

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.27936 OF 2015

ORDER

This writ petition is filed for the following relief:

“...to issue a Writ , Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in terminating the petitioner as constable (GD) without following procedure and CCS (CCA) Rules, 1965 is clear violation of principles of natural justice, hence the order dated 31.7.2014 of the 3rd respondent and confirming the said order in proceedings No.R-XII-60/2014-Adm-7, dated 21.01.2015 is liable to be set aside and consequently direct the respondents to reinstate the petitioner as constable and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri Tarlada Rajasekhara Rao, learned counsel appearing for the petitioner and Sri K.Lakshman, learned Assistant Solicitor General appearing for the respondents.

It is the case of the petitioner that pursuant to the notification issued by the respondents for the post of Constable General Duty (GD) in CRPF during the year 2012-13, he applied for the same. After being selected, he was appointed as a Constable on 25.3.2013 and allotted to 180Bn, CRPF. Thereafter, he was asked to fill up verification roll for antecedents verification on 17.10.2013. It is his further case that in the said antecedents verification, it has come to the

notice of the respondents that he was involved in a criminal case, which was registered as Cr.No.17 of 2013 for the offence punishable under Section 354 IPC at Tekkali Police Station, Srikakulam District. The respondents have construed his involvement in the said crime as well as his conduct in not disclosing the same in the application form during the verification roll, as a misconduct and terminated his services *vide* order dated 31.7.2014. Hence, the petitioner has preferred an appeal before the appellate authority, which in turn, has rejected the same *vide* order dated 21.1.2015 confirming the order of the disciplinary authority. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that the petitioner was acquitted in the above said crime by the competent criminal Court i.e., Principal Assistant Sessions Judge, Srikakulam, *vide* order dated 9th October, 2014, in S.C.No.65 of 2013 and in view of the same, the case of the petitioner deserves to be considered for reinstatement. In support of his contention, he relied on the decision of the Apex Court in *Avtar Singh vs. Union of India and others*¹, wherein it is held as under:

“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:

¹ (2016) 8 SCC 471

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.

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.

The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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:

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.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

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.

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.

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.

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 canceling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

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.

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.

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 to a fact which was not even asked for.

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

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.”

In view of the law laid down by the Apex Court in the said judgment, the respondents ought to have considered the case of the petitioner and passed appropriate orders.

Learned Assistant Solicitor General has contended that the petitioner has suppressed the fact of his involvement in a criminal case and it has come to the notice of the respondents

only in the antecedents verification and hence, he was removed from service.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that this writ petition can be disposed of directing the respondents to consider the case of the petitioner in terms of the judgment of the Apex Court.

Accordingly, the Writ Petition is disposed of directing the respondents to consider the case of the petitioner in terms of the law laid down by the Apex Court in *Avtar Singh vs. Union of India and others*, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

27th April, 2018
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