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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1567-2021 (O&M)
Date of decision: 05.08.2024

Ashwani Yadav

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manish Mehta, Advocate and
Mr. Ketan Antil, Advocate, for the petitioner.

Mr. Divyansh Shukla, Advocate for
Mr. Hitesh Pandit, Advocate, for respondents No.1 & 3.

Mr. Kapil Bansal, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 21.08.2020 (Annexure P-7), whereby the appointment of the petitioner has been ordered to be cancelled.

2. The brief facts of the present case are that the petitioner applied for the post of Shift Attendant in the respondent-Nigam. The selection process was undertaken by the Haryana Staff Selection Commission, Panchkula and the petitioner was selected on the aforesaid post of Shift Attendant. Thereafter, vide Annexure P-3 dated 10.01.2020, an appointment letter was issued to the petitioner for the aforesaid post. Thereafter, the petitioner was told to furnish an affidavit with regard to the terms and conditions which have been mentioned



in the offer of appointment in which he stated that there is an FIR being registered against him in Rajasthan which is pending in the Court. On the basis of the aforesaid affidavit, the respondent-Nigam passed an order vide Annexure P-7 dated 21.08.2020, whereby the appointment of the petitioner was cancelled. The aforesaid order is challenged before this Court in the present petition.

3. Learned counsel appearing on behalf of the petitioner submitted that when the petitioner applied for the aforesaid post, he filled the form according to which, there was no requirement of furnishing any such information regarding the pendency of any criminal case. He submitted that after he was given the offer of appointment dated 10.01.2020 (Annexure P-3), he was required to give the character and antecedents form which he furnished vide Annexure P-5 where categorically in column No.14 the details have been given and while referring to the aforesaid column wherein a question was mentioned as to whether any FIR/criminal case and that he has ever been arrested or kept under detention is pending against him and if yes complete particulars of thereof and to the answer of the aforesaid question on the right of the column he so stated 'yes' and details of the FIR etc. have been mentioned therein. He submitted that on the basis of the information given by the petitioner that an FIR is pending against him in Rajasthan, the aforesaid Annexure P-7 was passed on 21.08.2020 only because of the reason that as per terms and conditions of the appointment letter, it has been so stated in para No.3(IV) that no criminal case is pending against him. He submitted that because of the aforesaid reason, his appointment has been cancelled, whereas there is no provision of law under which the aforesaid appointment has been cancelled. He submitted that the pendency of a criminal case or an FIR against a candidate is no ground for not offering the post which he has been validly



selected by way of a selection process by the Haryana Staff Selection Commission. He submitted that it was not a case of a conviction that he was disqualified under the Statutory Rules nor any such provision has been so stated in the reply which has been filed by the respondent-Nigam to state that because of any Statutory provision regarding pendency of any criminal case that the petitioner has been disqualified. He further submitted that mere mentioning of the aforesaid condition in the offer of appointment would not mean that he was to be disqualified because of the aforesaid reason. He also referred to a Division Bench judgment of this Court in ***Dinesh Kumar Vs. State of Haryana and others, 2006(4) SCT 429***, a Co-ordinate Bench of this Court in ***Heera Lal Vs. State of Punjab and others, 2019(4) PLR 492 and Amandeep Singh Vs. State of Punjab and another, 2016(1) SCT 491*** in support of his contentions.

4. On the other hand, learned counsel appearing on behalf of the respondent-Nigam has submitted that the only reason as to why the appointment of the petitioner has been cancelled is that when the petitioner was offered the appointment letter, there were specific terms and conditions that no criminal case is pending against him and thereafter when he submitted his entire description of antecedents and character in which he so stated that an FIR was pending against him in Rajasthan and that was the reason as to why his appointment was cancelled because there was a violation of the terms and conditions.

5. I have heard the learned counsel for the parties.

6. It is a case where the petitioner applied for the post of Shift Attendant which after going through the selection process, he was selected and he was offered the appointment letter. However, one clause was inserted in the



offer of appointment under the heading of terms and conditions that no criminal case is pending against him. Thereafter, the petitioner disclosed the aforesaid properly in column No.14 with regard to the pendency of the FIR. On the basis of the aforesaid disclosure vide impugned order (Annexure P-7) his appointment has been cancelled.

7. The issue involved in the present case is as to whether on the aforesaid reason the appointment of the petitioner could have been cancelled by the respondent-Nigam or not. A perusal of the reply filed by the respondent-Nigam and also the arguments raised by the learned counsel for the respondent-Nigam, there is nothing on the record to show as to how and under which provisions of law, the petitioner could have been disqualified because of the pendency of the FIR. It is not a case of the respondent-Nigam that the petitioner has concealed anything or that he ought to have disclosed at any stage to which he has not disclosed but the only reason for cancellation was that there was a criminal case pending against him. During the course of arguments, the learned counsel for the petitioner has also apprised this Court that even in that FIR also, the petitioner has since been acquitted.

8. A Division Bench of this Court in ***Dinesh Kumar's case (Supra)*** held as under:-

“7. This Court has already taken the view that once a person is not convicted then non-disclosure of such an information does not amount to concealment of fact. In the case of [Subhash v. State of Haryana](#) 1994 (4) S.L.R. 525 this Court has observed as under:

Having heard the learned Counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly



hyper technical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose this fact to the respondents at the time of his submitting application for recruitment to the police service. In any case the fact stands that there is nothing against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4.9.1989 Annexure P.1. Therefore the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner.”

9. Similarly, a Co-ordinate Bench of this Court in **Amandeep Singh's case (Supra)** held as under:-

“9. Before parting with the judgment, the Courts can not lose sight of the fact that there is a growing tendency in this part of the country where many times innocent people are roped in criminal cases. Therefore, unless and until a person is convicted of any offence and has earned a disqualification, his services could not be terminated on the ground that at the time of joining service, a criminal case was pending against him, in which, the trial is going on and that the same was not disclosed, though in the form, the only query was put whether he has been convicted and sentenced in a criminal case and whether he was arrested in some criminal case?”

10. It being so, I am of the view that the judgment passed by the learned Civil Judge (Junior Division), Chandigarh is well



reasoned. Consequently, the judgment and decree dated 29.7.2010, passed by the learned Additional District Judge, Chandigarh is set aside and the judgment and decree dated 30.07.2009 passed by learned Civil Judge(Junior Division), Chandigarh is restored.”

10. A perusal of the aforesaid judgments would show that when such condition is imposed to the offer of appointment, then it has to be backed by sanction of law or an authority of law. In the absence of Statutory provisions to disqualify a person from being appointed on the basis of pendency of an FIR, such cancellation could not have been effected.
11. In view of the aforesaid facts and circumstances of the present case, this Court is of the considered view that the prayer of the petitioner is squarely covered by the aforesaid Division Bench judgment as well as Co-ordinate Bench judgments of this Court.
12. Consequently, the present petition is allowed. The impugned order dated 21.08.2020 (Annexure P-7) is hereby set aside. The respondent-Nigam is directed to further proceed with the offer of appointment to the petitioner which has been issued to him vide Annexure P-3 and to take him on duty within a period of two months from today with all the consequential benefits. However, the petitioner will not be entitled for any back wages or any previous monetary benefits.

(JASGURPREET SINGH PURI)
JUDGE

05.08.2024
rakesh

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