

The State Of Rajasthan vs Chetan Jeff on 11 May, 2022

Author: M. R. Shah

Bench: B.V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3116 OF 2022

State of Rajasthan & Ors.

..Appellants

Versus

Chetan Jeff

..Respondent

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.03.2020 passed by the High Court of Judicature for Rajasthan at Jaipur Bench in D.B. Special Appeal Writ No.1479 of 2018 by which the High Court has dismissed the said appeal preferred by the State of Rajasthan and has confirmed the judgment and order passed by the learned Single Judge directing the State to consider the case of the respondent herein □original writ petitioner for appointment to the post of Constable (General), the State has preferred the present appeal.

2. The facts leading to the present case in a nutshell are as under:

2.1 Applications were invited by the Director General of Police Rajasthan, Jaipur vide Letter dated 07.04.2008, for recruitment to 4684 vacant posts of Constable (General), Constable (Operator), Constable (Driver) and Constable (Band) in different Districts/Battalions/Units of Rajasthan Police. As per 2008 Recruitment Notification, all interested candidates were required to qualify the written test, physical efficiency test, proficiency test, special qualification test and an interview for securing appointment for different posts of constable. As per paragraph 9(e) of the said notification, the candidates were required to fill in the correct information in their application forms. It provided that if the information disclosed in the

application form was found to be wrong and incomplete, such an application form was liable to be rejected at any stage of the selection process. The respondent applied for the said post and submitted the application form. In column 15 of the Job Application Form dated 26.04.2008 the respondent herein □(hereinafter referred to as original writ petitioner) had categorically stated that there were no criminal antecedents against him. He also stated that there were no pending FIRs or criminal cases against him. He also enclosed the signed declaration with the application form stating that the information disclosed in para 15 of the Job Application Form dated 26.04.2008 was correct and there was no concealment of any criminal record by him.

2.2 The original writ petitioner cleared the written test as well as the physical test. At this stage it is required to be noted that as such, the original writ petitioner was already facing criminal proceedings in FIR bearing No.458/2007 dated 17.12.2007 registered against him at Police Station, Neem ka Thana, Sikar for the offences punishable under Sections 143, 341 and 336 of the Indian Penal Code (hereinafter referred to as, 'the IPC'). However, the same was not disclosed by him in the Job Application Form. Thus, as such he suppressed the material fact about pendency of the FIR/Criminal Case against him.

2.3 The Superintendent of Police, District Sikar informed the Superintendent of Police, Hanumangarh vide communication dated 21.08.2008 about the said FIR No.458 of 2007. Based upon the said information, the candidature of the original writ petitioner was rejected on the ground that the original writ petitioner suppressed the material fact about his criminal antecedents in Column 15 and made an incorrect statement in the job application form.

2.4 Feeling aggrieved by the rejection of his candidature, the original writ petitioner preferred the writ petition before the learned Single Judge of the High Court by way of Civil Writ Petition No.10250 of 2008. It appears that one another FIR bearing No.102/2012 dated 27.01.2012 was registered against the original writ petitioner at Police Station Neem ka Thana, Sikar for the offences punishable under Sections 147, 148, 149, 452, 380, 352, 427 of the IPC. By the judgment and order dated 30.07.2015, the learned trial Court acquitted him for the offences under Section 352 read with Section 149 IPC in view of the compromise arrived at between the parties.

For the offences under Sections 147, 148, 455, 440 read with Section 149 of the IPC the original writ petitioner was acquitted extending the benefit of doubt. However, the learned ACJM – I, Neem ka Thana, Sikar vide judgment and order dated 21.01.2016 convicted the original writ petitioner for offences punishable under Sections 341 & 323 read with Section 34 IPC. However, he was accorded benefit of the Probation of Offenders Act, 1958.

2.5 By the Judgment and Order dated 12.03.2018, the learned Single Judge allowed the aforesaid writ petition and directed the State to consider the case of the original writ petitioner for the post of Constable, inter alia, on the following grounds:

“1. That the Parties failed to place any material on record to show that the Respondent suppressed the information with respect to the criminal antecedents in the column 15 of the said Job Application Form dated 26.04.2008.

2. That the Respondent in the instant case was charged with the offences which were trivial in nature and the suppression of such offences by the Respondent should have been ignored by the Petitioners herein. In order to substantiate the aforesaid proposition, the Hon’ble High Court relied upon the judgment in Avtar Singh versus Union of India & Ors. (2016) 8 SCC 471.

3. That the judgment dated 01.03.2017 in the case of Bhanja Ram versus State of Rajasthan & Ors.

S.B. Civil Writ Petition No.6884 of 2008, applied squarely to the facts mentioned in the said Writ Petition.” 2.6 The third FIR bearing No.348/2018 dated 05.09.2018 was registered against the original writ petitioner at Police Station Neem ka Thana, Sikar for the offences punishable under Sections 341 & 323 of the IPC.

2.7 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge allowing the Civil Writ Petition No.10250 of 2008 and directing the State to consider the case of the original writ petitioner for the post of Constable, the State preferred the Writ Appeal before the Division Bench of the High Court.

2.8 During the pendency of the Writ Appeal, the learned ACJM, Neem ka Thana, Sikar vide judgment and order dated 09.09.2019 acquitted the original writ petitioner for the offences punishable under Sections 341 & 323 of the IPC in view of the compromise arrived at between the parties in FIR No.348/2018.

2.9 One another FIR bearing No.505/2018, dated 20.12.2018 was registered at Neem ka Thana, Sikar against the original writ petitioner for the offences punishable under Sections 341, 323, 382, 427 IPC.

2.10 Despite the above, by the impugned Judgment and Order dated 04.03.2020, the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge, by which the learned Single Judge directed the State to consider the case of the original writ petitioner for the appointment as Constable. That, in the meantime, the original writ petitioner has been charge-sheeted for the offences punishable under Sections 341, 323, 382, 427 of the IPC in relation to the FIR No.505/2018 and the trial is pending.

2.11 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court dismissing the writ appeal and confirming the judgment and order passed by the learned Single Judge directing the appellant – State to consider the case of the original writ petitioner for appointment as Constable, the State has preferred the present appeal.

3. We have heard Dr. Manish Singhvi, learned Senior Advocate and AAG appearing on behalf of the State of Rajasthan and Mr. R.K. Shukla, learned counsel appearing on behalf of the original writ petitioner.

4. Dr. Manish Singhvi, learned Senior Advocate, has vehemently submitted that considering the criminal antecedents which were suppressed by the original writ petitioner, both the learned Single Judge as well as the Division Bench have committed a grave error in directing the appellant □State to consider the case of the original writ petitioner for appointment as a constable. 4.1 It is contended by Dr. Manish Singhvi, learned Senior Advocate appearing on behalf of the State of Rajasthan that despite Column 15 of the Job Application Form of the original writ petitioner by which he was required to state true and correct facts of criminal antecedents and despite the fact that he was facing criminal prosecution by way of FIR No.458/2007, the original writ petitioner suppressed the same and did not disclose the same. It is submitted that on the contrary in the column of “whether any criminal case has been registered against the applicant?” he said “No”. 4.2 It is submitted therefore, when the candidate at the initial stage itself did not state the true and correct facts and as such suppressed the material facts, he is not entitled to be appointed on the post as Constable.

4.3 It is submitted that the post of Constable whose duty is to maintain law and order, first of all should be honest. It is submitted that a candidate who, at the initial stage and before even getting the appointment as a constable has suppressed the material facts of having criminal antecedents and he has made a false statement in the application form. How can he be trusted and be appointed as a Constable? It is submitted that as such the State was justified in rejecting his candidature as a constable. Reliance is placed upon the decisions of this Court in the case of Avtar Singh v. Union of India, (2016) 8 SCC 471 as well as Daya Shankar Yadav v. Union of India, (2010) 14 SCC 103.

4.4 It is urged by Dr. Manish Singhvi, learned Senior Advocate for the State that even otherwise and till the Division Bench decided the writ appeal, the original writ petitioner faced 3 to 4 more FIRs, out of which, in two cases he was acquitted by entering into a compromise and in one case he has been convicted, however has been given the benefit of the Probation of Offenders Act. It is submitted that one criminal case is still pending against him. That such a person cannot be appointed as a constable. Therefore, it is requested that this Court must consider the subsequent events also.

5. Present appeal is opposed by Mr. R.K. Shukla, learned counsel appearing on behalf of the original writ petitioner. 5.1 It is vehemently submitted by Mr. R.K. Shukla, learned counsel appearing on behalf of the original writ petitioner that having found that the offences against the original writ petitioner were trivial in nature and he was acquitted and in one case he has been granted the benefit of Probation of Offenders Act, both, the learned Single Judge as well as the Division Bench of the High Court have rightly directed the State to consider the case of the original writ petitioner for the post of Constable.

5.2 It is submitted that when both, the learned Single Judge as well as the Division Bench have concurred on directing the State to consider the case of the original writ petitioner for the post of Constable and by giving cogent reasons, the same may not be interfered with by this Court in

exercise of powers under Article 136 of the Constitution of India.

6. We have heard learned counsel appearing for the respective parties at length.

6.1 At the outset, it is required to be noted that the post on which the writ petitioner is seeking the appointment is the post of constable. It cannot be disputed that the duty of the constable is to maintain law and order. Therefore, it is expected that he should be honest, trustworthy and that his integrity is above board and that he is reliable. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated. In the present case the original writ petitioner has not confirmed to the above expectations/ requirements. He suppressed the material facts of his criminal antecedents. He did not disclose in the application form that against him a criminal case/FIR is pending. On the contrary, in the application form, he made a false statement that he is not facing any criminal case. Therefore, due to the aforesaid suppression, his candidature came to be rejected by the appropriate authority. Despite the above, the learned Single Judge allowed the writ petitioner and directed the State to consider the case of the original writ petitioner for appointment as a constable mainly on the ground that the offences were trivial in nature and the suppression of such offences should have been ignored. The same has been confirmed by the Division Bench.

6.2 The question is not whether the offences were trivial in nature or not. The question is one of suppression of material fact by the original writ petitioner in respect of his criminal antecedents and making a false statement in the application form. If in the beginning itself, he has suppressed the material fact in respect to his criminal antecedents and in fact made an incorrect statement, how can he be appointed as a constable. How can he be trusted thereafter in future? How it is expected that thereafter he will perform his duty honestly and with integrity?

6.3 Therefore, as such the authorities were justified in rejecting the candidature of the respondent for the post of constable.

6.4 At this stage the decision of this Court in the case of Daya Shankar Yadav (supra) is required to be referred to. In paras 14 and 16, it is observed and held as under:

“14. Rule 14 of the Central Reserve Police Force Rules, 1955 relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below:

“14. Verification.—(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The verification roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The verification roll shall be in CRP Form 25 and after verification shall be attached to the character and service roll of the member of the force concerned.” The purpose of seeking the said information is to ascertain the character and antecedents

of the candidate so as to assess his suitability for the post.

Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment : (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.” 6.5 In *State of A.P. v. B. Chinnam Naidu*, (2005) 2 SCC 746, this Court has observed that the object of requiring information in the attestation form and the declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.

6.6 In *Devendra Kumar v. State of Uttaranchal*, (2013) 9 SCC 363, while joining the training, the employee was asked to submit an affidavit giving certain information, particularly, whether he had ever been involved in any criminal case. The employee submitted an affidavit stating that he had never been involved in any criminal case. The employee completed his training satisfactorily and it was at this time that the employer in pursuance of the process of character verification came to know that the employee was in fact involved in a criminal case. It was found that the final report in that case had been submitted by the prosecution and accepted by the Judicial Magistrate concerned. On the basis of the same, the employee was discharged abruptly on the ground that since he was a temporary government servant, he could be removed from service without holding an enquiry. The said order was challenged by the employee by filing a writ petition before a Single Judge of the High Court which was dismissed. The Division Bench upheld that order, which was the subject-matter of appeal before this Court. Dismissing the appeal, this Court observed and held that the question is not whether the employee is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. It is further observed that the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information and in that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

6.7 In the case of *Jainendra Singh v. State of U.P.*, (2012) 8 SCC 748, in para 29.4, this Court has observed and held that “a candidate having suppressed material information and/or giving false

information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. In para 29.6, it is further observed that the person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service. In para 29.7, it is observed and held that “the standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

6.8 In *Daya Shankar Yadav v. Union of India*, (2010) 14 SCC 103, this Court had an occasion to consider the purpose of seeking the information with respect to antecedents. It is observed and held that the purpose of seeking the information with respect to antecedents is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. It is further observed that when an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can lead to any of the following consequences: (SCC pp. 110□1, para 15) “15. ... (a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non□disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.” Thereafter, it is observed and held that an employee can be discharged from service or a prospective employee may be refused employment on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). 6.9 In *State of M.P. v. Abhijit Singh Pawar*, (2018) 18 SCC 733, when the employee participated in the selection process, he

tendered an affidavit disclosing the pending criminal case against him. The affidavit was filed on 22-12-2012. According to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered. However, within four days of filing such an affidavit, a compromise was entered into between the original complainant and the employee and an application for compounding the offence was filed under Section 320 CrPC. The employee came to be discharged in view of the deed of compromise. That thereafter the employee was selected in the examination and was called for medical examination. However, around the same time, his character verification was also undertaken and after due consideration of the character verification report, his candidature was rejected. The employee filed a writ petition before the High Court challenging rejection of his candidature. The learned Single Judge of the High Court of Madhya Pradesh allowed the said writ petition. The judgment and order passed by the learned Single Judge directing the State to appoint the employee came to be confirmed by the Division Bench which led to appeal before this Court. After considering a catena of decisions on the point including the decision in *Avtar Singh v. Union of India*, (2016) 8 SCC 471, this Court upheld the order of the State rejecting the candidature of the employee by observing that as held in *Avtar Singh* (supra), even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

6.10 After reproducing and/or reconsidering para 38.5 of the decision in *Avtar Singh* (supra), in *Abhijit Singh Pawar* (supra), in para 13, this Court observed and held as under:

“13. In *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471, though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.” 6.11 Recently, in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited v. Anil Kanwariya*, (2021) 10 SCC 136, this Court had an occasion to consider the submission on behalf of an employee whose services were terminated on the ground of filing a false declaration to the effect that neither a criminal case is pending against him nor has he been convicted by any Court of law, that subsequently he has been granted the benefit of Section 12 of the Probation of Offenders Act and therefore his services ought not to have been terminated. This Court has observed in paras 13 & 14 as under:

“13. Even otherwise, subsequently getting the benefit of Section 12 of the 1958 Act shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14-4-2015 that neither any criminal case is pending against him nor has he been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of Section 12 of the 1958 Act. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST.

Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

7. Applying the law laid down by this Court in the aforesaid cases, it cannot be said that the authority committed any error in rejecting the candidature of the original writ petitioner for the post of constable in the instant case.

8. Even otherwise it is required to be noted that subsequently and during the proceedings before the learned Single Judge as well as the Division Bench, there are three to four other FIRs filed against the original writ petitioner culminating into criminal trials and in two cases he has been acquitted on the ground of compromise and in one case though convicted, he has been granted the benefit of Probation of Offenders Act. One more criminal case is pending against him. Therefore, the original writ petitioner cannot be appointed to such a post of constable.

9. In view of the above discussion and for the reasons stated above, both, the learned Single Judge as well as the Division Bench have erred in directing the State to consider the case of the respondent for appointment as a constable. The judgment and order passed by the High Court is unsustainable, both, on facts as well as on law. Under the circumstances, the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the candidature of the respondent – original writ petitioner for the post of constable had been rightly rejected by the appropriate authority. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. (M. R. SHAH)J. (B.V. NAGARATHNA) New
Delhi, May 11, 2022.