

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.17363 of 2013

ORDER:

This Writ Petition has been filed by petitioner challenging the proceedings Ref.No.HR/8/351 dt.03-05-2013 of the 1st respondent Bank terminating the service of petitioner as Probationary Officer.

2. The petitioner was appointed as Probationary Officer on 22-02-2011 by the State Bank of India. He joined on 01-03-2011. In the appointment order, it is mentioned that there would verification of character and antecedents and there shall be satisfactory completion of service during probation period. The period of probation was to be 2 years. As per SBI Officers Service Rules, 1992, his services would be confirmed on completion of satisfactory probation period. The petitioner's probation was to end on 01-03-2013.

3. In the meantime, proceedings dt.10-12-2012 was issued by the Bank to the petitioner to explain why his services should not be terminated on the ground that he was involved in a criminal case C.C.No.623 of 2009 before the AJFCM Court, Anakapalli and he had not disclosed the same in his bio-data-cum-Attestation Form dt.25-10-2010. It was alleged that he had suppressed the fact that he was involved in bigamy, which is punishable under law and he had given a declaration that the Bank would have the right to cancel his appointment if he is found to have given false information or suppressed material facts.

4. Petitioner gave a representation denying the allegations made in the show cause notice dt.10-12-2012. He contended that he had no intention of concealing the fact from the Bank at any point of time. He stated that case had been filed in the year 2009 and was settled by elders of both the families in front of well wishers more than a year prior to his applying to the Bank job. He stated that he had never been convicted for any dowry offence under the Dowry Prohibition Act or any criminal offence under any law. He stated that he married one K.Suryakumari and was not involved in any offence of bigamy.

5. Learned counsel for petitioner stated that one V.Siatarama Swamy Nayudu had given a complaint against petitioner and his family members under Section 417, 420 r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act, that in fact there was no charge of bigamy and though the petitioner was already married, the defacto-complainant alleged that petitioner and his family members had cheated the complainant. It is further stated that the matter was compromised in the Lok Adalat at Anakapalli on 21-09-2013 in Lok Adalat Case No.13 of 2013 and that the petitioner was acquitted. Learned counsel for petitioner contended that these facts were not mentioned in the application form since petitioner was not convicted and he thought that it was not necessary to mention them.

6. On 03-05-2013, the 1st respondent passed the impugned order stating that petitioner furnished 'Nil' information in his bio-data-cum-

Attestation form at column Nos.20 and 21 (which require him to furnish information in respect of prosecution/conviction/sentence and pending cases in Court) though he was involved in a criminal case C.C.No.623 of 2009 before the AJFCM Court, Anakapalli; that petitioner has thus furnished false particulars in his bio-data-cum-Attestation form and also explanation submitted by him about these material facts; and so it was decided to terminate his services under Rule 14(1) Note (2) and Rule 16(3)(a) of the SBI Officers' Service Rules, 1992.

7. Learned counsel for petitioner placed reliance on the judgment of the Supreme Court in **Avtar Singh Vs. Union of India and others**¹ and contended that in the facts and circumstances of the case, the respondents ought not to have terminated the service of petitioner; that the case was trivial in nature and no conviction was recorded and the acquittal in Lok Adalat should have been taken into account by respondents.

8. Counter-affidavit is filed by respondents refuting the above contentions and reiterating the stand taken in the impugned order. Emphasis is placed on the fact that petitioner suppressed information about his involvement in criminal cases though it is not disputed that the matter ended before Lok Adalat on 29-01-2013 and petitioner was acquitted of offences punishable under Sections 417, 420 r/w 34 IPC. Reliance is placed on the judgment of the Supreme Court in **Daya**

¹ (2016) 8 SCC 471

Shankar Yadav Vs. Union of India (UOI) and others² and it is contended that an employer is justified in dispensing with the services of Probationer, who gave false information regarding his antecedents.

9. I have noted the contentions of both sides.

10. The Supreme Court had an occasion to review various cases decided by it on the question of suppression of information or submitting information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case in **Avtar Singh** (1 supra). After considering the various decisions of the Supreme Court including the judgment in **Daya Shankar Yadav** (2 supra), the Supreme Court summarized the principles in para-30 as under:

“30. 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.

² (2010) 14 SCC 103

(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. Having regard to the principles laid down above, and since the impugned order appears to have been passed without keeping in mind these principles, I deem it appropriate to set aside the impugned order dt.03-05-2013 and remit the matter back to the 1st respondent to reconsider the issue keeping in mind the principles laid down in the judgment of the Supreme Court in **Avtar Singh** (1 supra). The petitioner shall be entitled to place in writing, within two (02) weeks from the date of receipt of a copy of this order, his submissions on the issue. The 1st respondent shall then consider the same keeping in mind the judgment in **Avtar Singh** (1 supra) and pass a fresh reasoned order within two (02) months from the date of submission of

petitioner's representation as mentioned above. Even if petitioner does not submit any representation within time stipulated, the 1st respondent shall pass a fresh reasoned order keeping in mind the judgment in **Avtar Singh** (1 supra) and the contentions raised by petitioner in the Writ Petition and in the explanation submitted by petitioner, and communicate its decision to the petitioner within two (02) months.

12. The Writ Petition is allowed to the above extent. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 18-07-2017
Vsv

JUSTICE M.S.RAMACHANDRA RAO

