

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM-6411-C-2022 in/and
RSA-4514-2005

Date of Decision : March 27, 2023

Labh Singh

.. Appellant

Versus

FCI and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. M.S. Uppal, Advocate, for the applicant/appellant.

Mr. H.S. Dhandi, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-6411-C-2022

Present application has been filed for fixing the main appeal at an early actual date.

Notice of the application to the counsel opposite.

Mr. H.S. Dhandi, Advocate, accepts notice on behalf of the respondents and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the facts mentioned in the application, the same is allowed and the main appeal is taken up for hearing today itself.

RSA-4514-2005

Present Regular Second Appeal has been filed challenging the judgment and decree of the trial Court dated 29.01.2005 by which, the suit filed by the appellant-plaintiff challenging the order terminating his services was decreed partly as well as against the judgment and decree of the lower Appellate Court dated 24.08.2015 by which, the appeal filed by the respondents-Food Corporation of India was allowed and the judgment and decree of the trial Court dated 29.01.2005 was set aside and the suit filed by the appellant-plaintiff was dismissed.

Certain facts may be noticed for the correct appreciation of the issue in question in the present Regular Second Appeal.

The appellant-plaintiff was selected as Worker/Handling Labour with the District Manager, Food Corporation of India. The services of the appellant-plaintiff was terminated by the District Manager, FCI on 25.06.2003 which action was challenged by the appellant-plaintiff before the Civil Court on the ground that without giving any show cause notice or observing the rules of natural justice, the services of the appellant-plaintiff were terminated, which is contrary to the settled principle of law.

Notice was issued to the respondent-defendants. In the reply, the respondent-defendants stated a fact that after the selection and appointment of the appellant-plaintiff, his case was sent to the police authorities for verification of his antecedents and the Senior Superintendent of Police of the concerned District vide his report dated 01.04.2002 brought to the notice of the Department that the appellant-plaintiff was convicted in FIR No.24 dated 09.06.1993 and he was sentenced to undergo rigorous

imprisonment for a period of six months and to pay fine. It was further mentioned that there was an another FIR No.51 dated 24.10.1995, which was also registered against the appellant-plaintiff, though he was subsequently acquitted in the said FIR, hence it was pleaded that as the appellant-plaintiff withheld the information of his conviction from the employer and further the pendency of another FIR at the time of his recruitment, the Department decided to terminate the services of the appellant-plaintiff.

Keeping in view the evidence, which came on record, the trial Court held that as the conviction of an employee cannot be treated as a bar to secure the appointment, and even for dis-continuing of the services, provisions of Industrial Disputes Act should have been complied with qua the Section 25 of the said Act, which deals with the retrenchment.

Feeling aggrieved against the judgment and decree of the trial Court, the Food Corporation of India filed an appeal, which came to be decided on 24.08.2005 and by the said judgment, the lower Appellate Court set aside the judgment and decree of the trial Court dated 29.01.2005 and the suit filed by the appellant-plaintiff was dismissed, which judgment is under challenge in the present Regular Second Appeal.

Learned counsel for the appellant argues that merely a conviction in a criminal case cannot result into the dismissal of an employee and therefore, the judgment of the trial Court was perfectly valid and legal which judgment and decree has wrongly been set aside by the lower Appellate Court, hence, the judgment and decree of the lower Appellate Court may kindly be set aside and the suit filed by the appellant-

plaintiff, as allowed by the trial Court, be maintained.

Learned counsel for the respondents, on the other hand, submits that as the appellant-plaintiff had not mentioned his criminal history to the employer at the time of seeking employment and the appellant-plaintiff secured the appointment by suppressing the material information qua his conviction as well as pendency of another FIR at the time of recruitment hence, the Department, keeping in view the report submitted by the Senior Superintendent of Police wherein, the criminal antecedents of the appellant-plaintiff were brought to the notice of the Department, the engagement of the appellant-plaintiff was rightly withdrawn and his services were terminated, which act cannot be treated as arbitrary and illegal and the lower Appellate Court has rightly appreciated the facts in the correct perspective hence, the appeal filed by the appellant-plaintiff may kindly be dismissed and the judgment and decree of the lower Appellate Court dated 24.08.2005 may kindly be maintained.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded fact that prior to seeking the appointment, the appellant-plaintiff was convicted and had undergone conviction for a period of six months along with fine, which conviction had already attained finality at the time when the appellant-plaintiff got an appointment in the year 1997. It is also a conceded fact that the factum of past criminal record was suppressed from the employer. Even the criminal proceedings pending in the shape of FIR No. 51 dated 24.10.1995, was also suppressed from the employer. Once, the facts are not in dispute and criminal past of the

appellant-plaintiff was suppressed by him while seeking the appointment, the Department was well within its right to take appropriate action upon receiving the report from the Senior Superintendent of Police concerned.

Once, the report qua the antecedents of the appellant-plaintiff was sought from the police, it is clear that the appointment given was subject to the character verification report and according to the character verification report, the appellant-plaintiff was a convicted person at the time of seeking appointment, which information has been suppressed by him from the Department. In the facts and circumstances of the present case, the evaluation of the evidence and the facts by the lower Appellate Court cannot be faulted with as no candidate can seek appointment suppressing the past criminal record.

As per the settled principle of law, in case any appointment has been obtained by suppressing the relevant information from the employer, the employer is well within its jurisdiction to re-consider the grant of the said appointment and take appropriate action.

The Hon'ble Supreme Court of India in ***Civil Appeal Nos.5743-5744 of 2021 titled as Rajasthan Rajya Vidyut Prasaran Nigam Limited and another vs. Anil Kanwariya, decided on 17.09.2021***, has held that where a candidate withhold the information qua the criminal past and gets an appointment, the said appointment can be reconsidered by the employer concerned and the services of the candidate can be terminated on the ground that the relevant required information had been withheld/suppressed from the employer. Relevant paragraphs No. 10 to 14 of the said judgment are as under:-

“ 10. Apart from the fact that at the time when the respondent applied in the month of October/November, 2013 though he was already convicted by the competent court and was given the benefit under [Section 3](#) of the Act 1958 only, he did not disclose his conviction, but even at the time when he filed a declaration on 14.04.2015 he filed a false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and relying upon such a declaration the appellants gave him appointment. Only on police verification/receipt of the antecedent's report from the Superintendent of Police, Sawai Madhopur, the appellants came to know about the conviction of the respondent. Therefore, the appellants were absolutely justified in terminating the services of the respondent.

11. Even the conduct on the part of the respondent to obtain the order subsequently from the learned Sessions Court in an appeal and getting the benefit of [Section 12](#) of the Act 1958 deserves consideration. As observed hereinabove, the judgment and order of conviction by the learned trial Court was passed as far back as on 5.8.2013. For two years, the respondent did not file any appeal before the learned Sessions Court. After a period of approximately two years and after he obtained the appointment on the basis of the false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and having realised that his conviction and the benefit granted under [Section 3](#) of the Act 1958 by the learned trial Court only will come in his way, subsequently after a period of two years he filed an appeal before the learned Sessions Court on 11.08.2015 and the appeal came to be disposed of within a period of one month, i.e., on 9.9.2015 and the learned Sessions Court granted the benefit of [Section 12](#) of the Act 1958. From the judgment and order passed by the learned Sessions Court, it

appears that the respondent only prayed for giving the benefit of [Section 12](#) of the Act 1958 and nothing was contended by him with regard to conviction and order of sentence. Therefore, with a view to get out of the conviction and the benefit of [Section 3](#) of the Act 1958 only and having realised that his conviction may come in his way, he preferred an appeal after a period of two years and obtained the benefit of [Section 12](#) of the Act 1958 which provides that a person found guilty of an offence and dealt with under the provisions of [section 3](#) or [section 4](#) shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Even otherwise, subsequently getting the benefit of [Section 12](#) of the Act 1958 shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14.04.2015 that neither any criminal case is pending against him nor he has been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of [Section 12](#) of the Act 1958. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then

the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.

13. In view of the afore-stated facts and circumstances of the case, both, the learned Division Bench as well as the learned Single Judge have clearly erred in quashing and setting aside the order of termination terminating the services of the respondent on the ground of having obtained an appointment by suppressing material fact and filing a false declaration. The order of reinstatement is wholly untenable and unjustified.

14. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the Division Bench, as well as, the order passed by the learned Single Judge quashing and setting aside the order of termination are hereby quashed and set aside. Consequently, the writ petition filed by the respondent-employee stands dismissed and the order of termination stands restored. However, in the facts and circumstances of the case, there shall be no order as to costs.”

Learned counsel for the appellant-plaintiff has not been able to rebut the settled principle of law stated hereinbefore in any manner so as not to be applicable in the facts and circumstances of the present case.

Keeping in view the settled principle of law cited hereinbefore, the judgment and decree of the lower Appellate Court dated 24.08.2005 is inconsonance with the law, keeping in view the facts and circumstances of the present case and needs no interference by this Court in the present Regular Second Appeal.

Dismissed.

March 27, 2023

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes