
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-14879-2019 (O&M)

Date of Decision : 10.03.2023

Sandeep Jailwal

... Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Rajesh Arora, Advocate for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Hitesh Pandit, Advocate for respondents No.2 to 5.

Anupinder Singh Grewal, J.

The petitioner has challenged the order dated 23.05.2019 whereby the petitioner's services have been dispensed with immediate effect without any show cause notice or opportunity of hearing.

Learned counsel for the petitioner submits that the petitioner was offered appointment as an Assistant Engineer (Electrical) on 24.11.2017 as he had secured All India Rank 1086 in GATE (Graduate Aptitude Test in Engineering). He had furnished the correct information which had been sought in the application form and while submitting an affidavit with regard to his character and antecedents, the petitioner stated that he had neither been convicted in any case involving moral turpitude nor had he been dismissed as Government/Public servant on account of such conviction. The petitioner was discharging his duties satisfactorily and the respondents had even given him an

additional charge of another Sub-Division. He had not been issued any show cause notice and no opportunity of hearing was granted to him before terminating his services. He submits that the petitioner along with his family members had been falsely implicated in FIR No.848 dated 03.11.2016 under Sections 323, 325, 506 and 34 IPC on account of a family dispute. The FIR had been lodged at the behest of a complaint moved by his maternal uncle and there is no specific attribution against the petitioner. Mere registration of an FIR would not render the petitioner ineligible and unfit for appointment as Assistant Engineer, as these offences do not constitute moral turpitude. In support of his submissions, he has relied upon the judgments of the Supreme Court in the cases of **State of Haryana and another versus Ved Kaur, 2017 (6) SCC 796; Pawan Kumar versus State of Haryana, 1996 (4) SCC 17; Dipti Parkash Banerjee versus Satyendra Nath Bose, 1999 (3) SCC 60; Commissioner of Police and others versus Sandeep Kumar, 2011 (4) SCC 644 and Avtar Singh versus Union of India, 2016 (8) SCC 471; and judgment of this Court passed in CWP-22868-2016 in **Ram Niwas versus State of Haryana and others, 2018 (4) PLR 615** decided on 08.08.2018.**

Learned counsel for the respondents submits that the petitioner had concealed the factum of FIR being registered against him and, therefore, his services had been terminated. The appointment of the petitioner was subject to the condition that there is no FIR/criminal case pending against him which may render him ineligible or unsuitable for appointment. Therefore, the petitioner had to disclose the factum of the FIR. He did not do so at the time of submission of the application form or while furnishing affidavit with regard to his appointment to the post of Assistant Engineer. In support of his submission,

he has relied upon the judgments of the Supreme Court in the cases of Rajasthan Rajya Vidyut Prasaran Nigam Limited and another versus Anil Kanwariya, (2021) 10 SCC 136; Devendra Kumar versus State of Uttaranchal, (2013) 9 SCC 363 and Daya Shankar Yadav versus Union of India, (2010) 14 SCC 103.

Heard.

The petitioner is stated to have obtained a B.Tech degree in Electrical Engineering from YMCA, Faridabad. He had secured All India Rank of 1086 out of 1,17,443 in the GATE Examination. He had applied for the post of Assistant Engineer in response to the advertisement issued by the respondent-Nigam on 28.07.2017. In the offer of appointment letter issued on 24.11.2017 (Annexure P-3), there was a column with regard to a conviction in any criminal case. The relevant column is reproduced hereunder:-

“4 (IV) That you are not a dismissed Government/Public Servant or a person convicted of an offence involving moral turpitude.”

When the offer of appointment had been made, the petitioner was asked to submit the 'Character and Antecedent Form' dated 30.11.2017 which is at Annexure R-2/1 wherein column No.13 was about his conviction in a Court of Law. Column No.13, is reproduced hereunder:-

“Have you ever been convicted by Court of any offence? If the answer is 'yes' the full particulars of the conviction and the sentences should be given.”

The petitioner had filled 'No' against this column.

In the appointment letter at Annexure P-4 issued to the petitioner

on 06.12.2017, the terms and conditions of the appointment have been set out.

The relevant extract of paras 3 (III) and (IV) are reproduced hereunder:-

“3 Your appointment will further be subject to the following conditions:-

(I) XXXX

(II) XXXX

(III) There is no FIR/Criminal case pending against you which may render you ineligible or unsuitable for appointment.

(IV) You are not a dismissed Government/Public Servant or a person convicted of an offence involving moral turpitude.”

The judgments cited by the counsel for the respondents are distinguishable on facts and not applicable to the instant case inasmuch as the petitioners therein were required to disclose the factum of pending cases or FIRs against them on affidavits or by undertaking at the time of submission of the application.

In the case of **Rajasthan Rajya Vidyut Prasaran Nigam Limited** (supra), the employee was required to disclose that he had not been convicted by any Court of law and no criminal case is pending against him. The respondent had withheld this information although he had been convicted under Sections 143, 341, 323 IPC by Court of law and, therefore, his dismissal was upheld.

In the case of **Devendra Kumar** (supra), specific information was sought in clause 4 of proforma affidavit, which reads as under:-

“That no cognizable or non-cognizable, criminal case
or proceedings has been registered against me to my

knowledge and neither have I been find by the police in any such case and neither is any police investigation pending against me.”

The petitioner therein had been chargesheeted under Sections 402, 465, 420, 471 and 120-B IPC which was not disclosed by him in the affidavit.

In the case of **Daya Shankar Yadav** (supra), the employee was required to disclose information in queries 12 (a) and (b) of declaration form related to any past or present arrest, prosecution, detention, fine, conviction and punishment etc. and any pending case with the Court/University/Education Authority at the time of filling this form. The appellant therein had responded to these queries in the negative although he was involved in a criminal case under Sections 323, 404, 506 IPC but had been discharged after trial. Therefore, it was held that he was unsuitable for the post.

In the instant case, there was no such condition and no question was raised by the respondents at any point of time before issuance of appointment letter that necessitated the petitioner to disclose the pendency of the FIR against him. The information sought was with regard to conviction in a case involving moral turpitude or dismissal or termination of services on account of moral turpitude. In the terms and conditions which had been set out in the appointment letter, his appointment was subject to the condition that there is no FIR pending against him in a case involving moral turpitude which would render him unsuitable for Government appointment. The situation would have been different, had he been convicted prior to his appointment, as in such circumstances, it would have been mandatory for him to make a disclosure to that effect.

The order of termination (Annexure P-6) states that the petitioner

has been terminated from services on account of unsatisfactory work and conduct during the period of probation and not because of his withholding the information of the pending FIR against him. The order of termination was passed on 23.05.2019 whereas the petitioner was given an additional charge of 66 KV Sub Station, HVPNL, Gurugram on 14.01.2019. There is also no material on record to indicate that the work and conduct of the petitioner was not satisfactory. In the written statement filed by the respondents, it has been clearly spelt out that the reason of his termination is not disclosing the factum of FIR against him.

I would now advert to the nature of the criminal case wherein the petitioner had been arraigned as an accused. The FIR No.848 dated 03.11.2016 had been registered against the petitioner and his family members by his maternal uncle. A copy of the final report under Section 173 Cr.P.C. had also been furnished by the counsel for the petitioner. A perusal of the FIR and the final report indicate that it is alleged by the complainant that when he along with his children were at home then Nihal Singh and his wife Murti Devi along with their two sons namely Sandeep (petitioner herein) and Sumit had come to their house and broke the cooler in the house and started abusing. They had beaten him and his family members with sticks and tried to strangle his wife. They were not armed with any lethal weapon. All the injuries are stated to be simple in nature except one injury on the complainant, which was fracture of right nasal bone. The petitioner along with other family members had been arrested and later released on bail by the trial Court. There is no specific allegation against the petitioner. The allegations are general in nature and he along with his other family members, had been arraigned as an accused.

It is, thus, manifest that mere registration of FIR under Sections

323, 325, 506 and 34 IPC, would not render the petitioner ineligible to hold the post of Assistant Engineer.

Consequently, the petition is allowed and the impugned order dated 23.05.2019 is set aside. The petitioner would be reinstated with consequential benefits.

(ANUPINDER SINGH GREWAL)
JUDGE

10.03.2023
A.Kaundal

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No