

Before Ritu Bahri, J.

VIJAY SINGH DAHIYA—Petitioner

versus

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS—Respondents

CWP No.7025 of 2016

August 01, 2019

Constitution of India, 1950—Arts. 226 and 227—Punjab Excise Act, 1914—S.61(2)/1/14—Service of petitioner as Shift Attendant terminated—Conviction under Section 61 (2)/1/14 of Punjab Excise Act not disclosed—Petitioner—Young person offence—Trivial—No basis for terminating services.

Held that, Petitioner was appointed as Shift Attendant and the said post, as per the observations of Hon'ble the Supreme Court, is not of a higher standard. Vide judgment dated 15.11.2008 (Annexure P-4), he had been convicted for an offence under section 61 (2)/1/14 Excise Act and sentenced to pay a fine of Rs.50/- much before making an application for appointment to the post of Shift Attendant. Hence, even if, this information was not given in his affidavit (Annexure R-2), being a petty and trivial offence, the appointing authority was required to apply its mind, as to whether suppression of this information would make the petitioner ineligible for entry into service or termination during the period of probation as per the guidelines set up by the Hon'ble Supreme court in Avtar Singh's case (supra). Petitioner being a young person, had been convicted for the aforesaid offence. Suppression of this information could not have been made basis for terminating his services. Had it been a case of higher post, things would have been different. Before terminating the services of the petitioner, this fact should have been brought to his notice, which has not been done in this case. Hence, as per the guidelines laid down by the Hon'ble Supreme Court in the aforementioned Judgement, this petition deserves to be allowed.

(Para 11)

M.S.Chahal, Advocate,
for the petitioner.

Supriya Garg, Advocate,
for the respondents.

RITU BAHRI, J. (oral)

(1) Petitioner is seeking a writ in the nature of certiorari quashing the impugned orders dated 07.11.2012, 29.01.2014 & 08.03.2016 (Annexures P-5, P-8 & P-11) with further direction to the respondents to reinstate him on the post of Shift Attendant (SA) with continuity of service along with all consequential benefits.

(2) Vijay Singh Dahiya-petitioner was appointed as Shift Attendant (SA) vide appointment letter dated 28.02.2012 (Annexure P-2) issued by the respondent-department. Prior to his appointment, petitioner had been convicted under Section 61 (2)/1/14 of Punjab Excise Act vide judgment dated 15.11.2008 (Annexure P-4) and was sentenced to pay a fine of Rs.50/-. After appointment of the petitioner, verification was got done and it was found that he had been convicted in the above mentioned case. On receipt of this information, services of the petitioner were terminated vide order dated 07.11.2012 (Annexure P-5) passed by the respondent No.3. Against his termination, petitioner filed CWP No.1994 of 2013 before this Court and vide order dated 26.03.2013 (Annexure P-6) permission was granted to the petitioner to withdraw the said petition with liberty to file an appeal as per rules. Thereafter, petitioner filed appeal (Annexure P-7) against his termination order dated 07.11.2012, which was dismissed by the competent authority vide order dated 29.01.2014 (Annexure P-9). Subsequently, he filed a revision dated 10.12.2014, but the same was kept pending. Thereafter, he approached this Court by filing CWP No.24478 of 2015, which was disposed of on 31.11.2013 (Annexure P-10) by giving direction to the respondents to decide the revision petition expeditiously, preferably within a period of three months from the date of receipt of certified copy of the order. Finally on 08.03.2016 (Annexure P-11), revision petition was dismissed by the Department. Hence, the present writ petition.

(3) Learned counsel for the petitioner has referred to the instruction (Annexure P-12) and contended that ex-convicts should be able to obtain employment after release from Jail. It was further laid down in these instruction that ex-convicts, who were convicted for commission of offences involving moral turpitude, should not be taken in Government Service. He further contended that the present petitioner is not involved in any case of moral turpitude and he is only convicted for an offence punishable under Section 61(2) 1/14 Excise Act, so his services cannot be terminated. Petitioner has also given an affidavit, along with his application (Annexure P-1) that there was no criminal

proceedings pending against him.

(4) Learned counsel for the respondents has vehemently argued that while applying for the post of Shift Attendant vide his application (Annexure P-1), petitioner had not mentioned that he was convicted under Section 61 (2) 1/14 Excise Act. Even in the appointment letter, it was specifically mentioned that if, verification report is not satisfactory, he shall be terminated without any notice. Once, the Department came to the know that he had been convicted vide judgment dated 15.11.2008 (Annexure P-4), his services have been rightly terminated vide order dated 07.11.2012 (Annexure P-5) as he had intentionally not disclosed with regard of his conviction in his application and had given false affidavit that he had never been convicted by any Courts of law.

(5) After hearing learned counsel for the parties, short question for consideration in this petition is, “whether non-disclosure of fact regarding conviction under Section 61 (2) 1/14 Excise Act, would be sufficient to terminate the services of the petitioner.

(6) Learned counsel for the respondent has referred to the judgment passed by Hon'ble the Supreme Court in ***Kendriya Vidyalaya Sangathan and Others*** versus ***Ram Ratan Yadav***¹ wherein, respondent had given false information in the attestation form that no criminal case was pending against him, whereas a case under Sections 323, 341, 294 and 506B read with Section 34 IPC was pending against him. A plea was taken by respondent (therein) that throughout he had read in Hindi medium and was not well conversant with English language. This reason was of no help to the respondent as he had filled other columns of form also in English language. The High Court had observed that non-mentioning of criminal case was of no consequence because the case was subsequently, withdrawn by the State Government. However, the Apex Court had observed that the Tribunal had rightly dismissed his petition and uphold his termination from service, A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his service, which is made expressly clear in offer of appointment. The Apex Court further observed that the High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious

¹ AIR 2003 SC 1709

nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. In that case the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief.

(7) In the facts of the present case, as per affidavit placed on record by the respondent (Annexure R-2), petitioner had stated that he had never been dismissed from any Government service and he had never been convicted under any offence by any Court of law, but after verification, he was found guilty of concealing the fact that he was convicted under the Excise Act vide judgment dated 15.11.2008 (Annexure P-4). The respondents were right in exercise their power while dismissing the services of the petitioner as he cannot take benefit of instructions dated 17/26.03.1975 (Annexure P-12) whereby, ex-convicts should be able to obtain employment after release from jail.

(8) The respondents are justifying the impugned orders dated 07.11.2012, 29.01.2014 & 08.03.2016 (Annexure P-5, P-8 & P-11) keeping in view that instructions dated 17/26.03.1975 (Annexure P-12) cannot be applied in the case of the petitioner. These instructions are applicable on persons, who are ex-convicts and after being released from jail(s), they can be considered for fresh appointment. In the case of present petitioner, his affidavit (Annexure R-2), which he had submitted at the time of appointment, has been found to be incorrect. Hence, his services have been rightly terminated.

(9) Hon'ble the Supreme Court in *Ram Ratan Yadav's* case (supra), had examined the case of an employee, who had given false information in attestation form that no criminal case was pending against him, whereas a criminal case under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending against him on the date when he had filled in the form. The explanation given by the employee that he was not well conversant with English language of the form, was held to be not convincing as he had filled up other columns of the form also in English language. After termination of the services, he approached the Tribunal and the Tribunal rejected his claim petition by upholding the termination. However, the High Court set aside the order passed by the Tribunal. Hon'ble the Supreme Court restored the order of the Tribunal by observing that the information in the said columns

was sought with a view to judging the character and antecedents of the respondent to continue in service or not. The object was not to find out the nature or gravity of the offence or the result of the criminal case ultimately. The very fact that the criminal case had been subsequently withdrawn and the offence was not of serious nature, could not be made a ground to set aside the termination order. The selected candidate had accepted the offer of appointment subject to the terms and conditions mentioned with his eyes wide open. In the attestation form, the selected candidate had certified that the information given by him was correct and complete to the best of his knowledge and belief. In para 12 of the judgment, it has been observed as under:-

“The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note

of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.”

(10) In a recent judgment passed by the Larger Bench of Hon'ble the Supreme Court in *Avtar Singh* versus *Union of India & Ors.*,² it had considered the cleavage of opinion in various decisions on the question of **suppression** of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case. While examining this question, Hon'ble the Supreme Court proceeded to consider the judgment passed in *State of Madhya Pradesh* versus *Ramashanker Raghuvanshi*³ where service of a teacher had been dismissed on account of participating in some political activity. It was held that even if, there is a conviction on petty/trivial issue, it cannot be made a ground for terminating an employee from Govt. service at young age. Reference was made to a decision given by three Judge Bench of the Hon'ble the Supreme Court in *T.S. Vasudevan Nair* versus *Director of Vikram Sarabhai Space Centre & others*⁴ wherein an employee had suppressed that during emergency, he had been convicted in a case registered under the Defence of India Rules for having shouted slogans on one occasion. The termination was held

² 2016 (3) SCT 672

³ 1983 (2) SCC 145

⁴ 1988 Supp. SCC 795

to be illegal and the employer was directed to appoint him as a Lower Division Clerk. The Court had observed that non-disclosure of aforesaid case was not a material **suppression** on the basis of which, employment could have been denied. Further reference was made to a decision given in *Ram Ratan Yadav's* case (supra). No doubt, verification of the antecedents is necessary to adjudge the fitness of incumbent. However, merely on suppression of involvement in trivial offence, which was not pending at the time of filling of the application form, he cannot be deprived of employment. In para nos.22, 27, 28, 29, 30 of the judgment passed in *Avtar Singh's* case (supra), Hon'ble the Supreme Court has observed as under:-

“22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if, disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt

on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

27. 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.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The ‘McCarthyism’ is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 : -

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

(11) In the facts of the present case, petitioner was appointed as Shift Attendant and the said post, as per the observations of Hon'ble the Supreme Court, is not of a higher standard. Vide judgment dated 15.11.2008 (Annexure P-4), he had been convicted for an offence under Section 61 (2) 1/14 Excise Act and sentenced to pay a fine of Rs.50/- much before making an application for appointment to the post of Shift Attendant. Hence, even if, this information was not given in his affidavit (Annexure R-2), being a petty and trivial offence, the appointing authority was required to apply its mind, as to whether suppression of this information would make the petitioner ineligible for entry into service or termination during the period of probation as per

the guidelines set up by the Hon'ble Supreme Court in *Avtar Singh's* case (*supra*). Petitioner being a young person, had been convicted for the aforesaid offence. Suppression of this information could not have been made basis for terminating his services. Had it been a case of higher post, things would have been different. Before terminating the services of the petitioner, this fact should have been brought to his notice, which has not been done in this case. Hence, as per the guidelines laid down by the Hon'ble Supreme Court in the aforementioned judgment, this petition deserves to be allowed.

(12) In view of the above discussion, impugned orders dated 07.11.2012, 29.01.2014 & 08.03.2016 (Annexures P-5, P-8 & P-11) are set aside and the respondents are directed to reinstate the petitioner on the post of Shift Attendant with continuity of service along with all consequential benefits.

(13) Allowed accordingly.

Shubhreet Kaur