

Item No.1
02.09.2025
Court. No. 1
B.Pal

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

MAT 69 of 2025
with
IA NO:CAN 1 of 2025

MITHU HOQUE
VS
UNION OF INDIA AND ORS.

*Mr. Sanjay Saha
Mr. Prabal Sarkar*
... for the Appellant.

*Mr. Sudipto Kumar Mazumdar
Mr. Tridip Saha
Mr. Saptak Sarkar*
...for the Union of India.

1. This is an intra court appeal. Being aggrieved by the judgment and order dated April 11, 2025, the appellant has preferred the appeal on various grounds. The primary contention of the appellant is that, once the appellant was acquitted from the criminal case, there could not be any impediment towards his reinstatement. The ground of non-disclosure of the criminal case had become irrelevant in the given scenario.
2. According to Mr. Saha, learned advocate for the appellant, a frivolous case had been instituted against the appellant and the

appellant was honourably acquitted. Thus, termination on the ground of pendency of the said falsely instituted criminal case was not only harsh, but shocking to conscious of a reasonable man.

3. It is submitted that the prayer for reinstatement ought to have been considered by the learned Single Judge, while disposing of the writ petition. The learned Judge did not take into account that, there was no deliberate suppression on the part of the appellant. The application form which was submitted by the appellant pursuant to the employment notification, did not contain any column which required disclosure of the pending criminal case. The learned Judge failed to take into consideration the fact that the order of acquittal was relevant for the purpose of deciding the lis involved in the writ petition. That was clearly the view of the Appeal Court. On such ground, the earlier order of dismissal of the writ petition had been set aside and the writ petition had been remanded for fresh hearing.
4. Mr. Saha has placed strong reliance on the decision of the Hon'ble Apex Court in the matter of ***Pawan Kumar vs. Union of India***

reported in **(2023) 12 SCC 317**, in support of his contention that the Hon'ble Apex Court had laid down the law requiring an employer to assess the intensity of a pending criminal case, before taking a decision to terminate an employee. Cases which were trivial in nature should not be taken as seriously as those involving heinous crimes. Thus, the benefit of reasonable doubt should have been given to the appellant, especially, when it was a case of clear acquittal.

5. Learned DSG submits that the order impugned does not suffer from either perversity or patent illegality. The learned Judge considered the first submission of Mr. Saha that, the application form did not require disclosure of any pending criminal case, but held that even assuming that such column was not available in the form and the appellant was not in a position to disclose the same at the time of applying for the job, the appellant did not disclose the factum of pendency of the criminal case when the character verification form was submitted. Such finding of fact by the learned Judge clearly dispels any doubt as to whether learned court had applied its mind to the first

issue raised by Mr. Saha, i.e., the disclosure was not mandated in the application form.

6. It is next submitted that the Hon'ble Apex Court in the matter of ***R. Radhakrishnan vs. The Director General of Police and Others*** reported in ***AIR 2008 SC 578***, had categorically laid down that when a person sought employment in a uniformed service, the standard of integrity expected from such person was superior to any ordinary citizen. Such person was required to understand the implication of his statements or omissions. Non-disclosure of vital information with regard to the pendency of the criminal case was a suppression and termination of such person would be justified. Exercise of equitable jurisdiction in a situation of such nature was not permissible under the principles governing the service of such employee. Further reference was made to another judgment of the Hon'ble Apex Court in the matter of ***Union of India (UOI) and Others vs. Shishu Pal*** reported in ***AIR 2024 SC 3652***. A similar issue was decided by the Hon'ble Apex Court.
- Considered the rival contentions of the parties. Verification of the antecedent of the

appellant was necessary to find out his fitness. In the process of verification, if the declarant was found to have suppressed facts involving commission of offences, it would be a reasonable approach for the employer to take such suppression seriously and deal with the employee as per the terms and conditions of the service. The question of credibility and trustworthiness of an employee who had failed to submit proper declaration or verification, had to be viewed seriously, inasmuch as, an employer, upon assessment of such factual background with regard to the pendency of a criminal case, had the option of rejecting the candidature.

7. We are conscious of our limited jurisdiction in deciding an intra court appeal. The scope of interference is microscopic. The Appeal Court cannot substitute a finding on fact, by its own view. The adjudication is restricted to the issues, whether the learned Judge had acted arbitrarily or without jurisdiction or in excess of jurisdiction or failed to consider vital evidence, which if considered, would have resulted in an order in favour of the appellant.

8. The appellant sought for reinstatement in service upon seeking quashment of the order of the appellate authority. The appellate authority upheld the order of termination. When the writ petition was filed, the criminal proceeding was continuing. The writ petition was dismissed. The appellant preferred an appeal and the order of dismissal was set aside, upon remanding the writ petition for de novo hearing. The appellant was selected for the post of Constable (Bugler) in the Central Reserve Police Force (CRPF). He was a probationer. As per the offer letter, the appellant was directed to report to the Group Centre, CRPF, Siliguri. The appellant reported at the venue which the learned Single Judge held to be a consent and/or acceptance of the terms and conditions of appointment. The appellant was sent for basic training. It was clearly stated in the offer letter that the appointment was subject to condition that there was no criminal or civil case pending against the appellant or that the appellant's name did not figure in the wanted persons list. The offer letter was annexed at page 31 of the writ petition.

9. Thus, the appointment was subject to condition that, there was no criminal case pending against the appellant. The appellant accepted such offer letter, joined the Group Centre and went for training, knowing fully well that a criminal case was pending and his appointment was on condition that no such case was pending against him. He did not disclose such pendency. He filed his character verification form with documents, but did not disclose the factum of pendency of the criminal case. His Lordship considered the appellant's specific contention that the criminal case was a false and fabricated one, but the crucial issue was whether non-disclosure of the case all through, even when the writ petition was filed, was a deliberate suppression to mislead the employer in order to remain in service.

10. The judgments relied upon by the appellant were discussed by His Lordship. The respondent came to know about the pendency of the criminal case from the District Administration, when the verification of the character was done. His Lordship was of the view that the same was gross suppression of material facts and the rules

provided for termination of a probationer, if any negative report was received. His Lordship considered the decisions of the Hon'ble Apex Court and came to the conclusion that, even equitable acquittal did not compel the employer to retain an employee who had suppressed material facts, while entering into the service.

11. His Lordship distinguished the decision in ***Pramod Singh Kirar vs. The State of Madhya Pradesh & Ors.***, inter alia, holding that the employee had been acquitted seven years prior to his candidature being considered for selection and as such, the said decision did not apply.
12. His Lordship found that the notice of termination in this case was served on the appellant on January 23, 2015, under the provisions of Rule 5(1) of 1965 Rules, when the criminal case was pending. The service stood terminated on August 3, 2015, on completion of one month's notice period. The order of the appellate authority was passed on October 15, 2015, when the criminal case was pending. The writ petition was filed on March 3, 2016, when the criminal case was pending. The writ petition was dismissed on

March 14, 2016, when the criminal case was pending. The judgment of acquittal came in January 2017. The appellate court had set aside the judgment and order dated March 14, 2016, by an order dated November 4, 2019. At the time of hearing of the appeal, the petitioner stood acquitted. However, more than 5 years had elapsed between the termination and the order of the Division Bench.

13. Even if it is assumed that the application form did not provide for disclosure of a pending criminal case, it was obligatory on the part of the appellant to disclose the pendency of the criminal case with necessary details, when he submitted its character verification form with supporting documents. Upon disclosure of such fact, the employer had the option to either offer appointment upon being satisfied that the criminal case was a trivial matter or reject the candidature on the ground of pendency of the criminal case. In this case, the employer was left with no such option. No person has a vested right of employment in a disciplined force, by suppressing material facts, no matter how insignificant such fact may be. Triviality of

the case or the impact of the case has to be judged by the employer and not by the writ court. Deciding the suitability of a candidate for a job in CRPF, is not within the domain of a writ court. There cannot be any equity in a situation where the incumbent has deliberately and wilfully suppressed that a criminal case was pending. He accepted the offer letter, which clearly stated that the offer of such service was made to him on an understanding of the employer that no case was pending against the employee. The appellant kept quiet, accepted such offer letter and went for his training. He filed his character verification report without mentioning the same. When the employer made the routine verification during the period of probation, the matter came to light. Thereafter, as per the service rules one month's notice was issued and the appellant was terminated. The decision making process, according to His Lordship was neither irregular nor contrary to the rules.

14. Under such circumstances, this Bench does not deem it appropriate to interfere with the order of His Lordship. The decision in ***Shishu Pal (supra)*** was rendered under

similar circumstances in respect of a person employed in the CRPF. The conclusions arrived at by their Lordship in the Apex Court were as follows:-

“10. Indisputably, Appellant intended to obtain appointment in a uniformed service. The Standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

11. The question came up for consideration before this Court in Delhi Administration through its Chief Secretary and Ors. v. Sushil Kumar MANU/SC/1777/1996 (1996)11SCC605 wherein it was categorically held:

3. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that

verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.

12. Mr. Prabhakar has relied upon a decision of this Court in T.S. Vasudavan Nair v. Director of Vikram Sarabhal Space center and Ors. The said decision has been rendered, as would be evident from the Judgment Itself, on special facts and circumstances of the said case and cannot be treated to be a binding precedent.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise.

14. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.”

15. A similar view was taken in **R.**

Radhakrishnan (supra). The relevant

portions are quoted below:-

“26. Given the aforesaid facts and circumstances of the present case, we are of the firm view that there was no occasion for the learned Single Judge to have interfered in the orders dated 24th June,

2014 passed by the Disciplinary Authority terminating service of the Respondent, duly upheld by the Appellate Authority vide order dated 23rd September, 2014. The Appellate Court fell into the same error when it observed that it was incumbent for the Appellants to have proven the fact that pendency of the criminal case was within the knowledge of the Respondent and the said information had been deliberately withheld by him. The records speak to the contrary and make short shrift of such a plea taken by the Respondent. The Respondent does not deserve any latitude as it has been established beyond doubt that he was all along aware of the FIR registered against him with Barnahal Police Station, Mainpuri, Uttar Pradesh and the ensuing criminal cases. Not just that, the Respondent failed to disclose that he had remained in judicial custody and on moving an application, was released on bail by the trial Court along with other co-Accused

27. In our opinion, the Appellants have exercised their discretion as employers in a reasonable manner. On receiving a complaint against the Respondent, not only was a show cause notice issued to him, all the relevant information was also furnished. On receiving his categorical denial in reply, the Appellants proceeded with disciplinary proceedings against the Respondent. The said proceedings were conducted in a fair manner and taken to their logical conclusion. Only thereafter did the Disciplinary Authority pass an order terminating the services of the Respondent which order was upheld by the Appellant Authority, for just and valid reasons. Therefore, it cannot be urged that the

decision of the Appellants to terminate the services of the Respondent was unjustified, tainted by any malafides or arbitrariness or too harsh.

28. As a result, we have no hesitation in quashing and setting aside the impugned judgment dated 07th February, 2019 passed by the Division Bench of the High Court upholding the judgment dated 27th March, 2018 passed by the learned Single Judge. The order dated 24th June, 2014 passed by the Disciplinary Authority and endorsed by the Appellate Authority vide order dated 23rd September, 2014, are restored and upheld. The present appeal is allowed. Parties are left to bear their own expenses.”

16. The appeal is dismissed and the connected application is disposed of. We do not find any irregular exercise of jurisdiction by the learned Single Judge.

17. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Prasenjit Biswas, J.)