

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: February 14, 2018

1) *CWP No. 638 of 2014 (O&M)*

Pardeep Kumar

... Petitioner

Versus

Union of India and others

... Respondents

2) *CWP No. 6761 of 2015 (O&M)*

Amit Kumar

... Petitioner

Versus

Government of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Jasbir Mor, Advocate,
for the petitioner in CWP No. 638 of 2014.

Mr. R.S. Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate
for the petitioner in CWP No. 6761 of 2015.

Mr. O.P. Dabla, Advocate,
for the respondents in CWP No. 638 of 2014.

Ms. Sheenu Sura, Advocate,
for respondents no.1 to 3 in CWP No. 6761 of 2015.

Mr. Indresh Goel, Advocate,
for respondent No.4 in CWP No. 6761 of 2015.

P.B. Bajanthri, J. (Oral)

1. By this common order, both the aforementioned civil writ petitions i.e. CWP Nos. 638 of 2014 and 6761 of 2015 are being decided together.

2. In CWP No. 638 of 2014, petitioner has challenged the validity of order dated 23.11.2013 (Annexure P/6).

3. In CWP No. 6761 of 2015, petitioner has challenged the validity of order dated 06/09.03.2015 (Annexure P/5).

4. Official respondent invited applications for the post of Sub Inspector. Petitioners participated in the process of selection and they were selected and appointed. Later on, official respondents came to know that petitioners have not disclosed information in respect of criminal proceedings which were pending / disposed of. When petitioners were in service, they have been given some questionnaires wherein they have disclosed pendency/disposal of criminal proceedings. Based on the answer to the questionnaires, official respondents terminated the services of the petitioners. Hence, present petitions.

5. Supreme Court by three Judges' decision in the case of ***Avtar Singh vs. Union of India and others***, reported in ***(2016) 8 SCC 471*** read with ***(2018) 1 SCC 268*** passed a detailed order while formulating points in para no. 38. Para No. 38.1 to 38.11 reads as under:-

"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."

In terms of this, impugned orders are set aside. Official respondents have to take afresh decision while passing a speaking order while considering the aforesaid guidelines issued by the Supreme Court. The official respondents are hereby directed to issue a show cause notice to the petitioners and after obtaining their explanations proceed to pass a final order while considering their explanation. The above exercise shall be completed within six months from today. The official respondents are also directed to not to displace the petitioners from service till final decision is taken in the matter.

6. With the above observation, both the afore-mentioned writ petitions stand allowed.

February 14, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No