

07.05.2024.
Court No.13
Item No. 12
ap

W.P.A. No. 12460 of 2024

**Sk. Hasanuzzaman
Versus
National Council of Science Museums & Ors.**

Mr. Sudipta Dasgupta,
Mr. Sondwip Sutradhar.

...For the petitioner.

Mr. Biswaroop Bhattacharya,
Mr. Victor Chatterjee,
Mr. Sourya Roy.

...For the respondent nos.1 to 4.

Mr. Soumya Majumder.

...For the respondent no.5.

1. The writ petitioner challenges an order dated 10th April, 2024 passed by the Senior Controller of Administration, Science City. By the impugned order, the writ petitioner's appointment as Technical Assistant "A", Computer Science in Science City, Kolkata was cancelled and withdrawn with immediate effect.

2. The Science City, Kolkata is a Unit of National Council of Science Museums under the Ministry of Culture, Government of India.

3. The brief facts of the case are that the petitioner was appointed as a Junior Peon by the Presidency University at Calcutta on 21st September, 2017 on a monthly remuneration of Rs.27000/-.

4. Pursuant to an advertisement published by the respondent Science City dated 2nd November, 2023,

the petitioner applied for the post of Technical Assistant “A” in the pay scale of 29200-92300 per month. The petitioner is in the OBC category.

5. It is an admitted position that the petitioner did not have no objection certificate from his existing employer, the Presidency University. In addition to the same, the petitioner made an incorrect statement in the application for the post of Technical Assistant “A” that he was not employed with any Government, Semi-Government, PSU or Autonomous Organizations. The petitioner applied directly and through the Presidency University.

6. The petitioner succeeded in the recruitment process to the Science City Museums. He was issued an offer of appointment on 15th March, 2024.

7. The Science City subsequently received no objection certificate from the Presidency University on 28th March, 2024. Having realized that the petitioner has suppressed facts and has violated Clause 6 of the recruitment notice, the offer of appointment of the petitioner was cancelled and withdrawn vide the said order dated 10th April 2024 with immediate effect.

8. Learned Counsel, Mr. Dasgupta, for the petitioner would argue that his client had never intended to mislead the respondents. He had not disclosed his engagement with Presidency University, as applying through the University would delay his application, and may be caught in “red tape”. The petitioner prays

for mercy for suppression of material facts which was not intended to cause any harm to the respondents. He, therefore, prays for leniency.

9. Per contra, the learned Counsel, Mr. Biswaroop Bhattacharya, for Science City Museum has vehemently opposed the prayer of the writ petitioner. He submits that non-disclosure of his present engagement with the Presidency College and a false statement made in the application that he was not employed with any public or private body, is fatal to the appointment itself. The said suppression would indicate the character of the petitioner. A person who makes a false statement at the time of entry into an organization, cannot be trusted.

10. Extensive reliance is placed on the decision of the Hon'ble Supreme Court of India in the case of ***Avtar Singh – Vs. – Union of India & Ors.*** reported in ***(2016) 8 Supreme Court Cases 471***, particularly paragraphs 34, 35 and 36 thereof. Reliance is also placed on the decision of the Hon'ble Supreme Court of India in the case of ***Rajasthan Rajya Bidyut Prasaran Nigam Limited – vs. – Anil Kanwariya*** reported in ***(2021) 10 Supreme Court Cases 136***, particularly paragraphs 6 and 14 thereof.

11. Having heard the Counsels for the respective parties at length, this Court notices that the ***Avtar Singh (supra)*** decision was rendered in the backdrop of certain specific facts.

12. The three judge Bench decision was on a reference to resolve conflicting views in several two judge bench decisions. The first paragraph of the decision is set out hereinbelow:-

“ARUN MISHRA, J.— The cases have been referred to for resolving the conflict of opinion in the various decisions of the Division Benches of this Court as noticed by this Court in *Jainendra Singh v. State of U.P.* [*Jainendra Singh v. State of U.P.*, (2012) 8 SCC 748 : (2012) 2 SCC (L&S) 754] The Court has considered the cleavage of opinion in various decisions on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case. A Division Bench of this Court has expressed the opinion on merits while referring the matter as to the various principles to be borne in mind before granting relief to an aggrieved party. Following is the relevant observation made by a Division Bench [*Jainendra Singh v. State of U.P.*, (2012) 8 SCC 748 : (2012) 2 SCC (L&S) 754] of this Court : (*Jainendra Singh case* [*Jainendra Singh v. State of U.P.*, (2012) 8 SCC 748 : (2012) 2 SCC (L&S) 754] , SCC pp. 761-62, paras 29-31)”

13. The aforesaid decision was restricted to aforesaid issue and the conclusion in para 38 of the judgment are specific to instances of suppression of Criminal Cases and or prosecution in Criminal Cases.

14. Even in the decision of ***Rajasthan Rajya Bidyut Prasaran Nigam Limited*** (supra), the

suppression was of criminal proceedings under Section 143, 341 and 323 of the Indian Penal Code in which charge-sheet was filed against the applicant.

15. The ratio in the aforesaid cases would have no application to the facts of the case at hand.

16. There can be no two opinions that a person who applies for any job and more so with a government body is required to be truthful, clean and make all necessary disclosures. Any suppression or mis-statement or misleading information in the application could reflect upon the character of the employee concerned. The State is not obliged to engage persons of doubtful character.

17. However, the nature of the suppression by an employee must be considered and carefully scrutinized. Not every suppression by the employee should ipso facto lead to termination or cancellation of an appointment made. This, however, does not mean and is not aimed at encouraging any suppression by any employee or a potential employee or applicant for a job. This Court is inclined to test the nature of the suppression and/or mis-statement made by the petitioner in the facts of the instant case.

18. Counsel for the Presidency College, has in no uncertain terms, stated that the petitioner's track record at the College from 2017 till 2024 was very good. There was no complaint against him. He worked diligently.

19. Suppression in the application before the Science City Authority is twofold.

- (i) The petitioner was not working with any organization whereas he was engaged with the Presidency University which is an Autonomous Body recognized by the University Grant Commission.
- (ii) The petitioner has in aid of the suppression, chosen to apply directly and not through the Presidency University as mandated under the recruitment notice. The suppression by the writ petitioner, as above, is definitely undesirable. The petitioner ought to have come clean before his potential new employer.

20. What however needs to be scrutinized in the instant case is whether the suppression is such that would completely negate the character of the writ petitioner and render him a dishonest person, who would be a liability to the Science City Museum.

21. Although the **Avtar Singh (supra)** case was concerned with suppression of criminal proceedings only, the Supreme Court of India went on to observe as follows at paragraphs 34, 35 and 36:-

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be

based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.”

22. The test to be applied by the employer while dealing with a case of suppression of criminal proceedings is summarized at paragraph 38.

“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 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.”

23. It is, therefore, clear and evident from the dicta laid down above in the case of **Avtar Singh (supra)** that not every suppression even of criminal proceedings and prosecution, would ipso facto render the appointment void. It must essentially be seen as to whether the suppression is such that would put a serious question mark on the character of the applicant. There is clearly no straight-jacket formula or equation. Each case of suppression must be assessed on its own merits. The employer has to apply his mind and take a decision accordingly.

24. The facts in the **Rajasthan Rajya Bidyut Prasaran Nigam Limited** case (*supra*) are those relevant to the dicta in **Avatar Singh case (supra)**. The said decision would therefore not assist the respondents.

25. Indeed at paragraph 14 of the **Rajasthan case (supra)** it has been held that suppression of criminal proceedings or giving a false declaration could lead to a question of trustworthiness of the employee or the

applicant in question. Indeed it has also been held that it is the discretion of the employer to decide the consequence of such suppression and that an employer cannot be forced to accept any such employee pursuant to such suppression. It is therefore necessary for an employer to apply his mind and decide on a case to case basis whether the suppression of even criminal proceedings would expose the employer to any uncertainty.

26. Referring to a number of decisions not applying the dicta of ***Avtar Singh*** (supra) correctly, recently the Supreme Court in the case of ***Satish Chandra Yadav – Vs. – Union of India*** reported in ***(2023) 7 Supreme Court Cases 536***, went on to clarify the law on the subject. At paragraphs 91, 92 and 93, the law on the subject has been summarized.

“91. Thus, this Court in *Mohd. Imran case* [*Mohd. Imran v. State of Maharashtra*, (2019) 17 SCC 696] took the view that although employment opportunity is a scarce commodity in the present times being circumscribed within limited vacancies yet by itself may not suffice to invoke sympathy for grant of relief where the credentials of a candidate may raise any question regarding his suitability, irrespective of eligibility. However, at the same time, this Court observed that there should not be any mechanical or rhetorical incantation of moral turpitude to deny appointment in a government service simpliciter which would depend on the facts of each case. The judicial philosophy flowing through the mind of the Judges is that

every individual deserves an opportunity to improve, learn from the past and move ahead in life for self-improvement. To make past conduct, irrespective of all considerations, may not always constitute justice. It would all depend on the fact situation of the given case.

92. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after the larger Bench decision in *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] different courts have enunciated different principles.

93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

93.1. Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials — more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. (See *Raj Kumar* [*State v. Raj Kumar*, (2021) 8 SCC 347 : (2021) 2 SCC (L&S) 745])

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open

to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc. has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

93.4. The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

93.5. The Court should inquire whether the authority concerned whose action is being challenged acted mala fide.

93.6. Is there any element of bias in the decision of the authority?

93.7. Whether the procedure of inquiry adopted by the authority concerned was fair and reasonable?"

27. It is clear from the above, every individual deserves an opportunity to improve and learn from his past mistakes. "Every saint has a past and every sinner has a future". Applying the aforesaid dicta, which summarized all the decisions and referring to and following the case of **Avtar Singh (supra)**, in the case at hand, the petitioner can at best be treated as a person, who only suppressed his previous

employment. The petitioner was anxiously seeking a higher level of income which is quite normal. Anybody would seek a better life with better financial resources.

28. The petitioner was admittedly a Junior Peon with the Presidency University. While working as such, with his limited income, he has enhanced his skills and qualifications. He thus succeeded in the post of Technical Assistant "A" in Computer Science with the Science City Museum. The petitioner must have worked hard to acquire knowledge of computers even while working full time as a Junior Peon.

29. In the backdrop of the above, while the suppression of any fact is undesirable, the suppression by the petitioner of his previous employment cannot be considered so very serious as to question his entire character and render him untrustworthy.

30. The Science City Museum has clearly not applied the dicta laid down by the Supreme Court set out above and could have given an opportunity to the petitioner to clarify his suppression.

31. The writ petitioner through his Counsel has tendered unconditional apology before this Court for such suppression and has also clarified his position to the respondent Science City.

32. In the light of the above discussions, this Court is of the view that the cancellation of the petitioner's appointment for suppression of fact by the petitioner is

extremely harsh. The respondent Science City Museum has acted mechanically in terms of the recruitment notification.

33. In the facts and circumstances of the case, this Court is of the clear view that the suppression by the petitioner could at best be termed as foolishly done in anxiety of missing the dead line for his application. The writ petitioner is warned against any such suppression in future.

34. The impugned order dated 10th April, 2024 is, therefore, set aside. The writ petitioner shall pay costs of a sum of Rs.5,100/- (Rupees five thousand one hundred only) to “Bharat Sevashram Sangha” for the indignation caused to by the respondents.

35. The writ petition is allowed and disposed of.

36. There will be no order as to costs.

37. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

38. Counsel for the respondent nos.1 to 4 prays for stay of operation of this Court’s order.

39. The same is considered and declined.

40. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)