

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1117 of 2018

Dilip Kumar Lakra S/o Late Shri Rambharosh Lakra Aged About 29 Years
R/o Village and Post Jawaharnagar, Police Station Kusmi District Balrampur
Chhattisgarh. **---- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary Department of Public Health and Engineering Mahanadi Bhawan Panchayat Secretariat , Mantralaya New Raipur District Raipur Chhattisgarh.
2. The Superintending Engineer , Public Health and Engineering Department Ambikapur Division , District : Surguja (Ambikapur), Chhattisgarh ---
Respondents

For the Petitioner : Mr. Tridib Bhattacharya, Advocate

For the Respondents : Mr. Kunal Das, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18-11-2019

1. The present petition is against the order dated 05.01.2018 passed by respondent no.2 whereby the services of the petitioner was terminated.
2. The facts of the case are that the petitioner was appointed on compassionate ground to the post of Assistant Grade-III in the respondent department on 05.01.2014. The petitioner contends that he has successfully completed the probation period. During the probation period, the verification form was filled in wherein the petitioner filled up the form by showing that he was not subjected to any prosecution. However, with respect to the fact whether he was arrested it was stated 'Yes' and it was further stated that in respect of query as to whether any compromise has been effected

in any criminal case, the answer was filled up as "Yes". The said verification was subjected to scrutiny. In the meanwhile, before the form was scrutinized, the probation period was completed. It is further contended that all of a sudden since the petitioner was subjected to a criminal case wherein he was acquitted on 30.04.2014, taking into such fact that trial was conducted against him in a criminal case for the offence punishable u/ss 147, 148, 149, 452, 323, 427 of IPC and he has suppressed those facts, his services was terminated without any departmental enquiry as his character certificate has not proved to be begetting.

3. Learned counsel for the petitioner submits that since the probation automatically came to an end after two years, without any departmental enquiry his services cannot be terminated. He placed reliance on a decision passed by this Court in W.P (S) No. 521 of 2012 (*Ratiram Bhagat Vs. State of Chhattisgarh and others*) and prays that the petitioner may be reinstated in service with all benefits.
4. Per contra, learned State counsel would submit that the petitioner has suppressed the fact that he was subjected to prosecution in any criminal case. It is stated that the petitioner secured the employment by misrepresentation of fact and his involvement in a criminal case was completely suppressed. Therefore, deliberately wrong information was given and because of the fact that the petitioner has given a wrong information by suppression of fact, his service was rightly terminated.
5. Heard learned counsel for the parties and also perused the records. A perusal of the record would show that the petitioner was appointed on compassionate ground vide Annexure P-2 on

15.01.2014. According to the terms of appointment, the period of probation was for two years and it was a condition of appointment that during the period of probation if the work performance was not satisfactory then his service would be terminated without any notice. Consequently as per the appointment order dated 15.01.2014, the probation period ended on 14.01.2016 and two years had completed. During such probation period, the petitioner had filed an application and gave the declaration. The said form is filed on 25.07.2014 vide Annexure P-3. In clause 12(Ka)(I) of this application as against the query that whether he was arrested at any time, it was stated "Yes" by over writing. With respect to the information sought in clauses 12(Ka)(II) to 12(Ka)(v) that whether he was subjected to prosecution; whether he was detained, whether any personal surety/bond was furnished and whether any fine was imposed on him, the answer was written "No". At Clause 12(Ka)(VI) with respect to the fact that whether he entered into any compromise in a criminal case, it was replied "yes" and as against the query raised at Clause 12(Ka)(VII) whether he was convicted by the Court, the answer was given "No". The records suggest that while the said verification was being done, by passage of time, the petitioner had completed his period of probation on 14.01.2016.

6. Subsequently it came to the notice of respondents that a case under section 148, 149, 452, 324/149 IPC was registered against the petitioner & 5 others wherein the case ended into acquittal on 30th April, 2014 in Criminal Case No.247/2013. On the basis of the said fact that the petitioner has wrongly mentioned the fact in the verification/ declaration form, his services were terminated without any enquiry. In the like nature of the cases, the Supreme

Court in *Avtar Singh Vs. Union of India* reported in AIR 2016 S.C. 3598 has laid down the principles to be followed for submitting false information in verification form and has held that in case of removal or dismissal of an employee pursuant to the result of criminal case against him, the departmental enquiry would be necessary before passing the order of termination. At para 30 of the said judgment guidelines have been prescribed, which are reproduced here-in-below:

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the 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.

(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 or 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 Department 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.”

7. During the course of arguments, the copy of acquittal order dated 30.04.2014 passed in Criminal Case No.247/2013 was placed for perusal. A perusal of the prosecution case as narrated in the order shows that on 13.05.2011 while playing cricket with colleagues of petitioner, on trivial issues the incident aggravated which resulted into eventual filing of the criminal case on report. The prosecution witnesses completely turned hostile and did not support the case of prosecution. The order would show that even if the witnesses were declared hostile, the allegation attributed that the petitioner assaulted one of the complainants by way of club was completely denied. Since the prosecution could not prove the allegation even after witnesses were declared hostile, the accused were acquitted.

The application for verification was filed on 25.07.2014. The petitioner also affirmed the same fact in the affidavit filed on 17th July, 2014. When the contents of acquittal order is read it appears that on trivial nature of issue the incident took place which ultimately led to filing of criminal case. Therefore, reading the acquittal order as against the declaration form which was filled by the petitioner do not demonstrate that a deliberate suppression was made as at certain portion of the declaration form at clause 12(Ka)(I), with respect to the arrest the petitioner, it was stated "Yes". However, with respect to the information sought about the prosecution, detention, imposition of fine and furnishing surety/bond it was stated "No". The nature of offence was common and petty which was committed at young age and the petitioner and others have been acquitted in such case as it was not fatal. Further more, while the petitioner was confirmed after completion of his probation, as per the dictum laid down by the Supreme Court in *Avtar Singh (Supra)*, the termination of service on the ground of suppression of false information without any departmental enquiry cannot be allowed to sustain. Consequently the termination order dated 05.01.2018 is set aside and the respondents are directed to reinstate the petitioner in service without back wages.

8. Accordingly, the petition is allowed to the extent indicated above.

Sd/-
GOUTAM BHADURI
JUDGE