

CWP-17649-2016
Date of decision: 07.02.2024

....PETITIONER

...RESPONDENTS

Mr. R.S. Bhatia, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

2. The petitioner in November' 2014 applied for the post of Peon with respondent-bank. The petitioner at initial stage filed application form and thereafter at the time of interview submitted attestation form. The petitioner appeared for the interview conducted by the respondent-Bank and stated that no criminal case is pending against him whereas FIR No. 121 dated 30.12.2011 under Sections 419, 420, 120-B IPC was already pending against him and he was facing trial in the said FIR. The petitioner was acquitted vide judgment dated 15.07.2015 passed by JMFC, Kapurthala in the said FIR. The respondents

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vide impugned communication dated 13.07.2016 has cancelled candidature of the petitioner on the ground of non-disclosure of criminal antecedents.

3. Mr. Vivek Thakur, Advocate submits that due to inadvertence the petitioner did not disclose pendency of criminal trial against him. He was ultimately acquitted, thus, respondents were supposed to take lenient view.

4. Per contra, Mr. R.S. Bhatia, Advocate submits that petitioner was duty bound to disclose his antecedents and it is settled proposition of law that in case of non-disclosure of criminal case, the employer at any stage may terminate an employee from service.

5. I have heard counsel for the parties and perused the record.

6. The conceded position emerging from the record is that the petitioner was involved in FIR No. 121 dated 30.12.2011. The petitioner came to be acquitted vide judgment dated 15.07.2015 of JMIC, Kapurthala after filing of application and interview. The petitioner, as per attestation form, was supposed to disclose his antecedents. The petitioner did not disclose his antecedents in the attestation form. In the attestation form dated 20.11.2014, there was a specific column enjoining the candidates to disclose factum of arrest or detention or conviction by Court of law for any offence. The said para with reply of petitioner is reproduced as below:-

“12. Have you ever been arrested or kept under detention or bound down/fined/convicted by a Court of law for any offence, or debarred/disqualified by the Public Service Commission from appearing at its examination selections or debarred from taking any examination or restricted by authority/institution?”

-NO-

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7. 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

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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.

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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]

8. 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.

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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]

9. In the case in hand, the petitioner concededly, did not disclose his criminal antecedents in the attestation form. The claim of the petitioner is that he had already been acquitted in aforesaid FIR, 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 case already pending against him. The petitioner as per his wisdom decided to conceal the case pending against him.

10. 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 case or its 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.

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11. 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.

07.02.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No