering with two minor children.

6. As per paragraph 38.4.a mentioned in the judgment referred supra certainly leverage has been given to a case trivial in nature. The appellants have not exercised their discretion which in our considered view is not correct. In fact the appellants have proceeded on the footing that respondent is not entitled for such discretion.

7. In such view of the matter there is no purpose in remanding the matter to undertake such an exercise. Perhaps it is may be for a reason that the judgement rendered by the Apex Court was at a later point of time. Be that as it may, in the light of the discussions made above, we do not incline to interfere with the decision made by the learned Single Judge. However, while directing the appellants to confirm the probation of the respondent/writ petitioner, we make it clear that he is not entitled for any salary from the date of termination till the date of reinstatement alone. His services can be taken into account for the purpose of monetary benefits apart from future promotion. Accordingly, we direct the appellants to reinstate the respondent/writ petitioner, within a period of 8 weeks from the date of receipt of a copy of this order. The confirmation has to be made in favour of the writ petitioner giving with retrospective effect from the the date on which his immediate junior was confirmed. No costs. Consequently, connected miscellaneous petition is closed.

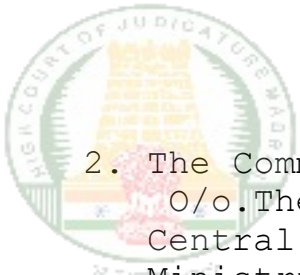
Sd/-
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1. The Senior Commandant
O/o.The Senior Commandant
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Ministry of Home Affairs,
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Tonk, Rajasthan.



2. The Commandant,
O/o.The Ch.Pt.Chennai,
Central Industrial Security Force (CISF),
Ministry of Home Affairs,
Chennai.

+ 1 CC TO MR.K.R.Laxman, ADVOCATE IN SR No.77194

+ 1 CC TO MR.K.P.Narayana Kumar, ADVOCATE IN SR No.77561

jikr

MK/MR KKR/SAR-1/6P/5C/21.09.2017

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