

CWP-2281-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-2281-2024
Date of Decision: 02.02.2024

Kuldeep

...Petitioner

Versus

State Bank of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Anurag Goyal, Advocate and
Ms. Shallu Aggarwal, Advocate for the petitioner
Ms. Madhu Dayal, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of notice dated 06.10.2022 (Annexure P-2) and order dated 29.12.2023 (Annexure P-5) whereby he has been terminated from service.
2. The petitioner pursuant to advertisement dated 05.10.2021 (Annexure P-1) applied for the post of Probationary Officer. He cleared written test as well as interview and medical. The petitioner on 18.04.2022 joined respondent-State Bank of India as Probationary Officer. The respondent-bank after joining of petitioner vide impugned notice dated 06.10.2022 (Annexure P-2) called upon him to show cause as to why action should not be initiated against him and why his services should not be terminated for concealment of material facts. The said notice was issued on

the ground that petitioner has not disclosed his criminal antecedents in the application form as well as at the time of interview. The notice dated 06.10.2022 is reproduced as below:-

“This has reference to Advertisement No.CRPD/PO/2021-22/18 dated 05.10.2021 pursuant to which you were issued “Offer of Appointment” vide our letter no. HR/RC/18 dated 11.04.2022 and you joined the Bank as Probationary Officer on 18.04.2022.

2. *In this connection, we advise that your appointment/confirmation in services of the Bank is subject to satisfactory report from District/Police Authorities regarding your character and antecedents as has been mentioned in “Offer of Appointment” dated 11.04.2022 issued to you. During the process of verification of your character & antecedents, it has come to our notice that there were/are some criminal cases registered against you and were/are pending in Courts of law. However, you had not disclosed anything about these cases to the Bank, either at the time of applying for the post or at the time interviews, or at the time of joining the Bank.*

3. *In this connection, your kind attention is invited to terms & conditions stipulated in the referred advertisement which reads as under:*

“1. ELIGIBILITY CRITERIA-1(C)- Other.

(ii) Candidates against whom there is/are adverse report regarding character & antecedents, moral turpitude are not eligible to apply for the post.”

“16. GENERAL INFORMATION:

(XX) At the time of interview, the candidate will be required to provide details regarding criminal case(s) pending against him/her, if any. The Bank may also

conduct independent verification, inter alia, including verification of police records etc. The Bank reserves to deny the appointment depending upon such disclosures and/or independent verification”

“18- Disclaimer:

In case it is detected at any stage of recruitment that a candidate does not fulfill the eligibility norms and/or that he/she has furnished any incorrect/false information or has suppressed any material fact(s), his/her/their candidature will stand cancelled. If any of these shortcomings is/are detected even after appointment, his/her services are liable to be terminated.”

4. Accordingly, it is apparent that there is/are adverse report against you regarding character and antecedents, and material information/facts have been concealed by you from the Bank. In view of the abovesaid, please arrange to explain why action should not be initiated against you and your services should not be terminated for concealment of the material facts.”

3. The petitioner filed reply to aforesaid show cause notice pleading that he has not concealed any material information. The criminal cases have already been compromised or set aside. The respondent-bank did not agree with the submission of the petitioner and vide impugned order dated 29.12.2023 has terminated him holding that he has secured appointment by concealing material information/facts regarding the criminal cases. The petitioner was not even eligible to apply for the post and it is apparent from the report of District Police that his antecedents are not satisfactory. The relevant extracts of impugned order read as:

“5. During the process of verification of your character & antecedents, it has come to notice that there were are some

criminal cases registered against you and were/are pending in the Courts-of law. However, you had not disclosed anything about these cases to the Bank either at the time of applying for the post or at the time of interview or at the time of joining the Bank.

6. *In my view, deliberately suppressing the fact of multiple pending cases assumes significance as the Candidate against whom there is/are adverse report regarding character & antecedents was not even eligible to apply for the post as per above mentioned Advertisement dated 05.10.2021. It is apparent from the adverse report from District/ Police Authorities that your character and antecedents is not satisfactory and you have also concealed the material information/ facts from the Bank and did not disclose the pendency of criminal cases against you and rather furnished incorrect/false statement about the same at every stage in order to secure the appointment.*

7. *The Bank provided you an opportunity to explain the reasons for suppressing the material information/facts, however you did not submit any satisfactory reply.*

8. *The appointment in Bank requires utmost good faith and truthfulness from an employee. In my view, the continuation of appointment of a person against whom multiple criminal cases were/are pending and who deliberately suppressed the fact of pendency of criminal cases from the Bank and gave false statement in order to get the appointment in violation of the terms and conditions of advertisement as well as joining formalities, may not be proper.*

9. *Therefore, in view of abovesaid, I am of the considered view that your appointment is liable to be cancelled as the same has been secured by concealing the material information/facts regarding criminal cases Accordingly, you are hereby terminated from Bank's services with immediate effect.”*

4. Mr. Anurag Goyal, Advocate submits that there was no concealment of fact on the part of the petitioner. The petitioner was implicated in an FIR dated 08.05.2016 under Sections 342, 323, 506/34 of Indian Penal Code, 1860 (for short '**IPC**') and he was acquitted vide judgment dated 08.03.2018 (Annexure P-7), thus, on the date of filing application, the said criminal case was not pending. The petitioner was implicated in two complaints filed under Sections 138 of Negotiable Instruments Act, 1881 (for short '**1881 Act**'). He was declared proclaimed person in the aforesaid complaints. FIR No.55, 291 and 292 were registered on 20.03.2020, 19.12.2022 and 19.12.2022 respectively under Section 174A of IPC. The petitioner was declared proclaimed offender as well as 2 FIRs under Section 174A IPC were registered after filing of application for appointment. The petitioner had applied for the post of Probationary Officer. The petitioner had not joined Armed Forces where parameters for declaration of antecedents are strict. The case of the petitioner needs to be sympathetically considered.

5. Notice of motion.

6. Ms. Madhu Dayal, Advocate, who on advance notice is present in Court, accepts notice on behalf of the respondents.

7. With the consent of both sides, the matter is taken up for final adjudication.

8. The conceded position emerging from the record is that the petitioner was implicated in two FIRs. First FIR was registered under Sections 342, 323, 506, 34 of IPC and second FIR No.126 dated 09.06.2016 was registered under Section 279, 337 & 338 of IPC. In the first FIR, he was

acquitted prior to filing application for the post in question, however, in the second FIR, he was acquitted after appointment i.e. on 19.07.2022. Two complaints under Section 138 of 1881 Act were filed prior to filing of the aforesaid application. He was declared proclaimed offender. 2 FIRs under Section 174A of IPC were registered after joining of petitioner on the post of Probationary Officer and one FIR was registered prior to his date of joining. The petitioner, as per advertisement, was supposed to disclose his antecedents.

9. A three Judge Bench of Supreme Court in ***Avtar Singh v. Union of India, (2016) 8 SCC, 471*** has adverted with question of appointment of a candidate who was/is involved in a criminal case. The Court after noticing plethora of judgments has culled out legal position as below:

“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 recourse 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.”*

[Emphasis Supplied]

10. A two Judge Bench of Supreme Court in ***Satish Chandra Yadav v. Union of India and others., 2023 (7) SCC 536*** has adverted with the question of appointment of a candidate against whom criminal case is pending/or was instituted. The Court has laid down guidelines as below:

“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?"*

[Emphasis Supplied]

11. In the case in hand, the petitioner concededly, neither disclosed criminal antecedents at the time of filing application nor at the time of interview. The claim of the petitioner is that he had already been acquitted in FIR under Sections 342, 323, 506, 34 of IPC prior to filing application and complaints under Section 138 of 1881 Act as well as subsequent proceedings arising therefrom are quasi-criminal in nature, thus, non-declaration of antecedents can be condoned. It is not case of the petitioner that he was unaware of his antecedents. He was very much aware of the cases already adjudicated or pending against him. The petitioner as per his wisdom decided not to disclose cases pending against him. It is apt to notice that petitioner was acquitted in FIR No.126 dated 09.06.2016 vide judgment dated 19.07.2022 i.e. after the appointment with the respondent-bank.

12. The Apex Court in *Avtar Singh (supra)* in Paragraph No.38.5 has held that where an 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. In Paragraph No.38.7, it has been held that in case of deliberate suppression of fact, an employer may pass appropriate order cancelling candidature or terminating services. The similar observation has been made by Supreme Court in *Satish Chandra Yadav (supra)*. Case of the petitioner is squarely covered by aforesaid judgments. Had the petitioner disclosed his antecedents, this Court could consider nature of criminal cases or their status, however, the petitioner as per his wisdom had decided not to disclose his antecedents. The act of the petitioner comes in the teeth of afore-cited judgments of the Apex Court.

13. In the wake of above discussion & findings and following the judgments of Apex Court in *Avtar Singh (supra)* and *Satish Chandra Yadav (supra)*, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

02.02.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>