

CM-2543-C-2019 ;
CM-2541-C-2019 in/and
RSA-1052-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(246)

CM-2543-C-2019 ;
CM-2541-C-2019 in/and
RSA-1052-2019
Date of Decision : 19.01.2023

Ram Rattan

...Appellant

Versus

Union of India through its Secretary and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Mittal, Advocate for the appellant-plaintiff.

Harsimran Singh Sethi J. (Oral)

CM-2543-C-2019

Present application has been filed seeking condonation of delay
of 28days in filing the appeal.

Keeping in view the averments made in the application, which
is duly supported by an affidavit, the same is allowed and delay of 28 days
in filing the appeal is condoned.

CM-2541-C-2019

Application is allowed, as prayed for.

RSA-1052-2019

In the present regular second appeal, the challenge is to the

order dated 26.08.2015 passed by the trial court by which the suit filed by the appellant-plaintiff seeking the declaration that the termination of his services vide order dated 20.11.2011 was bad in law, has been dismissed and even the appeal preferred against the decree and judgment of the trial court dated 26.8.2015 has also been dismissed by the lower appellate court on 03.10.2018.

Before coming to the grounds of appeal, certain facts need to be stated so as to appreciate the controversy in the correct prospective. The post of Barber was advertised to be appointed in the Central Reserve Police Force (CRPF) for which the appellant-plaintiff competed and was selected and he joined on 09.04.2011. As per the joining report, the character certificate was yet to be verified and after joining the service, the information qua the character of the appellant-plaintiff was obtained from the area where the appellant-plaintiff resided and according to the report received by the CRPF authorities, there was criminal case pending against the appellant-plaintiff being FIR No. 99 dated 24.07.2010.

A show cause notice was issued for terminating the services of the appellant-plaintiff on the ground that while filling up the application form, the information qua the pendency of the criminal proceedings against the appellant-plaintiff was concealed by the appellant-plaintiff and as per the show cause notice, the said withholding of the information regarding pendency of criminal proceedings was misconducted to be good enough to terminate the services of the appellant-plaintiff.

The reply was filed by the appellant-plaintiff admitting the said

fact that information qua the pendency of the criminal proceedings was not mentioned in the application form despite required hence keeping in view the reply filed, the services of the appellant-plaintiff were terminated w.e.f. 20.11.2011. The said order terminating the service was challenged by the appellant-plaintiff by filing civil suit on 02.01.2015. The said suit was dismissed keeping in view the evidence lead, wherein, it was proved that the relevant information was withheld by the appellant-plaintiff while competing for the post in question qua the pendency of the criminal case against him. The decree and judgment of the trial court was appealed by the appellant-plaintiff and said appeal also came to be dismissed on 03.10.2018. In the present regular second appeal, the challenge is to the order passed by the trial court dated 26.08.2015 as well as the order of the lower appellate court dated 03.10.2018.

The fact that while competing for the post of Barber, on which the appellant-plaintiff was selected and joined on 09.04.2011, the appellant-plaintiff was required to furnish the information qua any criminal proceeding pending against him as required to be filled in the application form itself. It is also a conceded position that information of the pendency of the criminal proceedings against the appellant-plaintiff was concealed by him while filling up the said form. Once, the said facts are not disputed, it is to be seen whether the termination of the services of an employee of the disciplined force could have been passed or not.

The question of law on the said aspect is well settled. Hon'ble Supreme Court of India while deciding SLP (Civil) No. 10499 of 2022 titled

as *Ex-const/DVR Mukesh Kumar Raigar Vs. Union of India and others*, decided on 16.01.2023, held that where a member of a disciplined force like CSF got an appointment by suppressing the relevant information such as pending criminal cases against him, it would amounts to grave misconduct and the removal of the such employee is justified. The relevant paragraph of the said judgment is as under :-

*“9. Having regard to the guiding principles, laid down in case of **Avtar Singh** (supra) and in case of **Satish Chandra Yadav** (supra), this Court has no hesitation in holding that the Single Bench of the High Court had committed an error in interfering with the order passed by the respondents-authorities. The respondents-authorities had after taking into consideration the decision in case of **Avtar Singh** terminated the services of the petitioner holding inter-alia that while the petitioner was appointed in CISF, a criminal case was pending against him at the time of his enrolment in the force, but he did not reveal the same and that there was deliberate suppression of facts which was an aggravating circumstance. It was also held that CISF being an armed force of Union of India, is deployed in sensitive sectors such as airports, ports, department of atomic energy, department of space, metro, power and steel, for internal security duty etc., and therefore, the force personnel are required to maintain discipline of the highest order; and that the involvement of the petitioner in such grave offences debarred him from the appointment. Such a well-reasoned and well considered decision of the respondent-authorities should not have been interfered by the Single Bench in exercise of its powers under Article 226 of the Constitution, more particularly when there were no allegations of malafides or of non-observance of rules of natural justice or*

of breach of statutory rules were attributed against the respondent authorities.

10. xxx xxx xxx xxx xxx xxx xxx xxx xxx

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12. xxx xxx xxx xxx xxx xxx xxx xxx xxx

13. *In view of the afore-stated legal position, we are of the opinion that the Division Bench of the High Court had rightly set aside the order passed by the Single Bench, which had wrongly interfered with the order of removal passed by the respondent authorities against the petitioner. The petitioner having been found to have committed gross misconduct right at the threshold of entering into disciplined force like CISF, and the respondent authorities having passed the order of his removal from service after following due process of law and without actuated by malafides, the court is not inclined to exercise its limited jurisdiction under Article 136 of the Constitution.”*

Not only this, the Division Bench of this Court in LPA No. 75 of 2000 titled as ***Union of India and others Vs. Ajit Singh***, decided on 29.09.2022 held that where an employee has not furnished the information required for at the time of competing or joining the service and had withheld the information qua the criminal proceedings pending against the said employee, **the services of the said employee is liable to be terminated.**

The relevant paragraph 14 of the said judgment is as under:-

“14. In the case in hand, the respondent was appointed in Armed Police Force. The respondent as per Rules was required to file verification roll wherein he was bound to disclose his criminal antecedents. The verification roll is in English as well as in Hindi language (Devanagari script).

Thus, nobody can claim lack of knowledge of language. In the present case, the respondent has ticked against Column No.12 in Hindi which indicates that he cannot claim that by mistake or because of ignorance, he has not disclosed the fact of registration of FIR. The respondent was arrested on 08.09.2010 and thereafter released on bail on 18.09.2010 whereas verification roll was filled on 04.05.2011. It is not a case where FIR was registered at the back of a candidate, who was unaware about FIR at the time of filing application form. On account of arrest and thereafter release on bail, the respondent was very much aware about pendency of trial against him. The respondent was seeking job in a disciplined Armed Police Force, thus, he was duty bound to disclose about pendency of criminal case against him. The contents of FIR, the allegations therein against respondent and his involvement was irrelevant. The issue involved is not that whether respondent was involved in a serious or a trivial criminal case whereas the issue involved is disclosure/non-disclosure of mandatory requirement. The respondent admittedly had failed to disclose pendency of criminal trial against him as well as his arrest. Para 2 of the Ministry of Home Affairs's Policy dated 01.02.2012 reads as :

2 Accordingly, the matter has been considered in this Ministry in consultation with CAPFs, and it has been decided as follows :

I. A candidate is required to declare in the application form, whether he has been arrested, prosecuted or convicted by a court for any criminal offence. If a candidate does not disclose the fact of his/her involvement and/or arrest in criminal case(s), complaint case (s), preventive proceedings etc. under IPC or any other Act of the Central or State Government

in the application form, during medical examination as well as in the application form, during medical examination as well as in the attestation/verification form and the fact subsequently comes to the notice of recruiting authorities/ is found out from the verification report received from the District authorities or otherwise, his candidature/appointment will be cancelled. However, in case the candidate has already been appointed while cancelling/terminating the appointment, the principle of natural justice shall be followed and opportunity of being heard would be accorded to the candidate.

II. If a candidate does not disclose his/her involvement and/or arrest in criminal case(s), complaint case(s), preventive proceedings etc. under IPC or any other Act of the Central or State Government in the application form but discloses the same during medical examination/PET and/or in the attestation/verification in writing, the candidature will not be cancelled on this ground alone.

III. The candidate will not be considered for recruitment if a) Such involvement/case/arrest is concerned with an offence mentioned in Annexure-A.

b) Such arrest/ detention is made under any of the Acts which are concerned with security/and integrity of the country terrorist and disruptive activities, acts against the State, insurgency etc.

c) The candidate has been detained under the National Security Act/ Crime Control Act/ any similar legislation, and the same is confirmed by the Reviewing Authority.

d) Such involvement/ case/ arrest is concerned an offence involving moral turpitude.

e) He/ she has been convicted by a Court in any case whether or not an appeal is pending against such conviction.

Provided that the candidate shall not be barred in the above cases, if only an FIR has been registered/ the case is under investigation and no charges have been framed either on FIR or on the complaint in any Court of Law.

Provided further that the candidate shall not be debarred if he/ she has been finally acquitted/discharged by a Court whether an appeal is pending or not against such acquittal.

Provided further that the candidate shall not be debarred if the proceedings are withdrawn by the Central/State Government.

Provided further that the candidate shall not be debarred if he/ she has been involved/ convicted/ concerned with minor offences mentioned in Annexure-B or those mentioned in Chapter VIII & X of Code of Criminal Procedure, 1973.

IV. Where a candidate has been convicted and awarded a jail-term of more than xxx (illegible) he/she will generally not be considered suitable for appointment in CAPF.

V. Notwithstanding the provisions of S(II) above, such candidates against whom charge sheet in a criminal case has been filed in the court and the charges fall in the category of serious offences or moral turpitude, though later on acquitted by extending, benefit of doubt or acquitted for the reasons that the witness have turned hostile due to fear of reprisal by the accused person(s), he/ she will generally not be considered

suitable for appointment in the CAPF. The details of crimes which are serious offences or involve moral turpitude are at Annexure 'A'. However, cases in which the criminal court while acquitted has categorically mentioned that the criminal case would not be a xxx (illegible) appointment in Government Service, the candidate shall be considered for appointment in the concerned CAPF.

VI. Involvement in minor offences traffic violations, juvenile in conflict with law (tried in open courts/ juvenile justice boards) and accident cases will not debar an individual for appointment in CAPFs & ARs, provided that appointments for the post of driver and those related to driving will not be offered to the individuals, punished for serious traffic offences.

VII. If a candidate is discharged by extending the benefit under the Probation of Offender Act, 1958, the name of such candidate shall be put up for consideration of the selection committee constituted by the DGs of CAPFs & ARs from time to time assessing his/ her suitability for appointment in the concerned department.

Thus non-compliance of Article 311(2) especially when respondent was under probation and concededly facing trial at the time of filing form which he failed to disclose, was not fatal to entire exercise carried out by Appellant.

The guidelines of Ministry of Home Affairs, relied upon by respondent does not come for his rescue because respondent was not terminated on account of contents or allegations of FIR or stage of trial i.e. pre or post framing of charges whereas he was terminated because he did not disclose pendency of trial as well as his arrest in the verification roll.

The Appellant, as respondent was under probation, in view of afore-stated judgments of Hon'ble Supreme Court, was not bound to follow the procedure contemplated by Article 311(2) of the Constitution of India. The Respondent was extended opportunity to put forth his stand by way of one month notice as well opportunity to file appeal which respondent unsuccessfully availed. Notice of termination in terms of Rule 5 (1) of 1965 Rules followed by proper opportunity to vindicate his stand, at appellate stage, was sufficient compliance of principles of natural justice. The termination orders in question are not stigmatic in nature, thus non-compliance of Article 311(2) especially when respondent was under probation and concededly facing trial at the time of filing form and having failed to disclose this crucial fact, was not fatal to the entire exercise carried out by Appellant. ”

No other argument has been raised.

Keeping in view the facts and law stated hereinbefore, learned counsel for the appellant-plaintiff has not been able to distinguish the said judgment that they cover the case of the appellant-plaintiff against him as well as point out any perversity in the finding recorded by the courts below. Keeping in view the above, no ground is made out for interference by this Court in the present regular second appeal.

Dismissed.

January 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes