



**1002 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-1168-2006
Date of decision: 12.11.2024**

BHURA SINGH THROUGH HIS LRS
...APPELLANT
V/S
FCI AND OTHERS
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. M.S. Uppal, Advocate for the appellant.

Mr. H.S. Dhandi, Advocate for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The appellant through instant second appeal is seeking setting aside of judgment and decree dated 08.02.2005 passed by learned Civil Judge (Sr. Div.), Mansa, dismissing the suit filed by the appellant for declaration to the effect that impugned order dated 24/25.06.2003 passed by District Manager, FCI-FSD on the basis of police report dated 01.03.2002, terminating his service with immediate effect under clause 14 of H.Qrs. Letter No.IR-(L) 18(20)/94 Vol.II dated 18.02.1997 is illegal and against the service rules and with consequential relief of mandatory injunction directing the respondents-defendants to withdraw the order of termination and reinstate the appellant-plaintiff with benefits, from the date of termination till the date of actual payment of arrears. At the same time, prayer is also made in the instant second appeal for setting aside the judgment and decree dated 20.08.2005 passed by learned Additional District Judge, Mansa vide which the first appeal filed by the present appellant was dismissed.
2. Case of the appellant before the learned trial Court was that he was



appointed to the post of worker/employee/employee handling labourer in the respondent corporation vide order dated 16/18.10.1997. Pursuant to his selection, the appellant-plaintiff joined his duties w.e.f. 01.04.1997. However, vide order dated 24/25.06.2003 passed by respondent no.4, his services were terminated with immediate effect on the ground of his past conviction prior to his entry in the employment of the respondent corporation. No departmental inquiry was conducted in his matter. Consequently, the appellant preferred a suit before the learned trial Court for redressal of his grievances. The suit was amended after the death of the appellant-plaintiff and his legal heirs were brought on record.

3. Notice was issued to the respondents-defendants. A written statement was filed on behalf of the respondents wherein preliminary objections were taken regarding *locus standi* of the petitioner. It was also pleaded that the service of the appellant was terminated in terms of clause-14 of Head Quarters letter dated 18.02.1997 as character and antecedents of the appellant were found to be bad in the verification report. It was also averred that the appellant-plaintiff also suppressed material facts from the respondents pertaining to his conviction under Sections 324, 148, 149 of IPC and on that account, he was not entitled to any relief. On merits, similar objections were raised by the respondents.

4. After considering the evidence on record, the learned trial Court dismissed the suit filed by the appellant-plaintiff vide judgement and decree dated 08.02.2005 while observing that he failed to disclose the factum of his conviction and sentence at the time of his entry in the employment. Feeling aggrieved against the judgment and decree of the trial Court, the appellant-plaintiff preferred an appeal before the lower Appellate Court which was also



met the same fate vide judgment and decree dated 20.08.2005. Both the aforesaid judgments and decrees are under challenge in the present second appeal.

5. Learned counsel for the appellant vociferously contends that the appellant was working with the contractor of the respondent corporation since 1987 and he was later regularized in the year 1997. In the Bio-Data form, there was not even a single column asking for the antecedents of the applicants. He further contends that merely a conviction of any person in a criminal case cannot be made basis for termination of his services if that conviction does not result from moral turpitude.

6. *Per contra* learned counsel for respondents submits that the appellant-plaintiff willfully concealed his criminal antecedents at the time of seeking employment and he secured his appointment by suppressing material information qua his conviction in FIR No.132 of 16.07.1980 registered at Police Station- Bhikhi under Sections 324, 148, 149 of IPC, whereby, he was sentenced to undergo imprisonment for 2 years. The same was only revealed to the department in the letter dated 01.03.2000 of the Deputy Commissioner of Police, Mansa. He argues that services of the appellant-plaintiff were rightly terminated by the respondent corporation and that the second appeal filed by him deserves to be dismissed.

7. I have heard the learned counsel for the parties and have perused the record with their able assistance. It transpires that at the time of his appointment, column No.12 of the attestation form required the appellant-plaintiff to disclose about his previous convictions, if any, but he answered the same in negative. The said attestation form of the appellant was accompanied by a declaration to the effect that information submitted by him in the



attestation form was true and correct. It is patently clear that the appellant-plaintiff tried to conceal the factum of his conviction and sentence. Furthermore, the appellant also tried to obfuscate the factum of his conviction and sentence during his cross-examination before the learned trial Court, although he volunteered that he was released on probation but order of releasing him on probation has not been proved on record. In addition, no explanation has been put forth by the appellant as to why this fact was not mentioned in the bio-data (Ex.P-2) or Attestation Form (Ex.D-2) or his examination-in-chief (Ex.P-1). It is an undisputed fact that the appellant-plaintiff was convicted and sentenced in FIR No.132 of 16.07.1980, vide judgment and order dated 18.02.1992. The conviction of the appellant-plaintiff had already attained finality at the time of his appointment in 1997. It stands conceded that the factum of past criminal record was suppressed from the respondent-employer.

8. It is the considered opinion of this Court that the respondent-corporation was well within its right to pass the impugned order upon receiving the report from the Deputy Commissioner of Police, Mansa which revealed that the appellant-plaintiff had concealed the factum of his past conviction and punishment at the time of his employment. It is trite law that, in case any appointment has been obtained by suppressing the relevant information from the employer, the employer is well within its jurisdiction to take appropriate action. The aforesaid principle has been resounded in the judgment of the Hon'ble Supreme Court in the case titled ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another vs. Anil Kanwariya***, (2021) 10 SCC 136 and the followings observations have been made: -

“10. Apart from the fact that at the time when the respondent applied in



the month of October/November, 2013 though he was already convicted by the competent court and was given the benefit under Section 3 of the Act 1958 only, he did not disclose his conviction, but even at the time when he filed a declaration on 14.04.2015 he filed a false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and relying upon such a declaration the appellants gave him appointment. Only on police verification/receipt of the antecedent's report from the Superintendent of Police, Sawai Madhopur, the appellants came to know about the conviction of the respondent. Therefore, the appellants were absolutely justified in terminating the services of the respondent.

11. Even the conduct on the part of the respondent to obtain the order subsequently from the learned Sessions Court in an appeal and getting the benefit of Section 12 of the Act 1958 deserves consideration. As observed hereinabove, the judgment and order of conviction by the learned trial Court was passed as far back as on 5.8.2013. For two years, the respondent did not file any appeal before the learned Sessions Court. After a period of approximately two years and after he obtained the appointment on the basis of the false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and having realised that his conviction and the benefit granted under Section 3 of the Act 1958 by the learned trial Court only will come in his way, subsequently after a period of two years he filed an appeal before the learned Sessions Court on 11.08.2015 and the appeal came to be disposed of within a period of one month, i.e., on 9.9.2015 and the learned Sessions Court granted the benefit of Section 12 of the Act 1958. From the judgment and order passed by the learned Sessions Court, it appears that the respondent only prayed for giving the benefit of Section 12 of the Act 1958 and nothing was contended by him with regard to conviction and order of sentence. Therefore, with a view to get out of the conviction and the benefit of Section 3 of the Act 1958 only and having realised that his conviction may come in his way, he preferred an appeal after a period of two years and obtained the benefit of Section 12 of the Act 1958 which provides that a person found guilty



of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Even otherwise, subsequently getting the benefit of Section 12 of the Act 1958 shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14.04.2015 that neither any criminal case is pending against him nor he has been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of Section 12 of the Act 1958. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

12. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right."



9. In view of the above discussion as well as the settled principle of law, which the learned counsel for the appellant-plaintiff has not been able to rebut, the judgment and decree dated 08.02.2005 passed by learned Civil Judge (Sr. Div.), Mansa and the judgment and decree dated 20.08.2005 passed by learned Additional District Judge, Mansa are found to be in harmony with the law.

10. As such, no interference is warranted by this Court in the present Regular Second Appeal and the same is, hereby, dismissed.

November 12, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No