

AFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 4445 of 2008

- Vikas Kumar Soni, S/o Gendlal Soni, Aged about 39 years
Occupation Service, Working as Constable (Driver) in 13th
Battalion, Chhattisgarh Armed Force (Bharat/Reserve)
(Since removed), R/o Shanti Nagar, Rajnandgaon, District
Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of
Home D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Director General of Police, Chhattisgarh Armed Force,
Raipur (C.G.)
3. Inspector General of Police, Chhattisgarh Armed Force,
Headquarter Bhilai, District Durg (C.G.)
4. Deputy Inspector General of Police, Chhattisgarh Armed
Force, Bilaspur Range, Bilaspur (C.G.)
5. Commandant, 13th Battalion, Chhattisgarh Armed Force
(Bharat/Reserve), Bango, District Korba (C.G.)

---- Respondents

For Petitioner	:-	Shri Parag Kotecha, Advocate.
For Respondent-State	:-	Shri Avinash Choubey, PL

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board**

21/11/2019

1. Heard.

2. Short question arising for decision making in the case is -

Whether after the Supreme Court's judgment in the matter of **Avtar Singh vs. Union of India & Ors. AIR 2016 SC 3598 : (2016) 8 SCC 471** and **State of Madhya Pradesh & Ors. vs. Abhijit Singh Pawar, (2018) 15 Scale 154**, petitioner's discharge from the service vide order Annexure P-1, is required to be sent back to the Government for an objective decision ?

3. Consequent upon petitioner's participation in a duly drawn selection process he was appointed as Constable (Driver) in the Chhattisgarh Armed Force on 06.05.2007. At the time of appointment petitioner filled a verification form, column 12 whereof requires the candidate to submit information as to whether he was chargesheeted in any criminal case or has been arrested or a bond has been obtained etc.

4. Admittedly, the petitioner did not disclose the fact that Crime No.65 of 2002 for offences under Sections 147, 148, 149, 294, 506 and 323 of the IPC was registered against him in Police Station Rajnandgaon and in the said matter he was arrested on 09.08.2002.

5. In course of verification of antecedent, the Superintendent of Police, Rajnandgaon submitted a report disclosing

registration of the above offence against the petitioner. Thereafter, the impugned order discharging him from the services has been passed by the Appointing Authority.

6. Assailing the impugned order, Shri Parag Kotecha, learned counsel for the petitioner, would submit that the trial concerning Crime No.65 of 2002, registered against the petitioner, ended in a compromise vide order dated 23.06.2005 passed by the CJM, Rajnandgaon, in Criminal Case No.1235 of 2002, therefore, the criminal case having already ended in acquittal pursuant to the compromise, the petitioner did not thought it necessary to disclose the information. It is further argued that the offence was registered pursuant to a dispute between two neighbouring families and it did not involve any heinous crime, therefore, such non discloser would not affect the petitioner's candidature. It is further argued that although the petitioner has been discharged from services but true reason for such discharge is non discloser of information and not on the basis of poor performance. It is lastly argued that order impugned has been passed without affording any opportunity of hearing to the present petitioner.
7. Per contra, Shri Avinash Choubey, learned State Counsel, would refer two Circulars issued by the State Government on 30.08.1993, Annexure R-3, and 20.12.2007 to argue that

offences alleged against the petitioner also include Sections 147 and 148 of the IPC, which are treated to be involving moral turpitude in the Schedule containing list of offences involving moral turpitude appended to the Circular dated 20.12.2007, therefore, there was no option available with the State Government but to follow its own Circular and discharge the accused from the services.

8. Shri Avinash Chaoubey, learned Panel Lawyer, is right in his submission on the strength of Circulars dated 30.08.1993 and 20.12.2007, however, at the same time this Court would notice the law laid down by the Supreme Court on the subject issue.
9. In **Avtar Singh** (supra), the Supreme Court was deciding a reference for resolving conflict of opinion in various decisions of the Division Benches of the Supreme Court as noticed in **Jainendra Singh vs. State of U.P. through Principal Secretary, Home & Ors. (2012) 12 SCC 748**. The reference was made due to cleavage of opinion on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of criminal case. The referring Bench in Jainendra Singh (supra), while making the reference observed that in case an appointment order has been secured fraudulently

the appointment is voidable at the option of the employer and the employee cannot get any equity in his favour and no estoppel has created against the employer only by the fact that the employee has continued in services for a number of years.

10. In **Avatar Singh** (supra), the Supreme Court considered its previous decisions on the issue rendered in **State of Madhya Pradesh vs Ramashanker Raghuvanshi** (1983) 2 SCC 145, **T.S. Vasudavan Nair vs. Vikram Sarabhai Space Centre** (1988) Supp SCC 795, **Union of India & Ors vs. M. Bhaskaran** (1995) Supp 4 SCC 100, **Vizianagaram Social Welfare Residential School Society vs. M. Tripura Sundari Devi**, (1990) 3 SCC 655, **Chief Secretary & Ors. vs. Sushil Kumar** (1996) 11 SCC 605, **Commissioner of Police, Delhi & Anr. vs. Dhaval Singh** (1999) 1 SCC 246, **Bank of Baroda vs. Presiding Officer, Central Govt. Industrial Tribunal & Anr.** (1999) 2 SCC 247, **Kendriya Vidyalaya Sangathan & Ors. vs. Ram Ratan Yadav** (2003) 3 SCC 437, **Secretary, Department of Home Secy., A.P. & Ors. vs. B. Chinnam Naidu** (2005) 2 SCC 746, **R. Radhakrishnan vs. Director General of Police & Ors.** (2008) 1 SCC 660, **Union of India & Ors. vs. Bipad Bhanjan Gayen** (2008) 11 SCC 314, **Kamal Nayan**

Mishra vs. State of Madhya Pradesh & Ors. (2010) 2 SCC 169, Daya Shankar Yadav vs. Union of India & Ors. (2010) 14 SCC 103, State of West Bengal & Ors. vs. SK Nazrul Islam (2011) 10 SCC 184, Commissioner of Police & Ors. vs. Sandeep Kumar (2011) 4 SCC 644, Ram Kumar vs. State of Uttar Pradesh & Ors. (2011) 14 SCC 709 and eventually concluded in the following words:-

“26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of ‘material’ information presupposes that what is suppressed that ‘matters’ not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more

rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service."

(Emphasis supplied)

11. The Supreme Court then summarized the conclusion in

Para 30 thus:-

"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. 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 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.

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

(Emphasis supplied)

12. **Avtar Singh** (supra) has been followed by the Supreme Court in its subsequent decision in the matter of **Abhijit Singh Pawar** (supra).
13. It is thus settled by the Supreme Court that assessment of suitability on the basis of verification of character and antecedent should be based on objective criteria on due consideration of all relevant aspects and further that though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases. Having further observed that chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service, the conclusion were summarized by the Supreme Court in Para 30. Dealing specifically with specific case of suppression of acquittal in a criminal case, it is held in paragraph 30(4)(c) that if acquittal has 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.

14. It is thus apparent that even in case where the candidate has been acquitted from the offences involving moral turpitude or heinous/serious crime it is obligatory for the employer to consider all relevant facts available as to antecedent. The exercise of power to discharge the candidate is, therefore, not to be exercised mechanically only on the basis of a previous Circular of the State Government which was issued much prior to the law laid down by the Supreme Court in **Avtar Singh** (supra). The fact that the case appears to be involving dispute between two neighbouring families and both of them having lodged criminal case against each other, the whole genesis of the incident which led to the registration of crime has to be considered objectively as to whether it would affect the petitioner's suitability for rendering services on the post of Constable (Driver).

15. In view what is discussed above, I deem it appropriate that the State Government should reconsider the issue keeping in view the law laid down by the Supreme Court in **Avtar Singh** (Supra).

16. Let the Government revisit the issue in an objective manner, keeping in view the principles laid down in **Avtar Singh** (supra), within a period of three months from today. It is made clear, even if, the order is recalled the petitioner shall not be entitled to back wages, however, he shall be entitled to notional seniority.

17. In view of the above observations, petition stands disposed of.

Sd/-
Prashant Kumar Mishra
Judge

Ankit

WPS No. 4445 of 2008

- Vikas Kumar Soni

---- Petitioner

Versus

- State of Chhattisgarh & Others

---- Respondents

Headnote

In cases of suppression of material information in the verification form the ultimate action should be based on objective criteria on due consideration of all relevant aspects. It should not be mechanical. In trivial cases employer may, in its discretion, ignore such suppression of fact by condoning the lapse.