

Rajnish Naresh vs Union Of India Thru Secy. Min.Of Home ... on 2 January, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:114

Court No. - 6

Case :- WRIT - A No. - 3130 of 2005

Petitioner :- Rajnish Naresh

Respondent :- Union Of India Thru Secy. Min.Of Home Affairs And 3 Others

Counsel for Petitioner :- S.N.Bhardwaj,C.P.S.Bhadauria

Counsel for Respondent :- Dipak Seth,Siddharth Dhaon,Sudhanshu Chauhan

Hon'ble Alok Mathur,J.

1. Heard Sri S.N. Bhardwaj, learned counsel for the petitioner as well as Sri Sudhanshu Chauhan, learned counsel for the respondents.
2. By means of present writ petition the petitioner has challenged order dated 08.10.2000, passed by the Commandant, 62nd Battallion, Central Reserve Police Force, Rampur whereby service of petitioner has been terminated in exercise of power under Sub Rule 5 of Central Civil Services (Temporary Service) Rules, 1965.

3. It has been submitted by learned counsel for the petitioner that the petitioner was appointed on the post of Constable in 62nd Battallion, CRPF. At the time of his appointment, the petitioner was required to fill up a declaration form wherein in Clause 12 he was required to give declaration about pendency of criminal cases pending against him. The petitioner has stated that there is no criminal case pending against him. It has been further stated that infact two criminal cases were pending against petitioner at the relevant time, one being First Information Report registered on 21.05.1998 being Case Crime No. 47A of 1998 under Section 324 I.P.C. and after investigation Sections 307 and 325 IPC were added, while the second first information report was lodged against petitioner being Case Crime No. 751 of 1998, under Sections 323/34, 324/34, 325/34 and 504 I.P.C. The respondents had sought to verify the contents of declaration made by the petitioner by writing letters to the Police authorities of the place of residence of petitioner and it is on the said inquiry that they came to know that there are two criminal cases pending against petitioner. It is stated that after verifying about the fact of pendency of criminal cases against petitioner, the impugned order was passed on 08.10.2000, invoking the provisions of Central Civil Services (Temporary Service) Rules, 1965 and impugned order was passed simplicitor terminating services of petitioner and further providing that he shall be entitled to claim a sum equal to the amount of his pay and allowances for the period of notice at the same rates at which he was drawing them immediately after the termination of his service.

4. It has been further submitted by learned counsel for the petitioner that petitioner has preferred an appeal against order dated 08.10.2000 before the appellate authority, who was Inspector General of Police, who also rejected the appeal by means of order dated 10.07.2001. It is submitted that that in both the criminal cases petitioner was acquitted for the offence under Section 323, 325, 307 IPC by means of judgment and order dated 07.01.2003, passed by the Additional Sessions Judge, Court No. 11, Ghaziabad, while with regard to second criminal case, petitioner was acquitted by judgment and order dated 06.12.2000 passed by the 7th Additional Chief Judicial Magistrate. It is after being acquitted in both the cases, the petitioner moved appropriate application before the competent authority for being re-instated in service and the said application have not been considered, the present writ petition has been filed in 2005.

5. In the present writ petition the petitioner has challenged order of termination dated 08.10.2000 as well as order of rejection of his appeal dated 10.07.2001. It has been submitted by learned counsel for the petitioner that there is no doubt that petitioner undoubtedly did not correctly fill up the declaration form at the time of recruitment and subsequently he has been acquitted and consequently, there is no criminal case pending against him now and therefore, in the light of the aforesaid facts, the impugned orders have been rendered illegal and arbitrary and deserve to be set aside.

6. The second ground taken by the petitioner is that the impugned order of termination has recorded the aspect with regard to pendency of criminal cases against petitioner and to that extent the said order has caused stigma upon the petitioner and hence the said order deserves to be set aside.

7. On the other hand learned counsel for the respondents has contested the writ petition. he has submitted that in the light of the facts of the case where the petitioner had deliberately given false declaration and suppressed the information with regard to pendency of criminal cases against him. The aforesaid facts were sought to be verified and which were infact subsequently verified and on the basis of the fact that criminal cases were pending against the petitioner and that the petitioner was guilty of deliberately suppressing material information, the impugned order was passed in exercise of powers under the Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and accordingly there is no infirmity in the impugned orders.

8. Learned counsel for the respondents has further submitted that no stigma has been cast upon the petitioner by passing the impugned orders inasmuch as there is no mention with regard to inquiry having been conducted or with regard to the fact that any criminal cases are pending against the petitioner. It is submitted that had this been recorded, then it was incumbent upon the respondents for affording opportunity of hearing to the petitioner before terminating his services. He further submits that in the appeal of petitioner against order of termination, preferred before the appellate authority, the petitioner himself has invited attention of appellate authority with regard to pendency of two criminal cases and it is after considering the submissions made by the petitioner the appellate authority was of the view that in the light of pendency of criminal cases against petitioner, the impugned order of termination cannot be held to be illegal or arbitrary and had consequently rejected the appeal.

9. Heard learned counsel for the parties and perused the record.

10. The facts of the case are not in dispute inasmuch as the petitioner was recruited on the post of constable in Central Reserve Police Force and at the time of filling up declaration form he has disclosed the fact that there was no criminal case pending against him. Subsequently, the said fact was found to be false inasmuch as two criminal cases were pending against the petitioner being Case Crime No. 47A of 1998 under Section 324, 307 and 325 IPC and Case Crime No. 751 of 1998, under Sections 323/34, 324/34, 325/34 and 504 I.P.C. were pending against petitioner.

11. It is in the aforesaid circumstances, this Court has been called upon to adjudicate upon the validity of order of termination of petitioner. The aspect with regard to suppression of fact of pendency of criminal cases by a person in uniform services has been an issue of consideration before various High Courts as well as Hon'ble Supreme Court. In this regard various previous judgments of the Apex Court were considered by the Apex Court in the case of Satish Chandra Yadav Vs. Union of India, (2023) 7 SCC 536. In the aforesaid judgment the Apex Court has followed the case of Avtar Singh Vs. Union of India, (2016) 8 SCC 471. In the case of Satish Chandra Yadav (supra), the Apex Court has observed as under :-

"79. The Court proceeded to hold further that a chance of reformation should be afforded to the young offenders in suitable cases while exercising the power for cancelling candidature. The Court thereafter summarised the discussion on the issue by way of laying down certain guidelines as stated below : (Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , SCC pp. 507-508, para 38) "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 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.

38.11. Before a person is held guilty of suppression or suggestio falsi, knowledge of the fact must be attributable to him."

12. Perusal of aforesaid judgment, clearly indicates that when ever it is brought to the knowledge of the appointing authority that the incumbent at the time of his recruitment has given false information or that he has suppressed material facts regarding pendency of criminal cases, then the employer has to take decision with regard to continuance of such Government servant in service. It was further stated that where ever allegations against Government servant are of trivial nature or the offence is petty in nature, even if not having been disclosed, would not render the person unfit to hold Government post. It was further stated that even in the case there has been acquittal, which is not clean, even then the employer shall consider the aspect of continuance of Government servant in employment.

13. The Hon'ble Supreme Court in the case of Satish Chandra Yadav (supra), apart from considering the case of Avtar Singh (supra) has also considered similar views expressed by various Benches of the Apex Court and they have summarized their findings in para 93 of Satish Chandra Yadav (supra) as under :-

"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 State v. Raj Kumar, (2021) 8 SCC 347) 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.

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?"

12. In Satish Chandra Yadav (supra), a note of caution has been given by the Apex Court with regard to persons who are in Uniform service like Police Force, whose duty is to maintain law and order and in case such officials are guilty of suppressing material information with regard to their criminal antecedents that may be relevant consideration for considering their continuance in Government service.

13. It is in the backdrop of the aforesaid legal proposition, it is noticed that the respondents by means of impugned orders have decided to terminate services of petitioner. In the counter affidavit it has come on record that criminal antecedents of petitioner were sought to be verified through local police station where from it was found that there are two criminal cases pending against petitioner.

14. This Court finds that there is no mention of criminal cases in the impugned order of termination and accordingly, this Court do not accept the arguments of petitioner that any stigma has been cast

upon him while passing the impugned order of termination. This Court further noticed that the fact that it is in the appeal filed by the petitioner before the appellate authority that he has himself stated that there were two criminal cases pending against him, in which he has been acquitted and the appellate authority while considering the submissions of the petitioner has observed that the petitioner himself has infact informed the appellate authority with regard to pendency of criminal cases and the appellate authority rejected the appeal while noticing the fact that two criminal cases were pending against petitioner, and it does not cast any stigma or render the said order infirm on the account of the fact that same is stigmatic. In this aspect of the matter also this Court does not find any infirmity in this regard.

15. The impugned order dated 08.10.2000 pas passed while undisputedly both the criminal cases were pending before the Court of competent jurisdiction. It is only subsequent to passing of order of termination, the competent Court has acquitted the petitioner. The acquittal of petitioner in both the criminal cases would not render the impugned order arbitrary or infirm. Needless to say that the impugned order of termination was passed looking into the criminal antecedents of petitioner where criminal cases were pending at the time when the said order was passed and the trial was under way. Petitioner's case was considered by the competent authority where petitioner was held to be guilty of suppressing material information pertaining to his criminal antecedents. Even if, petitioner has been acquitted in the criminal cases, it is noticed that allegation/charge against petitioner was with regard to suppression of material information at the time of his recruitment and the guilt or acquittal in criminal case has no bearing with regard to allegation of suppression of material information.

16. In the entire writ petition, there is no such circumstance stated or argued by the petitioner with regard to reason as to why he did not disclose correct fact in the declaration form at the time of his recruitment. We cannot loose sight of the fact that recruitment of petitioner in the present case was to the Police Force which is an Uniformed service i.e. CRPF and the petitioner has deliberately suppressed material information with regard to his criminal antecedents and it is in the aforesaid circumstances that the appointing authority considered the said suppression to be fatal and has passed the impugned order of termination of service of petitioner.

17. In the case of Union of India Vs. Methu Meda, (2022) 1 SCC 1, the Hon'ble Supreme Court has cited the case of Avtar Singh (supra) and held in para 17 has under :

"17.it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate."

18. In the aforesaid circumstances, this Court do not find that respondents have committed any error by taking decision to terminate services of petitioner in the light of pendency of criminal cases against him. It is not the case of petitioner that there was any malafide or arbitrariness in passing such orders, which has been taken in the facts of the present case. In the light of above this Court do not find any infirmity in the impugned order.

19. The writ petition being devoid of merits is dismissed.

Order Date :- 2.1.2025 A. Verma (Alok Mathur, J.)