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W.P.No.10950 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10950 of 2017

and

W.M.P.Nos.11920 to 11922 of 2017

Inderjeet Seharawat

... Petitioner

Vs.

1. The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai – 600 054.

2. The Government of India,
Represented by the Secretary to Government,
Ministry of Defence,
Indian Ordnance Factories,
Ordnance Clothin Factory,
Avadi, Chennai – 600 054.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent comprised in its communication dated 06.04.2017 bearing No.505/Estt/DR/2017 and to quash the same as being arbitrary and illegal, and consequently direct the first respondent to appoint the petitioner to the post of Teacher (Primary) in the Ordnance Clothing Factory School, Avadi without pressing into service the 'Warning' Clause contained the PVR Form submitted by the petitioner.

For Petitioner

: Mr.Sanjay
for Mr.Rahul Balaji



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For Respondents : Mr.B.Sudir Kumar, Standing Counsel

ORDER

In response to an advertisement dated 26.09.2020 issued by the respondents calling for applications for filling up 11 posts of Teacher (Primary), the petitioner submitted an application and participated in the recruitment process. In the said recruitment process, the petitioner emerged as a successful candidate and a list of ten successful candidates was prepared. However, thereafter in the police verification it has come to the notice of the respondents that the petitioner was earlier involved in a criminal case and he was also arrested in connection with the said criminal case on 15.01.2010, but the petitioner has suppressed the said information while submitting the PVR Form along with the application submitted by him to participate in the recruitment process. Therefore, the respondents have disqualified the petitioner for selection and issued the impugned order dated 06.04.2017. Aggrieved by the same, the petitioner approached this Court by filing the present Writ Petition.

2. It is not in dispute that the petitioner was involved in the criminal case registered under Sections 323, 324, 34 and 506 of IPC and that the



petitioner was arrested in connection with the said criminal case on 15.01.2010. It is also not in dispute that the petitioner was acquitted in the said criminal case on 07.08.2015 on the ground of benefit of doubt.

3. Whether a candidate, who suppressed about his involvement in a criminal case, while submitting an application to participate in the recruitment process can itself be a ground to exclude the said person from participating in the recruitment process or to remove such person from service etc., have been considered by a Three Judge Bench of Hon'ble Apex Court in the case of ***Avtar Singh -vs- Union of India*** and others reported in **(2016) 8 SCC 471**. In the said decision, the Hon'ble Apex Court has formulated certain guidelines that are required to be followed in such circumstances at Paragraph No.38 of the said Decision. Paragraph No.38 of the said decision reads 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



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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



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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



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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,



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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.”

4. From the conclusions that are arrived by the Hon'ble Apex Court, it is evident that it is not a thumb rule that in all the cases, where candidates were involved in a criminal case or where there was suppression about their involvement in a criminal case or in case of a false information, they should be disqualified and their claims have to be rejected on that sole ground, but the Hon'ble Apex Court has carved out certain circumstances and the manner in which the candidature of such candidates is required to be considered.

5. From the above, it is evident that Paragraph No.38(4), as extracted above covers a case of suppression or furnishing false information of involvement in a criminal case, where conviction or acquittal had already been recorded before filing the application/ verification form and such fact later comes to the knowledge of the employer. Under those circumstances, the Hon'ble Apex Court suggested different recourses to be adopted depending



upon the facts of each case. Those recourses are clearly mentioned at Paragraph Nos.38.4.1 to 38.4.3. Out of the above paragraphs, the facts of the case on hand would fall under Paragraph No.38.4.3. In terms of said Paragraph No.38.4.3, if an acquittal had been recorded on a technical ground and it is not a case of clean acquittal or benefit of reasonable doubt has been given, the employer may have to consider all relevant facts available as to antecedents and take appropriate decision, as to continuance of the employee or not. In the instant case, it is of issuing an appointment order to the petitioner pursuant to a selection already made.

6. From the impugned order, it is noticed that it is only on the ground of suppression of fact of involvement of the petitioner in a criminal case or on the ground of furnishing a false information, the candidature of the petitioner was rejected. But the case of the petitioner was not considered as required under Paragraph No.38.4.3 of the *Avtar Singh's* as noted herein above and therefore, in the considered view of this Court, it is a fit case that can be remanded back to the respondents for reconsidering the case of the petitioner afresh in the light of the law laid down by the Hon'ble Apex Court in the *Avtar Singh's* case as noted herein above.



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7. Accordingly, the impugned order dated 06.04.2017 bearing No.505/Estt/DR/2017 is set aside and the matter is remanded back to the first respondent for considering the case of the petitioner afresh duly taking into consideration the conclusions recorded by the Hon'ble Apex Court in the *Avtar Singh's* as noted herein above at Paragraph Nos.34.4.1 to 34.4.3 and pass orders afresh.

8. In case if the vacancies that were notified under the advertisement were already filled in, the respondents may not have to disturb the candidates, who were already appointed. In case if any of the vacancies notified under the advertisement in question are available, the respondents may consider the case of the petitioner for appointment in any one of the said vacancy or in any of the vacancies available otherwise as on date and pass appropriate orders as directed herein above.

9. Accordingly, the Writ Petition stands disposed of. No costs. Consequently the connected Miscellaneous Petitions, if any, shall stand closed.



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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The General Manager,
Ordnance Clothing Factory,
Avadi, Chennai – 600 054.
2. The Secretary to Government of India,
Ministry of Defence, Indian Ordnance Factories,
Avadi, Chennai – 600 054.



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MUMMINENI SUDHEER KUMAR, J.

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