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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.6431/2017 & CM Nos.26615-26616/2017**

+ Date of Decision: 28th July, 2017

HEMANT KUMAR Petitioner

Through: Mr.V.P. Tripathi, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION
& ANR.

..Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM Nos.26615-26616/2017 (for exemption)

1. Exemption allowed, subject to just exceptions.

WP(C) No.6431/2017

2. The present writ petition has been filed by the Petitioner, assailing the order dated 14th December, 2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4448/2013 whereby the Petitioner's Original Application

has been dismissed. The Petitioner had filed the Original Application challenging the order dated 8th August, 2013 passed by the Respondents disengaging him from service.

3. The Petitioner was on 4th April, 1997 appointed as a School Attendant on daily wages in M.C.D. Primary School, Chuna Bhatti, West Zone. In 2005, his case was to be considered for regularization in accordance with the regularization policy of the erstwhile MCD (which now stands trifurcated into three divisions) for which the case was sent to the Police for verification of character and antecedents. A report dated 14th December, 2005 was received from the Police, from which it transpired that the Petitioner was involved in two criminal cases both under Section 509 of the Indian Penal Code (IPC), the first being in FIR No.54 of 1995 dated 9th March, 1995 and the second in FIR No.146 of 1999 dated 23rd May, 1999. Subsequently, it transpired that the Petitioner had been acquitted in the first case relating to FIR No.54 of 1995 but the second case was still pending in the Court of learned Metropolitan Magistrate, Delhi. Due to pendency of the

criminal case against the Petitioner, the matter for his regularization remained pending and, in the meanwhile, vide judgment dated 15th December, 2008, the Petitioner was convicted by the Metropolitan Magistrate, who imposed a sentence of fine of Rs.10,000/- on him.

4. The Petitioner, thereafter, preferred an appeal before the learned Additional Sessions Judge which was dismissed on 21st February, 2009. It appears that after the dismissal of the Petitioner's appeal, the Respondents examined the matter at various levels and finally came to a conclusion that as the Petitioner had been convicted in a criminal case, he could not be regularized and should be disengaged from service. Accordingly, an order dated 8th August, 2013 was passed by Respondent No.1 disengaging the Petitioner from service with immediate effect.

5. Aggrieved by the order of his disengagement from service, the Petitioner approached the Tribunal by way of the aforesaid OA, wherein it was contended that since he had truthfully disclosed about the pending criminal cases and had

already served the department for about fifteen years with unblemished record, his services ought to be regularised. The Petitioner also contended that even though he had been convicted for an offence under Section 509 IPC, yet at the time of passing the order on sentence, the learned Metropolitan Magistrate had, after considering all relevant aspects, including the fact that he was a Government servant and a married man, imposed only a fine of Rs.10,000/- and on this ground, the Respondents ought to take a lenient and sympathetic view.

6. It appears that before the Tribunal, the plea of the Petitioner that he had truthfully disclosed about the pendency of criminal case against him, and therefore deserved leniency, was denied by the Respondents. The plea of the Respondents was that the order disengaging the Petitioner was just and proper, and the same had been passed after taking into consideration all relevant factors. It was also contended by the Respondents that the offence under Section 509 IPC for which the Petitioner had been convicted, was a serious offence involving moral turpitude, and since the Petitioner was only a daily wager, it

would not be appropriate to regularise him in a School, where he would be interacting with young children.

7. The Tribunal, after considering the fact that the Petitioner had suppressed the information of pending criminal cases against him, and also the fact that he had been convicted for a serious offence under Section 509 IPC involving moral turpitude, dismissed the OA vide order dated 14th December, 2016.

8. Aggrieved by the dismissal of his Original Application, the Petitioner has approached this Court by way of the present Petition. Before us, the counsel for the Petitioner has not been able to deny the fact that the Petitioner has been convicted for an offence under Section 509 IPC. He, however, has reiterated the same pleas as were taken by him before the Tribunal, and has urged that the Petitioner was the only bread earner of his family; he has served in the school for over sixteen years, and; in view of the fact that only a fine was imposed on him, he prayed that a lenient and sympathetic view be taken. Counsel for the Petitioner has also drawn our attention to note sheets

obtained under the RTI Act, to contend that upon consideration of the Petitioner's representations, some of the intermediary authorities had opined that his case could be examined on merits, which recommendations were arbitrarily ignored by the Additional Commissioner, who directed that the services of the Petitioner should not be regularized and that he should be disengaged from service with immediate effect.

9. Counsel for the Petitioner submits that the Petitioner deserves to be dealt with mercy and prayed that the impugned order be set aside.

10. We have considered the submissions of the counsel for the Petitioner. From perusal of the record, it becomes evident that the Petitioner was convicted under Section 509 IPC which offence is an offence involving moral turpitude. The Apex Court has in ***J. Jaishankar Vs. The Govt. of India & Anr. 1996***

(6) SCC 204, held as under:-

“3. In view of the admitted position that the conviction of the Petitioner for an offence under Section 509 IPC had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a government

servant is dismissed from service on conviction by a criminal court involving moral turpitude, it automatically leads to removal from service, without further enquiry. Can a worker be put on a higher pedestal than as a government servant? The obvious answer is 'No'. In view of the conviction for moral turpitude of the Petitioner and due to conviction for an offence under Section 509 IPC, the order of dismissal was rightly passed.”

11. We have also considered the judgment of *Avtar Singh Vs. UOI & Ors. 2016 AIR (SC) 3598*, on which reliance has been placed by the Tribunal and we find that in their judgment, the Apex Court had, after considering various judgments on the issue of suppression of information regarding involvement in criminal cases, as also the effect of conviction/acquittal in criminal cases summarised certain guidelines to be followed in different situations. The same read as under:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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 view of the above admitted facts, we find no infirmity in the decision of the Respondents to disengage the Petitioner. The offence in which the Petitioner was involved is a serious offence involving moral turpitude. He has been found to have insulted the modesty of a woman. The employment of the Petitioner was at a school where small children come. The safety and security of the children cannot be put to any risk. In view of his past conduct, the Petitioner has the propensity of committing another offence of the same kind. Merely because he may have served the school for several years without a complaint of the nature for which he stands convicted, is no reason to put the young children to the risk of being subjected to a similar offence. The fact that the Petitioner has been subjected to a fine, and not given a sentence, is neither here nor there. What is of relevance is the fact that he stands convicted of a serious offence under Section 509 IPC. The presence of a person like the petitioner within the precincts of the school in

the capacity of an employee is most undesirable. Thus, we are of the view that the Tribunal has rightly dismissed the Original Application and the present petition is wholly without any merit.

The writ petition is accordingly dismissed with no order as to costs.

JULY 28, 2017/aa f-

**(REKHA PALLI)
JUDGE**

**(VIPIN SANGHI)
JUDGE**