

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2540 of 2016**

Subhash Chand Yadav S/o Shri Badan Singh Yadav, Aged About 32 Years
 Ex Constable I/R 344, 11th Battalion Chhatisgarh Armed Forces, Janjgir
 Champa, R/o Village Bhagautipur Saraiya, Post Bhaupur, P.S. And District
 Oraiya (U.P.) Uttar Pradesh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Police,
Mantralaya, mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Director General Of Police, State Of Chhattisgarh Police Head Quarters,
Naya Raipur, District Raipur Chhattisgarh
3. Additional Director General (C.A.F)., Chhattisgarh Police H/qs Naya
Raipur, District Raipur Chhattisgarh
4. Inspector General Chhattisgarh Armed Forces, Police H/Qs. Naya Raipur,
District Raipur Chhattisgarh
5. Commandant, 11th Battalion Chhattisgarh Armed Forces, Janjgir
Champa Chhattisgarh
6. Dharamveer Singh, Through The Commandant 11th Battalion,
Chhattisgarh Armed Forces, Jajgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sushil Dubey, Advocate
For State	:	Mr. Vikas Shrivastava, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/03/2021**

1. The challenge in the present writ petition is to the order dated 28.02.2008
 Annexure P-1 issued by the respondent no.5 whereby the appointment of
 the petitioner was canceled holding him ineligible for employment on

account of Character certificate which the respondents have received after he was appointed.

2. The said order of appointment was subsequently questioned before the Appellate Authority before Director General of Police and before the State Government and the two appeals stands rejected and which again has been rejected by the authorities leading to the filing of the present writ petition.
3. Contention of the petitioner is that there was no ill intention on the part of the petitioner in not disclosing the pendency of the criminal case in the forms duly filled in by the petitioner at the time of appointment. It was further contention of the petitioner down the line the petitioner has also been acquitted from the case and thus he should have been granted the benefit of same.
4. As regards the allegations of the petitioner trying to take advantage of the reservation by wrong mentioning his Caste status as Scheduled Tribe(ST) though he belonged to Other Backward Class(OBC). The contention of the petitioner is that the said was due to an inadvertent mistake on his part. However, his appointment was in fact only against the OBC category and that the certificate that he has enclosed along with the application was that of Other Backward Caste Category. Thus, the petitioner has not availed any benefit from the said alleged clerical error of the wrong category being mentioned.
5. The learned counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Avtar Singh Vs. Union of India & Others, 2016 8 SCC 471** and also the judgment of this Court in the case of **Ratiram Bhagat Vs. State of Chhattisgarh & Anr. in WPS 521/2012** decided on 09.11.2016 whereby this court relied upon the judgment rendered by the Supreme Court in the case of Avtar Singh(Supra) and has

set aside the order of termination of service. He further submits that contention of the petitioner is that the department itself vide Annexure P-9 dated 17.01.2013 wherein State Government itself in similar set of facts have reconsidered the case of the similarly placed persons who was terminated on suppression of facts so far as being involved in a criminal case at the time of appointment and have recalled the order of cancellation of appointment and taking back the said constable namely Dharamveer Singh into service. Hence the case of the petitioner also needs to be reconsidered and order of cancellation of appointment of his service needs to be recalled on the ground of parity.

6. State counsel on the other hand submits that petitioner in the instant case has obtained appointment by suppressing two material facts one so far as the petitioner being involved in the criminal case for the offence punishable under Section 323, 324, 325 & 504 of the IPC in the case registered at Police Station District Auaraiya, U.P. where the case was registered as case no.241/2001. According to the State counsel even at the time of appointment and also when the application was duly filled in by the petitioner, the criminal case was pending consideration before the concerned criminal Court and therefore it was incumbent upon the petitioner to have disclosed this fact of his being involved in a criminal case particularly, when there was a specific column in the format for the material which he has suppressed of. According to the State counsel if he would have disclosed pendency of the criminal case, there was all likelihood considering the the fact that he was involved in the criminal case he would not have got the appointment particularly when the appointment being made the Uniformed forces where discipline is what it utmost required and persons with criminal antecedent would not have been considered for recruitment. State counsel further submits that petitioner has also suppressed the fact that he belong to the OBC Category and

when the caste status in the application was verified it was found that petitioner had mentioned himself of belonging to the S.T. Category though he belonged to the OBC Category. Thus, according to the State counsel petitioner has tried to mischief the authorities at the time of appointment and have got appointment which on due verification of facts, the respondent authorities found that he was not fit and eligible for employment under the respondents and thus have passed the impugned order which therefore does not warrant any interference.

7. Having heard the contentions put forth on either side and on perusal of records, admittedly there seems to be no dispute so far as petitioner having not disclosed the facts about his involvement in the criminal case and pendency of the criminal case at the time of the appointment. There was no dispute to the fact that petitioner while filling up the forms had disclosed his caste status to that of ST category while in fact he belonged to the OBC Category, though the petitioner in fact had submitted the caste certificate of his belonging to the OBC Category.
8. As regards, the two judgments cited by the counsel for the petitioner is concerned, if we look into the judgments passed by this Court in the case of Ratiram Bhagat(Supra) it would clearly reflect that petitioner therein was charged for an offence punishable under Section 427 which he had admitted at the first instance itself and he was let off with a fine of Rs. 200 and questions considered by this Court was whether offence under Section 427 should be termed to be one under moral turpitude or not? Moreover, the petitioner at the time of commitment of offence was a teenager and down the line this fact found by him itself struck his mind not to disclose it unlike with the present case where even on the date when the application was filled and appointment orders were issued the petitioner was facing criminal trial before the concerned Court of law. Yet, he had suppressed it for reasons best known. True, it is that petitioner has

got order of acquittal in his favour subsequently on 17.07.2007 but by that time the petitioner had already filled up his form and he had already got order of appointment issued in his favour and which would be gathered only in the course of verification of caste certificate of the petitioner from the place of his residence. Thus, the case of Ratiram Bhagat(Supra) may not be said to be on parity on factual backdrop.

9. Similarly, in the case of Avtar Singh(Supra) again Hon'ble Supreme Court held that there should be doctrine applied before taking a decision where the case of suppression of criminal antecedents is found out and according to the Supreme Court the yardstick would be depending upon the nature of post and department where the appointment were being considered for.

10. Hon'ble Supreme Court in the case of **Avtar Singh Vs. Union of India & Others, 2016 8 SCC 471** in Para 36 to 38 have held as under :-

“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 concerned authorities 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 aforesaid discussion, we summarize 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 recourse 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."*

11. Plain perusal of the operative part of the Avtar Singh's case it would clearly reflect in Paragraph 38.4.1 & 38.4.3 the requirement is that the employer has to assess the nature of offence and also the ground under which acquittal has been awarded and also the nature of employment which has been obtained by the employee concerned.

12. Plain perusal of the impugned order Annexure P-1 and subsequent rejection of the appeals would reveal that rejection has been done only on the solitary ground of suppression of facts and as there has been no consideration as such made by the department concerned so far as gravity of the suppression of facts etc.
13. Given the said facts and circumstances of the case and also taking note of the fact that judgment in the case of Avtar Singh has come much subsequent to the impugned orders in the instant case has been passed, in the interest of justice it would be more appropriate if the impugned orders Annexure P-1 dated 28.02.2008 and the subsequent rejection of the appeals by the higher authorities in the department is set aside and matter without ordering reinstatement as of now the matter should be remitted back to the respondent no.1, 2 & 5 to take an appropriate decision afresh, keeping in view the judgment of the Hon'ble Supreme Court rendered in the case of Avtar Singh(Supra) and decide as to whether in the light of the observations of the Hon'ble Supreme Court whether the petitioner has to be retained in employment or not? It is ordered accordingly.
14. Considering the fact that order of termination is of the year 2008 and a considerable time has lapsed, the respondent no.1, 2 & 5 are ordered to take appropriate decision at the earliest preferably within a period of 90 days from the date of receipt of copy of this order.
15. With the aforesaid observation, the writ petition stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit