



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.3613 of 2009

P.SIVAGURUNATHAN

...Petitioner

Vs.

1. The Union of India,
Rep. by its Secretary to the Government,
Department of Home Affairs,
New Delhi.
2. The Director General,
Central Reserve Police Force,
C.G.O. Complex, Lodhi Road, New Delhi.
3. The Inspector General,
Central Reserve Police Force,
North Eastern Sector, Shillong,
Meghalaya State.
4. The Deputy Inspector General,
Central Reserve Police Force Group Centre,
Avadi, Chennai - 65.
5. The Commandant,
Central Reserve Police Force,
49, BN, C/o.56,
A.P.O.Jammu and Kashmir.

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent in his Order No. R.XIII-31/2007-NES-ADM-D dated 03.04.2008 confirming the order passed by the 5th respondent dated 10.09.2007 in his Office Order No.P.VIII 1/2007-49.EC.II and quash the same and direct the respondents to take the petitioner into the strength of central reserve police force as Constable GD with all monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Dr.D.Simon, CGSC



O R D E R

The petitioner had joined the Central Reserve Police Force (CRPF) as Constable GD under the Deputy Inspector General, CRPF, Avadi, Chennai on 30.12.2005. The governing Regulations are the CRPF Rules, 1955. ('CRPF Rules') as well as the 1955/CCS (Temporary Service) Rules 1965 ('CCS Rules').

2. After basic training, he was posted on 30.12.2005 as Constable GD at Guwahati Group Centre, thereafter transferred to Meghalaya, onward to Jammu and Kashmir. The petitioner applied for Earned Leave (EL) for the period from 11.06.2007 to 09.08.2007 and was sanctioned the same.

3. In the meantime, the concerned authority undertook the verification of the petitioner's application for employment and arrived at the conclusion that the petitioner had concealed certain vital information in his application. The information culled was to the effect that charges had been framed as against the petitioner and five others in Mohanur Police Station in Cr. Nos.456 to 461 of 2004.

4. A criminal case had followed and the petitioner, arrayed as 4th accused, had been convicted by the Judicial Magistrate, Namakkal on 08.06.2004 in Crime No.459/04 under Section 12 of the Tamil Nadu Prohibition Act, 1937 ('TNP Act'). The aforesaid information had not been disclosed in the petitioner's application for employment.

5. In view of the fact that the petitioner had suppressed material facts, the respondents pressed into service the relevant Rules and in terms of Rule 16 of the CCS Rules, which permits the discharge of employee appointed temporarily on one months' notice, issued a notice of termination dated 27.06.2007.

6. Since the petitioner had been on EL at the time when the notice was ready for dispatch, the same was served upon the petitioner upon his return to duty and proof has been placed in the writ petition to the effect that the petitioner had received the notice on 10.08.2007. The order provides for notice of one month upon conclusion of which he would stand automatically discharged.

7. Thus an order of termination came to be passed on 10.09.2007 terminating the service of the petitioner from 11.09.2007, after the expiry of the notice period of one month. Aggrieved by the said order of termination, the petitioner filed an appeal before the third respondent, which was rejected on



03.04.2008. Challenging the same, the present Writ Petition has been filed.

8. Learned counsel for the petitioner would rely on the Judgment of the Hon'ble Supreme Court in the case of Avtar Singh V. Union of India and others ((2016) 8 SCC 471) stating that the offence in question was a trivial one and the non-disclosure of the same in the application would not/should not have led to such disastrous consequences such as dismissal from service.

9. Per contra, Dr.Simon, learned Central Government Standing Counsel for the respondents would rely upon the CRPF Rules which provide for the automatic discharge of service in certain situations, including suppression of vital facts in the application for employment, as admitted in the present case. In any event, he would object to the argument that the offence committed by the petitioner was petty in nature.

10. The issue arising from this matter is as to whether and to what extent suppression/non-disclosure of a conviction in a prior criminal case in an application for employment, would impact the employment itself. The Hon'ble Supreme Court has provided guidance in this regard, in the case of Avtar Singh (supra).

11. A conflict of opinion had arisen in various decisions of the Division Benches of the Hon'ble Supreme Court leading to a cleavage of opinion on the question of how suppression of information or submitting of a false information in the verification form as to the question of having been criminally prosecuted, arrested or in regard to the pendency of a criminal case, would impact the continued employment of a person in the police force.

12. The guidelines framed by the Court have been summarised in paragraph 30 of the judgment as follows:

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:

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.



WEB COPY

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. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 : -

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.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 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. (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. (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. (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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppression or suggestio falsi, knowledge of the fact must be attributable to him.

13. The overarching observation of the Hon'ble Supreme Court in the aforesaid judgement is that information given to an employer as to conviction, acquittal or arrest or in regard to the pendency of a criminal case must be true and there must be no suppression or false mention of information in this regard.

14. In cases where conviction has been recorded and suppressed by the applicant, there are a few categories of offences such as petty, trivial offences, that might be overlooked or condoned by the employer if he is of the view that the nature of the offence is such. Such discretion is that of the employer. The margin for intervention by the Court is minimal and restricted to whether the employer has followed the proper procedure and protocols in decision making.

15. In this case, the employment was temporary and subject to the petitioner complying with certain conditions. The terms of employment under which the petitioner was employed, as relevant to this matter, reads thus:-

a) Your services are liable to be terminated at any time on one month's notice during the initial period of your service i.e. 2 years by the appointing authority without assigning any reason in accordance with the provisions



contained in CRPF Rules, 1955/CCS (Temporary Service) Rules, 1965.

b) You shall be at liberty to resign from your appointment before the expiry of first three months of your service, provided three months pay or training charges whichever is higher is refunded.

c) Your appointing authority may during the period of initial appointment, permit you, for good and sufficient reasons, to resign from the force with effect from such date as may be specified in the order accepting discharge/resignation, provided that on the acceptance of your resignation you shall be required to refund to the Govt. all the cost of training imparted for you in the force or a sum equal to three months pay and allowances received by you prior to the date of your resignation whichever is higher.

d) The appointment carries with it the liability to serve any where in India or outside the country, if required.

e) On joining this Organization, you will be governed by CRPF Act, 1949 and CRPF Rules, 1955 and other Rules applicable to Central Govt. Employees as amended from time to time.

16. Rule 5(1) of the CCS Rules that has been invoked and applied in the petitioner's case, reads thus:

5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).



WEB COPY

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

17. The petitioner has been given a month's notice as per Rule 5(1)(b), as the notice has been served upon him on 10.08.2007. The services of the Petitioner have been terminated with effect from 11.09.2007 after a month's notice. Thus, the procedure followed is in line with the Rule.

18. As to whether the offence was trivial in nature, the petitioner had admittedly been convicted for a crime under Section 12 of the TNP Act, which deals with abetment of commission of offence in an area to which the Act is not extended. Section 12 of the TNP Act is extracted below for completion and appreciation of the narration:

'12. Punishment for abetment of offence against Act in area to which Act is not extended. - Where any offence against this Act is committed in any area to which it has been extended, whoever, commits, or attempts to commit, or abets the commission of any of the acts making up the offence shall be liable to be punished thereof, whether such commission, attempt or abetment takes place within or outside such area.'

19. The petitioner would impress upon the Court that the punishment imposed by Judicial Magistrate II, Namakkal is only a fine of Rs.50/- and this, according to him, would render the crime a petty or trivial offence. However, the reference to a petty or trivial offence by the Hon'ble Supreme Court in the case of Avatar Singh, is in the context of an offence which was so trivial that it is condonable. The example given by the Hon'ble Supreme Court in this regard are shouting of slogans at a young age which may be attributed to the exuberance of youth itself.

20. However, I do not agree that the description of 'petty' or 'trivial', would appropriately describe a case of the present nature where the petitioner had admittedly abetted the



commission of an offence under the TNP Act. The Tamil Nadu Prohibition Act is a special enactment which has been introduced to extend a prohibition upon the manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu.

21. The avowed object of the Act is to expeditiously bring about and impose prohibition in a phased manner, in the manufacture of intoxicating liquors except for medicinal, scientific, industrial or other legitimate purposes. Being a special enactment, its rigour is serious and offences that attract its provisions are grave in nature. Thus, to be convicted of an offence under Section 12 cannot be said to be a trivial or petty event. The decision of the respondent officer in this regard is not, in my view, perverse or erroneous, to warrant interference under Article 226 of the Constitution of India.

22. The judgment in Avtar Singh has been subsequently applied in State of Odisha and others V. Govinda Behera (Civil Appeal No.893 of 2020 dated 31.01.2020), wherein the Hon'ble Supreme Court has taken the view that suppression of a fact relating to criminal antecedents, is per se, not acceptable, particularly in the case of a candidate seeking employment in public service. The duty of such candidate would call for a far higher degree of responsibility, bearing upon the maintenance of law and order.

23. It cannot be countenanced that such a candidate may have a compromised background when it comes to law and order himself, though there are a few situations where the appointing authority may decide that the offence is so trivial that it merits no adverse consideration. However, and as the overarching intention is a full and true disclosure by the candidate seeking appointment, any violation in this regard will, straightaway, have adverse consequences.

24. That is to say, that it is incumbent upon a candidate to make a full and true disclosure in his application seeking employment. Having made such full disclosure including all charges/offences/cases as against him, it is then upto the employer to decide as to whether the particular offence or incident in question was petty/trivial and would have a bearing upon his appointment.

25. Such decision as above is that of the employer, and his alone and unless it is shown to be perverse, there would be no avenue for interference under Article 226 of the Constitution of India. In the present case, the fact that the petitioner has not only been convicted for an offence under a special enactment but



also has chosen to conceal this information from the prospective employer, would, in my considered view, be a very relevant consideration. In light of the discussion as above, the impugned order of dismissal and its confirmation by the appellate authority, are sustained.

26. This Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sl

To

1. The Union of India,
The Secretary to the Government,
Department of Home Affairs, New Delhi.
2. The Director General,
Central Reserve Police Force,
C.G.O. Complex, Lodhi Road, New Delhi.
3. The Inspector General,
Central Reserve Police Force,
North Eastern Sector, Shillong,
Meghalaya State.
4. The Deputy Inspector General,
Central Reserve Police Force Group Centre,
Avadi, Chennai - 65.
5. The Commandant,
Central Reserve Police Force,
49, BN, C/o.56,
A.P.O. Jammu and Kashmir.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.45627

+1cc to Mr.D.Simon, CGSC Advocate, S.R.No.45715

W.P.No.3613 of 2009

SSI (CO)

RGA(24/09/2021)