

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.221 of 2016

Shailendra Kumar Mathur, S/o Late Shri Nand Kishore Mathur, aged about 35 years, R/o currently working as aushadhalya sewak hardi, O/o District Ayurveda Officer, Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Department of Health, Mahanadi Bhawan, Rakhi, New Raipur, Distt. Raipur (C.G.)
2. Director, Directorate of AYUSH, Old Nurses Hostel, Raipur (C.G.)
3. District Ayurveda Officer, Janjgir-Champa, Distt. Janjgir-Champa (C.G.)
4. Special Cell Police Headquarter, Raipur, O/o Special Cell Police Headquarter, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Vaibhav Shukla, Advocate.

For Respondents / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/12/2021

1. The petitioner calls in question the show cause notice dated 11-1-2016 (Annexure P-1) by which respondent No.3 has issued notice to the petitioner as to why he should not be terminated from service for non-disclosure of criminal case in which he has already been acquitted on 30-1-2004.
2. Mr. Vaibhav Shukla, learned counsel appearing for the petitioner, would submit that the petitioner had already been acquitted long back, therefore, he has not disclosed the fact, but he is ready and willing to file fresh form and respondent No.3 be directed to consider the case of the petitioner in the light of the decision of the Supreme Court

in the matter of Avtar Singh v. Union of India and others¹.

3. Mr. Ravi Kumar Bhagat, learned State counsel, would submit that deliberately, the petitioner has suppressed material facts i.e. acquittal of the offence punishable under Section 354 of the IPC, as such, the petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
5. In Avtar Singh (supra), the Supreme Court has laid down the principles relating to suppression of relevant information or submission of false information in verification form in regard to criminal prosecution, arrest or pendency of criminal case(s) against candidate / employee and held that “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”, and observed as under: -

“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

¹ (2016) 8 SCC 471

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.”

6. Reverting to the facts of the case, since the petitioner has not disclosed the fact in his application form that he had already been acquitted, which later-on came to the notice of respondents No.2 & 3 leading to issuance of the impugned notice, the petitioner is granted liberty to file reply to the show cause notice within two weeks from today to respondents No.2 & 3 which will be considered by them in the light of the decision of the Supreme Court in Avtar Singh (supra), noticed herein-above and it will be decided within a further period of six weeks from the date of receipt of the reply, in accordance with the decision of the Supreme Court in Avtar Singh (supra), particularly in the light of paragraphs 38.4 to 38.4.3, on its own merit, in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter.
7. The interim order granted earlier shall continue for a period of eight weeks. With the aforesaid observation and direction, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge