2024:PHHC:072337-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA NO.1183 OF 2024 (O&M)

DATE OF DECISION : MAY 13, 2024

Kuldeep **…Appellant**

Versus

The State Bank of India and another **…Respondents**

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Pankaj Nanhera, Advocate,
For the appellant.

Ms. Madhu Dayal, Advocate,
For the respondent-Bank.

<u>LAPITA BANERJI, J.</u>

<u>CM-2845-2024</u>

Application for condoning the delay of 65 days in filing the present appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant. Delay of 65 days in filing the appeal is hereby condoned.

CM stands disposed of.

<u>LPA-1183-2024</u>

Consideration in the present letters patent appeal is to a judgment and order dated February 02, 2024 passed by an Hon'ble Single Judge of this Court in CWP No. 2281 of 2024 "***Kuldeep v. State Bank of India and another***". The Hon'ble Single Judge dismissed the writ petition by refusing to set-aside the notice dated October 06, 2022 (Annexure P-2) whereby the appellant had been asked to show-cause, and the order dated December 29, 2023 (Annexure P-5), whereby the appellant had been terminated from the service.

2. The facts of the present appeal are narrated herein below:-

i) Pursuant to an advertisement dated October 05, 2021, the appellant applied for the post of Probationary Officer with the State Bank of India-respondent No.1.

ii) Upon clearing the written test, interview and medical test, the appellant joined the respondent bank on April 18, 2022. Vide impugned notice dated October 06, 2022 issued by the Assistant General Manager (L&D)/respondent No.2, the appellant was directed to show cause as to why action should not be initiated against him and his services be not terminated in view of concealment of material facts/information regarding his character and the antecedents.

iii) It was noted in the impugned notice that against Column No.17 of his bio data-cum-attestation form relating to the information of particulars of cases pending against the candidate in a court of law including the cases for non-payment of any loan from a bank or financial institutions, the appellant had responded in negative.

iv) Furthermore, it was noted that during the process of verification of the appellant's character and antecedents, it transpired that several criminal cases were registered against him and the same were even pending in a Court of law. However, the appellant neither disclosed anything about these cases to the respondent bank at the time of applying for the post nor at the time of interview nor at the time of joining the respondent bank.

v) Vide the impugned notice, the petitioner was intimated that a candidate against whom there was an adverse report regarding character and antecedents, moral turpitude he/she would be ineligible for the post.

vi) The appellant supplied a reply (Annexure P-3) to the impugned notice wherein he stated that as far as the pending criminal case registered vide FIR No.126 dated June 09, 2016, was concerned, the appellant had been discharged.

vii) Furthermore, the appellant being a layman had failed to understand the terms and conditions of the advertisement and therefore, should be allowed to continue to work on the said post.

viii) The respondent bank was not satisfied with the explanation given by the appellant and after referring to Clause (1) regarding Eligibility criteria, clause (16) regarding General Information and Clause (18) regarding Disclaimer decided to terminate the services of appellant. The said clauses are reproduced herein below:

> ***(1) ELIGIBILITY CRITERIA***:
>
> ***(A) Essential Academic Qualifications (as on 31.12.2021):***
>
> *Graduation in any discipline from a recognized University or any equivalent qualification recognized as such by the Central Government. Those who are in the final year/semester of their graduation may also apply provisionally subject to the condition that, if called for interview, they will have to produce proof of having passed the graduation examination on or before 31.12.2021. Candidates having integrated dual degree (IDD) certificate should ensure that the date of passing the IDD is on or before 31.12.2021. Candidates possessing qualification of Chartered Accountant or Cost Accountant may also apply.*
> *Xxx*
> ***16. GENERAL INFORMATION***:
> *xxx*
> *xx. At the time of interview, the candidate will be required to provide details regarding criminal cases(s) pending against him/ her, if any. The Bank may also conduct independent*

SHALINI BHATIA
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I attest to the accuracy and integrity of this document.

verification, inter alia, including verification of police records etc. The bank reserves right to deny the appointment depending upon such disclosures and/ or independent verification.
Xxx
***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. Decisions of bank in all matters regarding eligibility, conduct of written examinations/other tests/ selection would be final and binding on all candidates. No representation or correspondent will be entertained by the Bank in this regard."

ix) In the impugned termination order, Clauses 17 and 23 of the bio-data-cum-attestation form, duly filled by the appellant at the time of interview was also reproduced. The said clauses read as under:

"xxx

17. Particulars of cases peding against you in any court of law including case(s) for non-payment of any loan from Banks/ Financial Institutions.
Response: No
Xxx
23. I certify that particulars furnished above are true, correct and complete to the best of my knowledge and belief. I am not aware of any circumstance which might impair any fitness for employment in the Bank. I am willing to serve anywhere in India and in any other country. Further, I declare that I have never been convicted for any dowry offece under the Dowry Prohibition Act, 1961, or any criminal offence under any other law.
In case the particulars submitted by me are found to be false or not-true and/or suppression of material facts by me while submitting the form is revealed at a later date, the Bank shall have the right to cancel the appointment including the offer for appointment, as the case may be. The above details are submitted in reference of State Bank of India advertisement No. CRPD/PO/2021-22/18 dated 05.10.2021 and my online application thereto."

x) It was recorded in the impugned termination order, in unambiguous terms that adverse reports from the district/police authorities regarding the appellant indicated that the character and antecedents of the appellant were not satisfactory. Furthermore, the appellant did not disclose the pendency of criminal cases against him and had rather furnished incorrect/false statement about the same at every stage, in order to secure the employment.

xi) In the opinion of the employer-Bank, a bank employee was required to maintain utmost good faith and truthfulness and the appellant was unable to give any satisfactory reply to explain the reasons for suppression of material facts. The respondent bank, therefore, decided to terminate the services of appellant, with immediate effect.

3. The Hon'ble Single Judge while analyzing the facts noted that it was a conceded position emerging from the records that the appellant was implicated in two FIRs. The first FIR was registered on May 08, 2016 under Sections 342, 323, 506 and 34 of the Indian Penal Code (for short, "IPC") and he was acquitted vide judgment dated March 08, 2018 prior to filling of the application form in 2021, for the post in question. However, in the second FIR vide No.126 of June 09, 2016 for offences under Sections 279, 337, 338 of IPC, the appellant was acquitted on July 19, 2022 during his period of service.

4. The Hon'ble Single Judge also noted that the appellant was implicated in two complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act"). He was also declared to be a Proclaimed Offender in the aforesaid complaints. FIR Nos. 55, 291 and 292 were registered on March 20, 2020, December 19, 2022 and on December 19, 2022 respectively, under Section 174-A IPC on that account. The appellant was declared a Proclaimed Offender in the two FIRs under

Section 174-A IPC after joining the post of probationary officer and in one FIR prior to his date of joining.

5. The Hon'ble Single Judge heavily relied on a three judge bench judgment of Supreme Court in ***"Avtar Singh v. Union of India"****(2016) 8 SCC 471* by extensively quoting therefrom and a recent two bench judgment of Supreme Court in ***"Satish Chandra Yadav v. Union of India and others"*** *2023 (7) SCC 536*, to come to the finding that even where an employee had truthfully made a declaration about a concluded criminal case, the employer still had the right to consider his criminal antecedents and could not be compelled to appoint a candidate or continue with his services. He held that the present case was squarely covered by the aforesaid judgments and where there was a case of deliberate suppression of fact the employer was entitled to pass appropriate order cancelling the candidature or terminating the services of an employee.

6. Therefore, the Hon'ble Single Judge was of the opinion that had the petitioner disclosed his antecedents, the employer could have considered the nature of criminal cases or their status but since the appellant as per his wisdom had decided not to disclose his antecedents, the act of the appellant came in the teeth of the aforesaid judgments of the Apex Court and the writ petition was deserved to be dismissed being devoid of any merit.

7. Learned counsel appearing on behalf of the appellant strenuously argued that in the case registered under first FIR dated May 08, 2016, the appellant was already acquitted on the date of filing the application and in the case registered vide second FIR No.126 dated June 09, 2016, the appellant even though was acquitted after joining vide

judgment and order dated July 19, 2022 but the same was done prior to issuance of the impugned notice dated October 06, 2022.

8. Furthermore, he argued that FIR No.126 of 2016 related to a case of rash and negligent driving and did not involve any crime of moral turpitude. It was also stressed before this court that the cases under Section 138 of 1881 Act were only complaint cases in which the appellant was declared a proclaimed offender. Two FIRs were lodged under Section 174-A IPC after the appellant joined the post of Probationary Officer and he could not have furnished information about the same prior to his joining. Therefore, there was no material suppression by the appellant regarding his character and antecedents either prior to or at the time of his joining.

9. Learned counsel further strenuously placed reliance on a recent judgment of the Apex Court in Civil Appeal No.5902 of 2012 dated February 22, 2024 "***Ravindra Kumar v. State of U.P and others***" in support of his contention that non-disclosure of a criminal case (in which a candidate is acquitted), in the verification form was not fatal to a candidate's employment.

10. Ms. Madhu Dayal, learned counsel appearing on behalf of the respondent bank submitted that the conduct of the appellant shows his lack of honesty and he is guilty of clear suppression of material facts. Time and again opportunity has been given to the appellant to come clean about the pendency of criminal proceedings against him/his antecedents but he deliberately and willfully failed to do so. Therefore, the employer had lost his trust on the employee and could not be directed to take him back in service by giving a go-by to the terms and conditions stipulated in the advertisement.

11. This Court has heard the arguments of the parties and materials placed on record. There is no dispute with regard to the fact that even though the appellant was acquitted in the FIR dated May 08, 2016, prior to the filing of application form but the case registered in second FIR No.126 dated June 09, 2016, was pending at the time of his appointment on April 18, 2022. Subsequent to his appointment the appellant was acquitted vide order dated July 19, 2022. Furthermore, two complaint cases under Section 138 of 1881 Act were pending wherein he was declared a proclaimed offender and three FIRs were lodged under Section 174-A IPC, in relation to the said cases.

12. From the reply to the impugned notice dated October 06, 2022 it appears that the appellant's primary defence was that, as per the Disability Certificate dated February 08, 2021, he had 40% disability in both his eyes and could not read the terms and conditions for appointment to the post in a "*deep manner*" and therefore, wrongly understood the terms. Next he went on to state that he could not understand the terms and conditions and failed to go "*deep*" into the matter. In his wisdom, he only referred to FIR No.126 dated June 09, 2016 and stated that he was acquitted vide judgment dated July 19, 2022 making no mention of the second FIR on the complaint cases. Part disclosure/material omissions made by him in the reply is indicative of a dishonest mind**.**

13. To the mind of this Court, reply given by the appellant was correctly held to be an unsatisfactory one, vide termination order dated December 29, 2023. It is difficult to believe that a person who is competing for appointment to the post of a Probationary Officer with respondent No.1-bank, did not go through the terms and conditions of appointment in a

"*deep*" or detailed manner. Even if such an argument is accepted then also the casual approach of the petitioner would make him unsuitable to discharge the duties of an employee in banking sector. The eligibility criteria for the post regarding the essential academic qualification is reproduced herein below:

> *"**ELIGIBILITY CRITERIA**:*
>
> ***(B) Essential Academic Qualifications (as on 31.12.2021):***
>
> *Graduation in any discipline from a recognized University or any equivalent qualification recognized as such by the Central Government. Those who are in the final year/semester of their graduation may also apply provisionally subject to the condition that, if called for interview, they will have to produce proof of having passed the graduation examination on or before 31.12.2021. Candidates having integrated dual degree (IDD) certificate should ensure that the date of passing the IDD is on or before 31.12.2021. Candidates possessing qualification of Chartered Accountant or Cost Accountant may also apply.*
>
> ***NOTE**:-*
>
> *1) The date of passing eligibility examination will be the date appearing on the mark sheet or provisional certificate issued by the University/Institute. In case result of a particular examination is posted on the website of the University/Institute, a certificate issued by the appropriate authority of the University/Institute indicative the date on which the result was posted on the website will be taken as the date of passing.*
>
> *2) Candidate should indicate the percentage obtained in graduation calculated to the nearest to decimals in the online application. Where cgpa/ogpa is awarded, the same should be converted into percentage and indicated in the online application. If called for interview, the candidate will have to produce a certificate issued by the appropriate authority inter alia stating the norms of the University regarding conversion of grades into percentage and the percentage of marks scored by the candidate in terms of these norms.*
>
> *3) Calculation of percentage: The percentage marks shall be arrived at by dividing the total marks obtained by the candidate in all the subjects in all the semesters/years by*

aggregate maximum marks in all the subjects irrespective of honors/optional/additional optional subject, if any. This will be applicable for those Universities also where class/grade is decided on basis of honors marks only. The fraction of percentage so arrived will be ignored to 59.99% will be treated as less than 60% and 54.99% will be treated as less than 55%.

14. Every candidate was required to be a graduate in any discipline from a recognized University. Therefore, it is not believable that a graduate candidate who could neither read or appreciate the conditions of the advertisement, nor the clauses in the bio-data-cum-attestation form properly but still wanted to continue as a probationary officer with the respondent-Bank.

15. Any callous omission or casual approach on the part of a candidate is at his own peril. A beneficial reference may be made to the Apex Court's decision in ***"Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav"*** *(2003) 3 SCC 437* where the respondent employee against column 12(I) of the attestation form had mentioned "No" despite the fact that a criminal case was pending against him in a court of law. The employee took the plea that he was not well-conversant with English and thus made an error while filling the said column. The Apex Court while rejecting the contention of the employee, noted that that at one end he claimed to be a graduate while on other hand had pleaded his inability to understand the language of the application form. Furthermore, no prudent man could accept that he did not study English language at all on any stage of his education. The relevant extract thereof is reproduced herein below:

"xxx
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 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.
xxx"

16. As noticed earlier by this Court that there had been neither any reference to the complaint cases under Section 138 of 1881 Act in the reply nor there was any mention of the fact that the appellant was declared to be a proclaimed offender in the aforesaid cases. The Apex Court has time and again held that the degree of honesty or integrity expected from a banking official is higher than several other public posts. A beneficial reference may be made to "***Chairman and Managing Director, United Commercial Bank v. P.C.Kakkar"*** *(2003) 4 SCC 364*. The relevant extract thereof is reproduced herein below:

> *"xxx*
> *A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer.*
> *Xxx"*

17. In the light of aforesaid findings, this Court is of the opinion that the Hon'ble Single Judge correctly relied on the decisions in ***Avtar Singh's*** *case (supra)* and ***Satish Kumar Yadav's*** case *(supra)* to come to the finding that the writ petition was bereft of merit and deserved to be dismissed.

18. Before parting with the discussion, this Court refers to judgment passed by the Supreme Court in ***Ravinder Kumar's*** *case (supra),* relied on behalf of the appellant to contend that every non-disclosure cannot be held fatal to an employment. The facts of the said case are clearly distinguishable. In that case the appellant applied for the post of Constable on February 12, 2004. Five days after submitting the application form i.e on February 17, 2004, an FIR was registered against him under Sections 324, 352 and 504 of IPC. Vide judgment dated September 30, 2004, the appellant was acquitted. After being selected the appellant submitted an affidavit on October 13, 2004 stated that there was no criminal case, cognizable or non-cognizable ever registered against him. Subsequently on April 12, 2005 he was discharged from service with effect from September 13, 2004 as he had concealed the factum of the criminal cases registered against him.

19. The Hon'ble Apex Court noted that the Station House Officer of the police station concerned certified that the character of the candidate/

appellant was excellent and consent was given to the effect that the candidate was eligible to do government service. The Gram Pradhan also not only seconded the said character certificate stating that the candidate's character was excellent but also wished him a bright future. The said character certificates were reproduced in the judgment of Apex Court. The Superintendent of Police vide report dated December 10, 2004 also gave his opinion that the character of the candidate was excellent and he was eligible to be in government service.

20. Under such circumstances, the Apex Court referred to several judgments including ***Avtar Singh's*** *case (supra)* and ***Satish Kumar Yadav's*** *case (supra)* to hold that every suppression of fact need not be material suppression. The relevant extracts are reproduced herein below:

> ***"Avtar Singh v. Union of India:***
>
> *Xxx*
>
> *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.*
>
> *Xxx*
>
> *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."*

21. In such circumstances, the Apex Court held as follows:

> *"xxx*
>
> *30. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things ? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure as a disqualification will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the Court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.*
>
> *Xxx"*

22. In the facts of the case, this Court holds that it was not a case of one time mistake committed by the appellant rather, the non-disclosure on part of the appellant was deliberate and motivated. The reply given to the impugned notice also does not inspire any confidence of this Court with regard to the honesty and integrity of the appellant. The appellant thus was held not to be well suited at all to perform the job of a Probationary Officer or be appointed as a Probationary Officer by the respondent-Bank.

23. Accordingly, this Court finds no infirmity in the well reasoned order of Hon'ble Single Judge or the impugned order passed by the Bank. Accordingly, the present letters patent appeal is dismissed. Connected applications, if any, are also hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

MAY 13, 2024
Shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes