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

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Decided on: 27.01.2020

+ W.P.(C) 6558/2017 & CM APPL. 27188/2017

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

MANOHAR LAL Respondent

Through: Mr. Tarang Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order dated 22.04.2017 passed by the learned Labour Court in LC No.2319/16 (Old No. DID 62/15), on the ground that it is erroneous in law, inasmuch as it has invoked a clause of the Judgment of the Supreme Court in *Avtar Singh Vs. Union of India (UOI) and Ors.*, SLP (C) Nos.20525/2011 decided on 21.07.2016, which held *inter alia* as under:

“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) 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)(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.”

2. The respondent's employment was terminated by the DTC. It was impugned before the learned Labour Court. His claim was allowed and DTC was directed to reinstate him.
3. It is the petitioner's case that the respondent did not disclose that there was a criminal case pending against him under section 448/341 of the Indian Penal Code, 1860. Had this information been available to the prospective employer i.e. DTC, it may have initiated enquiries apropos the suitability of the candidate for the job.
4. It is not in dispute that the candidate did not disclose the relevant information, therefore, the only conclusion that can be drawn is that he suppressed the information. The employer was deprived from taking a considered decision about the candidate's employability. That being the position, the impugned order relying on para 30 (4) of the Supreme Court's judgment is erroneous.

5. The impugned order has dealt with the substance of the criminal proceedings as under:

“13. The Hon'ble Apex Court reviewed all the laws of the land in respect of suppression and false information of involvement in a criminal case, in verification form / CVR and held in Avtar Singh Vs. Union of India (UOI) and Ors., SLP (C) Nos.20525/2011 decided on 21.07.2016 as under:

“para 30(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.”

As discussed in para No.30(4) (a) in the above judgment, the Apex Court held that in a trivial case 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 any incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. In the case in hand, the claimant had not given information to the employer that a case under Section 448/34 IPC was pending against him when he had joined it that case was still pending. He has still not been convicted. So, claimant's case is on better footing than the case discussed by the Apex Court in para No. 30(4).”

6. The Court is of the view that the learned Labour Court misconstrued the directions of the Supreme Court because the case was still pending and it had not been decided, therefore, the nature of the punishment, etc., was yet to be determined.

7. What is important for a prospective employer is to take a decision after disclosure of relevant facts by the prospective candidate. There could well be an issue of the integrity of the candidate. The non-disclosure of the information could well lend to forming such a decision.

8. However, what also emanates from the preceding discussions, is that the *lis* arose apropos an ancestral property of the respondent, which was sought to be disposed-off allegedly in an objectionable manner, and the

response of the respondent is stated to be most natural i.e. to object the entry of a third party into his ancestral property, in which he claims to be in rightful ownership. More significantly, the *lis* was a dispute between family members, it could not possibly have any bearing upon his work with the DTC. At worst, it was a case of criminal trespass by a third party, whose rights are still in dispute. It is claimed that there is no case of criminal assault on anybody.

9. Furthermore, when an enquiry was made, the respondent had duly furnished the requisite documents to the said Corporation, which has not taken a view on the merits of the case but has simply said that since there was a non-disclosure, therefore, it terminated his service.

10. In the circumstances, the conduct of the respondent which was primarily originated from a civil dispute and allegedly did not entail criminal physical assault, the non-disclosure cannot be considered to be of so significant a nature as to render him to be dismissed from services. The petition raises no significant reason to interfere with the impugned order. It is without merit and is, accordingly, dismissed.

NAJMI WAZIRI, J

JANUARY 27, 2020

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