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

Date of Decision: 15.04.2019

+ W.P.(C) 1960/2019

PRASHANT DEEP

..... Petitioner

Through Ms.Saahila Lamba, Adv.

versus

HIGH COURT OF DELHI

..... Respondent

Through Ms.Anu Bagai, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner assails the order dated 11.02.2019 passed by the respondent/High Court of Delhi, whereby the petitioner's services were terminated. The petitioner also seeks a direction to the respondent to reinstate him in service on the post of Junior Judicial Assistant.

2. The facts emerging from the record that are necessary for the adjudication of the present petition are as follows. The respondent, on 12.06.2017, issued an advertisement inviting applications for filling up 124 vacancies to the post of Junior Judicial Assistant/Restorer and for preparing a panel for future vacancies. Pursuant to the aforesaid advertisement, the petitioner filled up an online application form,

wherein he was categorically asked if he had ever been arrested, prosecuted, kept under detention or bound/convicted by a Court of Law for any offence. It is the petitioner's case that he had inadvertently answered the aforesaid question in the negative at the time of submitting his online application form. He states that on 18.03.2013, i.e., long before the issuance of the aforesaid advertisement, a misunderstanding took place between his family and their neighbor, namely Mr. Mahabir Singh, as a consequence of which, two cross FIRs were lodged, one by the petitioner's father against Mr. Mahabir Singh and the other by Mr. Mahabir Singh against the petitioner and his family members. It may be noted that FIR No.110/2013, in which the petitioner and his family members were arrayed as accused persons, was registered under Sections 323/341/427/506/34 of the Indian Penal Code, 1860.

3. It is the petitioner's further case that after the registration of the aforementioned FIRs, the petitioner's family and Mr. Mahabir Singh resolved their issues and settled all their disputes. In the light of the settlement arrived at between the parties, Mr. Mahabir Singh preferred an application under Section 320 of the Code of Criminal Procedure, 1973 with a prayer that the offences against the petitioner and his family members be compounded. While allowing Mr. Mahabir Singh's application under Section 320, the learned Additional Chief Metropolitan Magistrate (East), Karkardooma Courts, Delhi put up the matter before the Lok Adalat for passing of appropriate orders. In view of the compromise arrived at between the parties, the learned Plea Bargaining Judge, Lok Adalat, Karkardooma

Courts, Delhi passed an order dated 25.05.2014 acquitting the petitioner and his family members. Similarly, even the FIR lodged by the petitioner's father against Mr. Mahabir Singh was also compounded.

4. It transpires that the petitioner successfully cleared the written test conducted for making selections to the post of Junior Judicial Assistant and, vide letter dated 19.12.2018, was offered appointment to the aforesaid post and was asked to submit his acceptance within 15 days. The petitioner submitted his acceptance on 05.01.2019 and, vide the said communication, he also informed the respondent that a criminal case arising out of FIR No.110/2013 had been registered against him on 19.03.2013, in which he stood acquitted. The petitioner also submitted a copy of his acquittal order.

5. Based on the petitioner's acceptance, he was posted to the Listing Branch of the High Court by way of an office order dated 05.02.2019, which required him to submit a Joining Report in the Establishment Branch of the High Court. In terms of the aforesaid office order dated 05.02.2019, the petitioner submitted his Joining Report and vide order dated 08.02.2019, was appointed to the post of Temporary Junior Judicial Assistant w.e.f. 05.01.2019. The office order dated 08.02.2019 also recorded that the petitioner would initially be on probation for a period of one year, on the expiry of which period he would not stand automatically confirmed. However, on 11.02.2019, i.e., three days after the petitioner was appointed to the post of Temporary Junior Judicial Assistant, the respondent passed the impugned order terminating the services of the petitioner, by invoking

Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

6. Aggrieved by his termination, the petitioner made a representation dated 22.02.2019 before the Hon'ble Chief Justice of the Delhi High Court, to which he received no response. It is in these circumstances that the petitioner has preferred the present writ petitioner impugning the office order dated 11.02.2019 passed by the respondent.

7. At the outset, learned counsel for the petitioner states that the petitioner did not inform the respondent about the FIR lodged against him and his family members in his online application form due to a bona fide belief that there was no need to do so, as the same stood compounded and he had been acquitted as a consequence thereof. She further submits that, while terminating the petitioner from service, the respondent has not considered the ratio of the decision of the Supreme Court in *Avtar Singh v. Union of India and Ors. [(2016) 8 SCC 471]*. She submits that the Supreme Court has, after considering the various decisions on the subject, held that even in a case where there is suppression by a candidate about his involvement in a criminal case where he already stands acquitted, the employer has the discretion to ignore such suppression by considering all the relevant factors, including the nature of the allegations against him. She further states that even otherwise, the petitioner had much before joining duty, already informed the respondent about his false implication in a criminal case wherein he already stood acquitted and, therefore, it could not even be treated as a case of wilful concealment or

suppression. She submits that the petitioner was issued the joining order after the respondent had already been informed about the petitioner's involvement and subsequent acquittal in a criminal case. She, therefore, prays that the impugned termination order be set aside and the respondent be directed to reinstate the petitioner in service.

8. On the other hand, Ms. Anu Bagai, learned counsel appearing for the respondent submits that the petitioner having deliberately concealed information about his arrest and involvement in a criminal case, the respondent was fully justified in terminating him from service after it was found that he had furnished false information in the application form. In support of her aforesaid contention, she places reliance on the instructions contained in the advertisement, as also the undertaking given by the petitioner while submitting his online application form. She further submits that the offer of appointment issued to the petitioner clearly stated that his services were terminable on one month's notice and, therefore, once it was found that he had given incorrect information, his services were liable to be terminated.

9. Ms. Anu Bagai further states that the matter was also placed before the five-member Selection Committee for the Appointment of Officials of the High Court ('Selection Committee') and the said Committee in its meeting held on 31.01.2019, recommended termination of the petitioner's services on the ground that the suppression of material information, or making a false statement has a clear bearing on the character and antecedents of the candidate in relation to continuance in service. She, therefore, submits that the

petitioner's services were terminated only in accordance with the well-considered decision of the Selection Committee, which was duly accepted by the Hon'ble Chief Justice. She, thus, contends that the termination of the petitioner's services was strictly in accordance with the terms of his appointment and the undertaking given by him at the time of submitting his online application form.

10. We have carefully considered the submissions of the learned counsel of the parties and with their assistance, perused the record.

11. The admitted position emerging from the record is that the petitioner, when he was about 22 years old, was involved in a criminal case where his entire family had been implicated at the behest of their neighbor, against whom a cross FIR had also been registered by the petitioner's father. However, the FIR registered against the petitioner and his family members was subsequently compounded and the petitioner was acquitted in May, 2014 itself, i.e., much before he had applied for the vacancies advertised by the respondent. In these circumstances, the explanation of the petitioner that he acted bona fide, and the declaration made by him in his application form with regard to his not being involved in a criminal case was not deliberately false, appears to be plausible. While there can be no doubt that the petitioner had failed to make the relevant disclosures in his online application form, it is undisputed that he had informed the respondent about his involvement in a criminal case and subsequent acquittal, even before he had actually joined service.

12. In the light of the fact that the petitioner did not disclose any information about his involvement in a criminal case in the online

application form, there can be no doubt that, strictly speaking, he could be said to be guilty of suppressing material information and, therefore, the occasion arose for the respondent to consider what action, if any, be taken against the petitioner in accordance with the instructions in the respondent's advertisement and the undertaking submitted by the petitioner at the time of filling up his online application form and his offer letter dated 19.12.2018, the relevant portions of which read as under:-

Instructions to the Advertisement dated 12.06.2017

*"No scrutiny of applications for the eligibility and other aspects will be undertaken at the stage of objective test, descriptive test and typing test, therefore, the candidature will be provisional only and subject to scrutiny at appropriate stage. The candidates are advised to go through the requirements of educational qualifications, age etc. and satisfy themselves that they are eligible before applying. Copies of supporting documents will be sought at the time of interview only from those candidates who will be shortlisted for interview. **When scrutiny is undertaken, if any claim made in the application is not found substantiated, the candidature will be cancelled and Delhi High Court's decision shall be final.**"*

Undertaking submitted alongwith the Online Application Form

*"All the statements made and information given by me in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information or part of it being found false or incorrect before or after the exam/interview or appointment, **action can be taken against me by the High Court of Delhi** and my candidature/appointment shall automatically stand cancelled/repatriated/terminated." (Emphasis supplied)*

Offer letter dated 19.12.2018

“Your services during the tenure of your appointment will be terminable on one month’s notice from either side. However, Hon’ble the Chief Justice reserves the right of terminating your services forthwith without assigning any reason on or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for such equivalent to the pay and allowances for such period or the unexpired portion thereof;

Your appointment is further subject to Verification of character and antecedents by the concerned District Magistrate (s);

*Your appointment is provisional and is subject to the Caste/Tribe/Class certificates if any being verified through the proper channels and **if the verification reveals that the claim to belong to Scheduled Caste or Scheduled Tribe or other Backward Class, as the case may be, is false, his services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates.***

(emphasis supplied)

13. The advertisement or the recruitment rules do not per se debar a candidate from applying for, or getting appointed to the position in question merely because the candidate has, at some earlier point of time, been named as an accused in an FIR, and who stands discharged in the case. Thus, non disclosure of the registration of the FIR by the petitioner at the initial stage did not lead to the petitioner deriving any benefit, which he would not have had, had he made the disclosure. Moreover, the above extracts from the Instructions of the

Advertisement dated 12.06.2017 and the offer letter dated 19.12.2017 show that the making of a positive claim, which is false, is treated differently, than the submission of an incorrect information, which is found to be false (as per the undertaking to be submitted by the candidate). While the former is stated to result in cancellation of the candidature and termination, the later only states that “action can be taken against the candidate”, meaning thereby, that action may, or may not be taken and, even if taken, it may or may not be of extreme nature – resulting in termination depending upon the nature of false or incorrect statement made by the candidate. This shows that termination need not necessarily be the result, in every such case – based only and only on the ground that there is suppression/falsity/incorrect statement made by the candidate.

14. The question, thus, would be whether merely because the petitioner had failed to provide the requisite information in the first instance itself, his services could be terminated without even examining the relevant factors, including the nature of the offence, his subsequent acquittal, as also the fact that he himself had furnished the said information prior to his joining service. In this regard, it may be appropriate to refer to the relevant paragraphs of the decision of the Supreme Court in *Avtar Singh (supra)*, which are reproduced hereinbelow:-

“29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation

form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kinds of cases?

30. *The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person*

unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.

31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound

to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran case [Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] , it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however, we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34. 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.

35. 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.***

36. 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 authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. 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.

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."

(emphasis supplied)

15. When we examine the impugned order of termination, as also the minutes of the meeting of the Selection Committee held on 31.01.2019, we find that none of the above factors have been considered and the termination order has been directed to be passed by simply holding that since there was suppression of material

information by the petitioner, his services ought to be terminated. In our view, it was incumbent upon the respondent to consider the petitioner's case on the parameters laid down by the Supreme Court in *Avtar Singh (supra)*, which has not been done.

16. As noted hereinabove, the petitioner had not only brought the relevant facts to the knowledge of the respondent even before his joining service, but he also stood acquitted of the offences levelled against him way back in May, 2014 itself, i.e., much prior to his making an application in pursuance of the advertisement issued by the respondent. Before terminating his services, the respondents ought to have considered the aforesaid facts as also the young age of the petitioner at the time of the registration of the FIR against his entire family, which arose out of a trivial incident between neighbors that resulted in the registration of a cross FIR at the behest of the petitioner's father. The respondent ought to have also given due consideration to the fact that the offences levelled against the petitioner were not of such nature as to sprout serious concerns about his moral turpitude, gauging which is the sole purpose of inquiring into one's criminal antecedents in matters of public employment. Needless to say, not every brush with the law, whether serious or trivial, has a bearing on one's moral turpitude and the recruiting authority must always keep this in mind while ascertaining the suitability of a candidate for public employment.

17. In our view, the termination order having been passed without considering any of the aforementioned factors, is unsustainable and is, therefore, set aside. The respondent is directed to reinstate the

petitioner in service with all consequential benefits, except backwages, and reconsider his case in the light of the parameters laid down by the Supreme Court in *Avtar Singh (supra)*.

18. The writ petition is allowed in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

APRIL 15, 2019/aa