



2023:DHC:8653-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.12.2023

+ **W.P.(C) No.11336/2023 & CM No. 44103/2023**

DISHA LANGAN

..... Petitioner

Versus

DELHI HIGH COURT

(THROUGH ITS REGISTRAR GENERAL)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mrs. Anjali Jha Manish, Mr. Priyadarshi Manish & Ms. Divya Rastogi, Advs.

For the Respondent : Dr. Amit George, Mr. Rayadurgam Bharat, Mr. Arkaneil Bhaumik, Mr. Piyo Harold & Mr. Adhishwar Suri, Advs.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning the decision of the establishment of this Court (hereafter 'DHC') cancelling / revoking her candidature and recommendation for appointment to the Delhi Judicial Service (hereafter 'the DJS'). The petitioner's candidature for appointment to the DJS was cancelled on the ground that she had concealed the fact that a criminal prosecution/criminal complaint was pending against her, in her



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application form for the Delhi Judicial Service Examination – 2022 (hereafter ‘**DJS Examination**’). DHC communicated its decision to the petitioner by a letter dated 31.07.2023, which is assailed by the petitioner in the present petition.

2. At the outset, it is relevant to note that petitioner’s candidature was not revoked on account of criminal proceedings instituted against her, which now stand quashed, but for the reason that she had not disclosed the fact that she was being prosecuted in her application form.

FACTUAL BACKGROUND

3. The petitioner completed her five years of Bachelor of Law degree course from National Law University, Gandhinagar, Gujarat in June, 2019. The petitioner states that she secured first division in the said course.

4. The petitioner was enrolled as an advocate in Delhi on 23.08.2019. She cleared the All India Bar Examination in the year 2021. Thereafter, she participated in various competitive examinations for appointment in government services. She also appeared for the DJS Examination but was unsuccessful in clearing the Preliminary Examinations held prior to 2022.

5. On 23.02.2022, DHC invited online applications from eligible candidates for filling up 123 (one hundred and twenty-three) vacancies



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in DJS. The DJS Preliminary Examination – 2022 was scheduled to be held on 27.03.2022.

6. On 14.03.2022, the petitioner filled her application form for the DJS. In the said application, the petitioner was required to disclose whether she had been arrested, prosecuted, kept under detention or bound / convicted by a court of law for any offence. The petitioner's response to the said query was in the negative. The relevant query and the petitioner's response to the same, as reflected in her application form, are set out below:

“Additional Details:

6. Have you ever been arrested, prosecuted, kept under detention or bound / convicted by a court of Law for any offence? **NO.**”

7. The result of the DJS Preliminary Examination – 2022 was declared on 18.05.2022 and the petitioner was shortlisted for appearing in the DJS Main Examination (Written) – 2022. The said examination was held on 11.06.2022 and 12.06.2022. The petitioner cleared the same and was admitted to *Viva-Voce*. The petitioner appeared for the interview on 13.02.2023 and was selected to join the DJS on 25.04.2023. The petitioner was offered appointment to the DJS, however, the same was subject to the verification of her character antecedents from the concerned police authorities.



8. The petitioner filed the attestation form on 31.05.2023. In the said form, she disclosed that a criminal complaint bearing No.14924/2018 captioned ***DRI v. Amit Goyal & Ors.***, was pending before the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi. She further disclosed that the said criminal complaint as well as the summoning order dated 22.10.2018 were subject matter of challenge before this Court in Crl. M.C. No.2141/2021 captioned ***Disha Langan v. Directorate of Revenue Intelligence*** and pursuant to the orders passed by this Court, the proceedings relating to the criminal complaint as well as the summoning order were stayed.

9. The relevant extract of the attestation form filled by the petitioner is set out below:

“12(a) Have you ever been arrested, prosecuted, kept under detention or bound down / convicted by a court of law for any offence or debarred / disqualified by any Public Service Commission from appearing at its examination/selection or debarred educational authority/institution?”	NO
(b) Is any case pending against you in any court of law, university or any other equatorial authority/ institution at the time of filing up this attestation form. If the answer to (a) or (b) is “Yes” full particulars of the case, arrest detention fine conviction, sentence etc. and the nature of the case pending in the court/university educational authority etc. at the time of filling up	YES A case bearing criminal complaint no. 14924 of 2018 titled as “DRI vs Amit Goyal & Ors.” is pending before the learned Chief Metropolitan Magistrate, Patiala House New Delhi. However, the said criminal complaint as well as summoning order dated 22.10.2018 has been challenged before the Hon’ble Delhi High



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this form should be given.

Court by filing Crl. MC No.2141 of 2021 and the Hon'ble Delhi High Court was pleased to stay the proceedings against the criminal complaint No.14924 of 2018, vide order dated 17.02.2023, modified by order dated 25.05.2023.”

10. Thereafter, on 07.06.2023, petitioner was directed by the DHC to provide certified copies of all documents relating to the Criminal Complaint No.14924/2018 as mentioned by her in her attestation form. The same were furnished by the petitioner under cover of a letter dated 01.07.2023.

CRIMINAL COMPLAINT

11. The factual averments made in regard to the aforesaid criminal proceedings are briefly summarized as under:

11.1 The petitioner claims that she is a renowned shooter and claims that she has been pursuing the said sport since the age of twelve years. She states that she became a member of the National Rifle Association of India (hereafter ‘NRAI’). Thereafter, on 10.07.2012, the petitioner obtained an arms licence bearing No. WDPV/6/2012/46, which was valid till 27.06.2018. She claims that she had imported five weapons and spare barrels and conversion from outside India. Three of the weapons were imported without payment of duty in terms of the provisions of Notification No.146/1994-Cus. dated 13.07.1994 and the remaining two weapons were imported on concessional duty in terms of Notification No.147/1994-Cus. dated 13.07.1994. The petitioner



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claims that thereafter on 11.04.2017, NRAI sent a letter to the Joint Commissioner of Police (Licensing), Delhi recommending that the petitioner may be granted permission to purchase three non-prohibited bore pistols. The said permission was granted on 20.04.2017 and was valid till 27.06.2018.

11.2 The petitioner claims that she authorized her father Sh. Anil Kumar Langan to procure the three weapons from abroad on the basis of her arm licence for her personal use. The petitioner states that on 29.04.2017, her father Sh. Anil Kumar Langan arrived from Slovenia carrying three pistols. She states that the same were handed over by the airline's staff to the Custom Authority at the Red Channel. Petitioner's father was asked by the Customs Authorities to pay the duty at the rate of 50% of the applicable rate, which was paid by him. She states that thereafter her father Sh. Anil Kumar Langan also filed a challan for the duty paid by him in respect of a weapon imported on behalf of her brother Sh. Dwij Langan, who she states, is also a renowned shooter.

11.3 It is the DRI's case that three persons including Sh. Anil Kumar Langan were intercepted at the IGI Airport on 29.04.2017 on the basis of specific intelligence to the effect that a syndicate was involved in smuggling of arms and ammunition from Slovenia to India. It is alleged that petitioner's father had utilized the arms and ammunition licence issued by the Delhi Police and the Renowned Shooter



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Certificate issued by the NRAI for importing weapons using bogus invoices and suppressing their true value and description.

11.4 The officials of DRI recorded the statements of Sh. Anil Kumar Langan under Section 108 of the Customs Act, 1962 on various dates. They also recorded the petitioner's statement on 20.06.2017. She claims that she denied having purchased any arms and ammunition and informed the concerned officials that her father dealt with the purchase, sale and import of arms and ammunition.

11.5 The Principal Additional Director General of the DRI issued an order dated 03.08.2018, sanctioning prosecution of the accused persons including the petitioner, Sh. Anil Langan and Sh. Dwij Langan.

11.6 Subsequently, a Criminal Complaint bearing No.14924/2018 dated 26.09.2018 was filed by the DRI against the accused for the offences punishable under Section 132 and 135(1)(a) and (b) of the Customs Act, 1962 (hereafter the '**Customs Act**'). The complaint also noted the role of the petitioner and observed that she was liable for penal action under Section 135 of the Customs Act.

11.7 The learned Chief Metropolitan Magistrate, by order dated 22.10.2018 took cognizance of the complaint, and issued summons to the petitioner as well as other accused.

11.8 In the adjudication proceedings, the Adjudicating Authority passed an order dated 28.06.2019 holding that the petitioner had



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allowed her license to be used by her father to import firearms in her name, using bogus invoices to suppress the true value of the arms imported without the recommendation of NRAI. The Adjudicating Authority held the petitioner liable for penalty under Section 112 of the Customs Act and imposed a penalty of ₹50,000/-. The petitioner filed an appeal before the Commissioner of Customs (Appeals) and the Appellate Authority remanded the matter for fresh adjudication.

11.9 The Customs Department through the Principal Commissioner of Customs (Preventive), New Delhi filed an appeal against the order of the Appellate Authority before the learned Customs, Excise and Service Tax Appellate Tribunal, New Delhi, which was dismissed by order dated 26.05.2023.

11.10 On 09.09.2021, the petitioner filed a petition (Crl.M.C. No.2141/2021 captioned ***Disha Langan v. Directorate of Revenue Intelligence***) for quashing the criminal complaint filed by the DRI for offences punishable under Sections 132, 135(1)(a) and 135(1)(b) of the Customs Act as well as impugning the summoning order dated 22.10.2018 issued by the learned CMM.

11.11 It was the petitioner's case that she could not be punished for the alleged offences committed by her father and no case was made out against her.

11.12 The petitioner was successful and by a judgment dated 18.08.2023, this Court quashed the criminal complaint qua the



petitioner. However, the Court clarified that the proceedings and the criminal complaint against the remaining accused persons shall continue in accordance with law.

SUBMISSIONS OF COUNSEL

12. Ms Anjali Jha Manish, the learned counsel appearing for the petitioner submitted that the petitioner had not made any false statement or attempted to conceal any information. She stated that the petitioner's response to the query in the application form was relevant to the information required. She submitted that the petitioner was required to disclose whether she has been arrested, prosecuted, kept under detention or bound / convicted by a court of law for any offence. She stated that since the petitioner was not arrested, kept in detention or convicted by any Court, she had responded in the negative. She earnestly contended that the attestation form was more explicit and had clearly articulated the information sought from the petitioner and, therefore, the petitioner had made a full disclosure of the criminal complaint pending against her as well as further proceedings in that regard.

13. She contended that no allegation of suppression of information could be levelled against the petitioner as the verification form was not clear as to the disclosure required. She submitted that a reading of the application form indicated that the petitioner was required to disclose information regarding whether she had been arrested, kept under detention or convicted by a court of law. The inclusion of the



word ‘prosecution’ in the context was vague. She submitted that petitioner may have misunderstood the specific nature of the query but there was no intention to suppress any fact. She contended that this was also clear from the disclosure made by her in her attestation form.

14. According to Ms. Manish, the present case is squarely covered by the decisions of the Supreme Court in *Umesh Chandra Yadav v. Inspector General and Chief Security Commissioner, Railway Protection Force, Northern Railway, New Delhi & Ors.*¹ and *Daya Shankar Yadav v. Union of India & Ors.*² She also referred to the decisions in *Secy., Department of Home Secy., A.P. & Ors. v. B. Chinnam Naidu*³, *State of West Bengal & Ors. v. Mitul Kumar Jana*⁴, and *Mohammed Imran v. State of Maharashtra & Ors.*⁵

15. Dr. Amit George, learned counsel appearing for the DHC countered the aforesaid submissions. He also pointed out that the petitioner was aware that her prosecution for offences under the Customs Act had a bearing on the process for her selection to the DJS. He referred to the application [Crl.M.A. No.24451/2022] dated 22.11.2022 for early hearing filed by the petitioner in Crl.M.C. No.2141/2021. In the said application, she had stated that pendency of the complaint would “invariably bring negative impression upon the Petitioner’s Application in the Judicial Services Examination”. He

¹ 2022 SCC OnLine SC 299

² (2010) 14 SCC 103

³ (2005) 2 SCC 746

⁴ 2023 SCC OnLine SC 1070

⁵ (2019) 17 SCC 696



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contended that it is not open for the petitioner to contend that she was not required to disclose that she was being prosecuted in a criminal complaint instituted by DRI.

REASONS & CONCLUSION

16. As noticed at the outset, the controversy involved in the present petition is not whether the petitioner is liable to be prosecuted for offences punishable under Sections 132, 135(1)(a) and 135(1)(b) of the Customs Act. The petitioner's candidature was directed to be revoked by the DHC solely on the ground that she had concealed the information regarding the prosecution launched against her by the DRI.

17. It is also relevant to note that there is no dispute that the petitioner was required to make a true and correct disclosure in her online application form. The application form required the petitioner to, *inter alia*, certify that all statements and information submitted by her in the application form were true, complete and correct. And, in the event any information was found to be false or incorrect, her candidature would automatically stand cancelled. The relevant declaration made by the petitioner in her application form reads as under:

“3. All statements made and information given by me in this application are true, complete and correct to the best of my knowledge and belief. In the event of any information or part of it being found false or incorrect before or after the exam / interview or appointment, action can be taken



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against me by the High Court of Delhi and my candidature/appointment shall automatically stand cancelled/repatriated/terminated.”

18. In view of the above, Ms. Manish, the learned counsel appearing for the petitioner, readily conceded that if the statement made in the application form is found to be false or incorrect, the petitioner’s candidature for appointment would stand cancelled. However, according to her, the petitioner’s response to the query in the application form was apposite. She contended that the petitioner had not made any false statement or attempted to conceal any information.

19. It is settled law that suppression of material information or making a false statement particularly in respect of queries relating to prosecution and conviction would have a material bearing on the suitability of a candidate. In *Kendriya Vidyalaya Sangathan & Ors. v. Ram Ratan Yadav*⁶, the Supreme Court had made it abundantly clear that neither the gravity of the offence nor the fact that the criminal proceedings had ultimately culminated in acquittal of the candidate, would be relevant in considering whether a candidate who has suppressed information while applying for the post was suitable for continuing as a probationer. In the said case, the candidate had applied for the post of a Physical Education Teacher. He was asked to respond to the following queries:

⁶ (2003) 3 SCC 437



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“Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law of any offence?

Is any case pending against you in any court of law at the time of filling up this attestation form?”

and to which he had responded in the negative.

20. The candidate in the said case was accused in a criminal case registered under Sections 323, 341, 294, 506 read with Section 34 of the Indian Penal Code, 1860 (hereafter ‘**IPC**’). The State had subsequently withdrawn the said case. In the aforesaid context, the Supreme Court held as under:

“**11.** It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506 read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as “No” is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of BA, BEd and MED degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the



case that columns 12 and 13 are left blank. The respondent could not have said “No” as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.”

[Emphasis Added]

21. In ***Yogeeta Chandra v. The State of Uttar Pradesh & Anr.***⁷, the candidate had applied for the post of a Judicial Officer and was required to respond to the following query:

“Did you ever figure as an accused or a complainant in any criminal case? If so, give particulars with result.”

22. The candidate replied in the negative. At the material time, the candidate was arraigned as an accused in a criminal case under Sections 323, 524, 506, 542 and 427 of the IPC. The closure report in the said case was subsequently filed. In the aforesaid context, the Court observed as under:

“6. In the application form, the applicant, who, as such, applied for the post of a judicial officer was required to disclose certain facts, more particularly, the facts stated in Clause 18 of the Application Form and non-disclosure of true facts and not only that but saying “No” can certainly be said to be suppression of material facts. It was immaterial whether

⁷ SLP (Civil) Nos. 4860-4861/2019



there was a closure report or acquittal or conviction. At this stage, it is required to be noted that the particulars which were asked, whether “did you ever figure as an accused or a complainant in any criminal case? If so, give particulars with result.” Therefore, the factum of figuring the name either as an accused or a complainant in any criminal case was required to be disclosed with full particulars and with result. Therefore, the appellant cannot take the plea and/or defence that as a Closure Report was filed in the complaint in which she was the accused, the same was not required to be disclosed. On the basis of the nature of the allegations in the complaint either as an accused or a complainant, it is ultimately for the employer to take a conscious decision whether to appoint such a person or not. What could be considered while actually appointing a person depends upon the facts and circumstances of each case and it is ultimately for the employer to take a conscious decision. The post which was applied by the appellant was a very important post of judicial officer and therefore, it was expected of a person who applied for the judicial officer to disclose the true and correct facts and give full particulars as asked in the application form. If in the application form itself, she has not stated the true and correct facts and suppressed the material facts, what further things can be expected from her after she was appointed as a judicial officer.”

23. In *R. Radhakrishnan v. Director General of Police & Anr.*⁸, the appellant was accused in a criminal case under Section 294(b) of the IPC. He was arrested and released on bail. The appellant was provisionally selected for the post of Fireman on 05.01.2000. Thereafter, he submitted a Verification Roll. He was called upon to respond to the following queries:

“Have you ever been concerned in any criminal case as accused?”

⁸ (2008) 1 SCC 660



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Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with CC No. and court.”

24. He responded to the above query in negative. In view of the above, the appellant was not selected. He filed an application before the Tamil Nadu Administrative Tribunal. The Tribunal allowed his application on the ground that he had been acquitted in the criminal case and therefore, should not have been denied the appointment to the post of Fireman. However, the Madras High Court set aside the said order in the writ petition filed by the respondent authorities principally on the ground that there was no dispute that the appellant had suppressed the fact regarding his involvement in a criminal case. The Supreme Court rejected the appeal against the said decision of the Madras High Court. The Supreme Court also observed “*the appellant had intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services.*” The Supreme Court held that the appellant had suppressed the material fact and therefore the question of exercising equitable jurisdiction in his favour would not arise.

25. The decision in the case of ***Umesh Chandra Yadav v. Inspector General and Chief Security Commissioner, RPF, Northern Railway & Ors.*** (*supra*) is of little assistance to the petitioner. In that case, the Supreme Court had noted that the appellant was a juvenile when the criminal case was registered against him. He was discharged while he



was a juvenile. The selection process had commenced a decade later. The Supreme Court further noted that the peculiar facts had not been noticed by the authority while exercising its judicious discretion to determine whether there was any suppression, which disentitled the appellant for continuation of service.

26. Similarly, the decision in the case of ***Mohammed Imran v. State of Maharashtra & Ors.*** (*supra*) has no application to the facts of the present case. In that case, the applicant's appointment was cancelled on account of the allegation that he was involved in an offence involving moral turpitude. The applicant had duly disclosed the pending case in his application. This is apparent from the fact that it was the respondent's contention that the disclosure of the alleged involvement in the attestation form could not be considered as sufficient to ignore his conduct involving moral turpitude. The Supreme Court found that the allegation that applicant's conduct involved moral turpitude was not established. The accused was not the prime accused charged with an offence punishable under Section 376 IPC. He was alleged to be travelling in an auto rickshaw in which the prime accused was also travelling. The appellant was also acquitted in the said case. As noticed above, the controversy in this case was not regarding non-disclosure in an application form but whether the applicant's conduct involved moral turpitude.

27. The decisions in ***Department of Home Secy., A.P. & Ors. v. Chinnam Naidu*** (*supra*) and ***State of West Bengal & Ors. v. Mithul***



Kumar Jana (*supra*) relied by the petitioner are not relevant in the given facts. In **Chinnam Naidu's** case, the candidate was required to respond to the following query:

“Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against.”

28. The applicant was accused in a criminal case registered under various provisions of the IPC and Andhra Pradesh Public Examination (Prevention of Malpractice and Unfair Means) Act, 1997. The Supreme Court held that the queries raised did not require the candidates to disclose their involvement in the case.

29. In **Mithul Kumar Jana's** case, the candidate was required to respond to the following query:

“Have you been arrested, detained or convicted by a court of any offence if the answer is 'yes' the full particulars of the Arrest or detention or conviction and the sentence should be given.”

30. The applicant was arraigned as an accused in a criminal case registered under Sections 147/149/447/323/506 of the IPC but he had not been convicted. The Courts held that the query raised did not require the candidates to disclose their involvement in the case.

31. In **Chinnam Naidu's** case, the candidate was merely required to disclose whether he was detained under a State/Central preventive detention laws or had been convicted. In **Mithul Kumar Jana's** case,



the candidate was required to disclose whether he was arrested, detained or convicted and not whether he was involved in a criminal case.

32. In *Avtar Singh v. Union of India & Ors.*⁹, the Supreme Court had examined the earlier decisions and summarized the conclusion as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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

⁹ (2016) 8 SCC 471



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.”

33. The aforesaid principles are required to be borne in mind when determining the question whether the decision of the DHC to revoke the petitioner’s candidature warrants any interference in these proceedings.

34. In the present case, there is no dispute that the petitioner was being prosecuted at the material time. Thus, the petitioner was required to respond in the affirmative to any query requiring her to disclose whether she was being prosecuted. The petitioner’s defence largely rests on the assertion that the information required under serial no.6 of the application form was not free from ambiguity. It is contended that the query is capable of being interpreted to mean whether the candidate had been arrested, prosecuted, and kept under detention or bound/convicted by a court of law. It is contended that the punctuation marks (commas) between the words arrest, prosecuted, and kept under detention were capable of being construed conjunctively.



35. Indisputably, if there is any ambiguity in the query, the benefit of doubt must be extended to the petitioner. The revocation of the petitioner's candidature is in the nature of a punishment for failure on her part to correctly disclose the information as asked for. The suitability of the petitioner's candidature for being appointed as a DJS is called into question on the premise that the petitioner made a false assertion when she responded in the negative to the information sought at serial no.6 of the application form. Clearly, such measures would be impermissible unless the information sought is in unambiguous terms lending a high degree of certainty to the conclusion that the petitioner's response to the query in question was false.

36. One of the principles as distilled by the Supreme Court in *Avtar Singh's* case is that for determination of whether there is suppression or furnishing of false information, the attestation /verification form has to be specific and not vague. Further, a candidate cannot be held accountable for not responding to a query which has not been specifically raised. In cases where action is taken on the basis of suppression or submission of false information as to a fact, it is necessary that the same must be specifically asked for.

37. The key question to be addressed is whether there is any ambiguity in the information as sought at serial no. 6 of the application form.

38. The case of *Daya Shankar Yadav v. Union of India & Ors.* (*supra*) squarely covers the controversy in the present petition. In that



case, the applicant had responded in the negative to the queries, which are undoubtedly similar to the disclosure required in the attestation form (not the application). The Supreme Court had accepted the contention that the queries under query 12(a) and 12(b) in English version – which are similar to the queries in this case – were confusing. The Supreme Court also highlighted that the object of a query is to ascertain the antecedents and the character of the candidate to consider his fitness and suitability for employment.

39. It is relevant to reproduce the query referred to as query 12(a) in English version, which was the subject matter of consideration by the Supreme Court in *Daya Shankar Yadav's* case. The said query reads as under:

“12 (a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections, or debarred from taking any examination/restricted by any university or any other education authority/institution?”

40. The Supreme Court held that the aforesaid query was capable of being interpreted in two ways. The Supreme Court noted that one way of reading the query would be whether the declarant had ever been arrested, or prosecuted, or kept in detention, or bound down/fined, or convicted by a court of law for any offence. And, another way of reading the query would be whether the declarant had undergone all of the events/processes; that is, arrested, prosecuted, kept in detention,



bound down, and convicted by a court of law for any offence. The Supreme Court also observed that the said query could not only confuse persons with basic knowledge, but may even confuse a person legally trained to answer “yes” only if he had been convicted and not otherwise. Paragraph 19 and 20 of the said decision are relevant and are set down below:

“19. The appellant submitted that in this case Questions 12(a) and (b) in the verification form were complex, ambiguous, tangled, involved and confusing for the following reasons:

(i) Question 12(a) involved three distinct and separate issues. The first relates to criminal prosecution and conviction. The second relates to disqualification by Public Service Commission. The third relates to debarment from examinations by universities/educational authorities.

(ii) The first part of Question 12(b) sought information relating to pendency of cases. The second part of Query 12(b) was not a query, but an instruction common to Queries (a) and (b), as to how further information should be given if the answer to the query was “yes”.

(iii) There was a variation between the English version and the Hindi version of Question 12(a) and the words “restricted by any university or other education institution”, in Query 12(a) appear to have been erroneously printed instead of the words “rusticated by any university or other educational institution”.

(iv) The second part of Query 12(b) as also the nature of Queries 12(a) and 12(b) contemplated the declarant employee to answer Queries 12(a) and (b) in monosyllable answers of “yes” or “no”; and only if the declarant answered Query 12(a) as “yes”, he had to give further particulars. If an employee answers Query 12(a) by the word “yes” it would really mean that he has been arrested, prosecuted, kept under



detention and bound down/fined/and convicted by a court of law even if he has not been subjected to all those processes.

(v) The first part of Query 12(a) is capable of being interpreted in two ways. One way of reading it is: “whether the declarant had ever been arrested, or prosecuted, or kept under detention, or bound down/fined, or convicted by a court of law for any offence”, thereby requiring the declarant to state whether he was subjected to any one of those events/processes. Another way of reading it is: “whether the declarant has been arrested, prosecuted, kept under detention, bound down/fined, and convicted by any court of law for any offence” thereby requiring the declarant to state whether he had undergone all those events/processes with reference to a criminal offence. The above questions can confuse not only a person with basic education, but may even confuse a person legally trained to assume that he has to answer “yes” only if he had been convicted and not otherwise.

20. We agree that the English version of the questions were involved and confusing. If the queries in 12(a) and (b) in this case had been split into separate questions with instructions, to provide clarity and precision, there would have been no room for controversy. For example, if Questions 12(a) and (b) had been split up into five separate questions with a note as follows, there would have been no confusion or ambiguity:

(a) Have you ever been arrested or prosecuted or kept under detention?

(b) Have you ever been bound down or fined or convicted by a court of law for any offence?

(c) Have you ever been debarred or disqualified by any Public Service Commission from appearing in any of its examinations or selections?

(d) Have you ever been debarred from taking any examination by any university, or expelled or rusticated from any educational institution?



(e) Whether any case is pending against you in any court or before any university/educational authority/institution at the time of filling up of this verification roll?

Note : If the answer to any of the above queries is “yes”, then give details.”

[Emphasis Added]

41. It is important to note that the Supreme Court did not grant any relief to the applicant as it found that there was no ambiguity in the queries as posed in Hindi and that the applicant had responded in Hindi. The Supreme Court also extracted the English translation of the queries in Hindi, which indicated that there was no ambiguity in regard to the said question. The English translation of query 12(a) in Hindi as extracted by the Supreme Court is set out below:

“Have you ever been arrested for any offence *or have been prosecuted or have been taken in custody or have been released on bail or have been fined/convicted by court of law or have been debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from taking any examination/restricted by any university or any other education authority/institution?*”

42. In view of the aforesaid decision, the information as sought in the present case – which is similar to the part of query 12(a), considered by the Supreme Court in ***Daya Shankar Yadav’s*** case – must be held to be capable of being misunderstood. The contention that the petitioner had understood the correct answer to the query to be in the affirmative, only if she was arrested and detained, cannot be rejected.



43. There is yet another reason to accept that the petitioner had responded in the negative to the query raised in the application form on account of misunderstanding the same to mean, whether, she had been arrested and prosecuted and kept under detention by a court of law for any offence. This is because in the attestation form filled by the petitioner, she clearly disclosed the criminal case pending against her as well as the petition preferred by her for quashing the said case.

44. It is also relevant to note that after the order in the present petition was reserved, the petitioner had filed an application for placing additional documents/facts. The petitioner had submitted that another candidate (hereafter referred to as 'ME') had a criminal case pending against him but had responded in the negative to the query in the application form and had been selected for appointment to Delhi Higher Judicial Service pursuant to Delhi Higher Judicial Service Examination - 2022. She submitted that the petitioner was similarly placed as ME. Whilst, no action was taken by the DHC against ME, the petitioner's candidature was cancelled. She contended that the decision to take steps against the petitioner was, thus arbitrary, and was liable to be set aside.

45. Pursuant to the order dated 03.11.2023 passed by this Court, Dr Amit George, learned counsel appearing for DHC had submitted a short note confirming the same. The note indicates that a complaint was also made in regard to the said candidate. However, DHC has not revoked the candidate's appointment but is awaiting the outcome of



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the criminal case. Concededly, no proceedings have been initiated against the said candidate for making a false statement in his application form. There is merit in the petitioner's contention that DHC cannot adopt a pick and choose policy whereby it proceeds against one candidate in similar facts while refraining from doing so in the case of another. However, in view of our conclusion that the query itself is capable of more than one interpretation, it is not necessary to examine whether the petitioner can derive any benefit from DHC not proceeding against ME.

46. The petition is, accordingly, allowed. The impugned communication cancelling the petitioner's candidature and recommendation for appointment to DJS, is set aside.

47. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 05, 2023

'gsr'/RK