

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.7037 of 2011**

- Sunil Kumar Yadav, S/o Manharan Singh Yadav, aged about 31 years, R/o Qr. No.NF 161, CSEB Colony Korba (East), Patharri Para Road, Near ITI Chauk, Korba, Chhattisgarh

----- Petitioner**Versus**

- 1.Chhattisgarh State Power Transmission Company Limited, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh PIN – 492013 through its Managing Director
- 2.Deputy General Manager (Human Resources), Chhattisgarh State Power Transmission Company Limited, Vidyut Seva Bhawan, Dangania, Raipur, Chhattisgarh PIN 492013
- 3.Executive Engineer, Extra High Tension Construction Division, Chhattisgarh State Power Transmission Company Limited, CSEB, Korba, Chhattisgarh

----- Respondents

For Petitioner	Mr. M. K. Baeg, Advocate
For Respondents	Mr. K. R. Nair, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****04/08/2021**

1. Proceedings of this matter have been taken up through Video Conferencing.

2. With the consent of learned counsel for the parties, the matter is heard finally.
3. The petitioner herein calls in question the legality, validity and the propriety of the order dated 27.06.2011 (Annexure-P/5) passed by the respondent No.3, whereby the petitioner's posting has been cancelled. The petitioner also calls in question the order dated 13.09.2011 (Annexure-P/6) passed by the respondent No.2, whereby the petitioner's appointment on the post of Trainee Attendant Class-III (Line) has been cancelled/annulled by recalling and cancelling the order of posting dated 08.06.2011 passed by the respondent No.3.
4. Mr. M. K. Baeg, learned counsel for the petitioner, would submit that the orders (Annexure-P/5&P/6) passed by the respondents, whereby petitioner's posting and appointment on the post of Trainee Attendant Class-III (Line) have been cancelled/annulled, have been passed without affording reasonable opportunity of hearing to the petitioner, as such the impugned orders are liable to be set

aside.

5. Mr. K. R. Nair, learned counsel for the respondents, would support the impugned order and submit that since criminal case bearing No.1485/2007 for the offence punishable under Section 379/34 of IPC was pending against the petitioner in the Court of the learned Chief Judicial Magistrate, Korba on the date of petitioner's appointment, therefore, in light of the decision rendered by the Supreme Court in the matter of Avtar Singh Vs. Union of India and others¹, the writ petition deserves to be dismissed.
6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
7. It is correct to say that the petitioner was temporarily appointed on the post of Trainee Attendant Class-III (Line) by the respondents vide order dated 10.05.2011 (Annexure-P/1), but at the time of joining, the petitioner was required to submit an affidavit mentioning

¹ (2016) 8 SCC 471

that no criminal case is pending against him. In compliance of the order dated 10.05.2011, the petitioner filed an affidavit on 20.05.2011 clearly stating that criminal case bearing No.1485/2007 for the offence punishable under Section 379/34 of IPC is pending against him in the Court of Chief Judicial Magistrate, Korba, but despite the said fact, the respondent No.3 on 08.06.2011 vide Annexure-P/3 allowed the petitioner to join, subject to two conditions, firstly if penal order is passed against the petitioner by the Court, his services will be terminated with immediate effect and secondly, whatever decision will be taken by the respondent No.1 against the petitioner in respect of his joining, the same will be acceptable to the petitioner, but thereafter on 27.06.2011, the respondent No.3 vide order (Annexure-P/5) cancelled the posting of the petitioner and ultimately on 13.06.2011 vide order (Annexure-P/6), the respondent No.2 has taken a decision that since Criminal Case No.1485/2007 for the offence punishable under Section 379/34 is pending against the petitioner and for the

reason that the petitioner has not been able to fulfill the terms and conditions mentioned in the posting order, therefore, his appointment on the post of Trainee Attendant Class-III (Line) was cancelled/annulled by the impugned order (Annexure-P/6).

8. The Supreme Court in the matter of **Avtar Singh** (supra) in para 32 has held as under:-

"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."

Thereafter summarizing the legal position, their Lordships have held as under in para 38:-

"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."

9. Reverting to the facts of the case in light of the principles laid down by the Supreme Court in the matter of Avtar Singh (supra), it is quite vivid that though the petitioner was earlier allowed to join by the respondent No.3, subject to two conditions including the joining has to be accepted finally by the respondent No.1 and accordingly the respondent company has taken a decision that since criminal case bearing No.1485/2007 for the offence punishable under Section 379/34 of IPC is pending against the petitioner in the Court of Chief Judicial Magistrate, Korba and the same has not been decided till the date of his appointment on 10.05.2011 and further the petitioner has failed to fulfill the terms and conditions mentioned in the posting order, therefore, the petitioner's appointment on the

post of Trainee Attendant Class-III (Line) is cancelled/annulled and the order of posting dated 10.05.2011 (Annexure-P/1) is revoked, which is strictly in accordance with law and as per decision rendered by the Supreme Court in the matter of Avtar Singh (supra), as the criminal case was admittedly pending against the petitioner on the date of his appointment.

10. The submission made by the learned counsel for the petitioner that the petitioner was acquitted by the Criminal Court subsequently on 02.12.2012 is of no use to the petitioner now, as on the date of his appointment, the criminal case was indisputably pending against him and for that reason, the respondent company is justified in dispensing with the services of the petitioner.

11. Consequently, I do not find any merit in this writ petition. It deserves to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-
Sanjay K. Agrawal
Judge