Neutral Citation No. - 2024:AHC:12210-DB
Reserved
A.F.R.

Court No. - 10

Case :- SPECIAL APPEAL No. - 777 of 2023

Appellant :- Chandrajeet Kumar Gond
Respondent :- High Court Of Judicature At Allahabad And Another
Counsel for Appellant :- Amit Kumar Tiwari,Akash Yadav,Shyam Dhar Gupta
Counsel for Respondent :- Ashish Mishra

Hon'ble Salil Kumar Rai,J.
Hon'ble Surendra Singh-I,J.

Per : Hon'ble Surendra Singh-I, J.

Heard Sri Shyam Dhar Gupta assisted by Sri Akash Yadav representing the appellant and Sri Ashish Mishra representing the respondents.

2. This special appeal has been instituted against judgement and order dated 18.09.2023 passed by learned Single Judge of this Court in WRIT- A No. 15566 of 2023, Chandrajeet Kumar Gond Vs. High Court of Judicature at Allahabad and Another). Vide impugned order, learned Single Judge had rejected the writ petition filed praying for quashing of the order dated 03.08.2023 passed by learned District Judge, Sultanpur, whereby the candidature of the petitioner for Class-IV post in District Court, Sultanpur, has been rejected.

3. The aforesaid writ petition was filed by the petitioner, Chandrajeet Kumar Gond, with the following prayer to :-

> *(a) issue a writ, order or direction in the nature of certiorari to quash/set-aside the impugned administrative order dated 03.08.2023 passed by the respondent no. 2, i.e. District Judge, Sultanpur, where learned District Judge, Sultanpur, has rejected the candidature of the petitioner for the post of Orderly/Peon/Office Peon/Farrash (Group 'D') conducted by*

High Court of Allahabad with respect of Advertisement No. 01/ Sub.Court/Category D/2022.

(b) issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no. 2 to appoint the petitioner for the post of Orderly/Peon/Office Peon/Farrash (Group 'D') within some stipulated period in pursuance of the Advertisement No. 01/Sub.Court/Category D/2022, by which the petitioner may discharge his duty for the said post.

4. The averment made by the appellant/petitioner in the writ petition is that the High Court of Judicature at Allahabad had issued an advertisement bearing Advertisement No. 01/Sub.Court/Category- D/2022 on 30th October, 2022 (30.10.2022) at official website of High Court of Judicature at Allahabad. The petitioner applied to the post of Orderly/Peon/Office Peon/Farrash: Category- D bearing Advertisement No. 01/Sub.Court/Category- D/2022. The essential qualification for the appointment for the post of Orderly/Peon/Office Peon/Farrash : Category- D was that the candidate must have passed Junior High School (Class-VIIIth). The petitioner had passed Class- VIIIth examination from Nav Bharat Junior High School, Sevapuri, District- Varanasi in the year 2010. The petitioner finding himself eligible for the said post filled the online application form on 13.11.2022. As per him, against the column of "*Whether any criminal complaint case have been registered against you ?*", the petitioner inadvertently filled in the reply column as *"No"*. The selection was held in two rounds of which the first round was held on 17.12.2022 in which the petitioner qualified. The second round of selection was held on 02.04.2023 in which the petitioner again qualified and he was declared as successful. An order was received by the petitioner from the respondents on 20.05.2023 requiring the petitioner to complete various formalities including submission of an affidavit as to whether the petitioner has got any criminal case pending against him or whether he has ever been proceeded against in a criminal case in which he has been acquitted or found guilty. In pursuance thereof, the petitioner claims to have submitted an affidavit on 02.06.2023 in which he

has disclosed about pendency of a Case Crime No. 166 of 2020 u/s 307, 323, 504, 506 & 325 I.P.C. registered in Police Station- Mirzamurad, District-Varanasi. Learned District Judge vide impugned order dated 03.08.2023, considering the guidelines issued by the High Court, more particularly paragraph 6 of the guidelines that where a candidates has not disclosed information of criminal case/proceedings then his candidature is liable to be cancelled, has cancelled the candidature of the petitioner.

5. It has been submitted by learned counsel for the appellant that the learned Single Judge without applying proper judicial mind by misreading the true facts and also not correctly applying the judgement of Hon'ble Apex Court in **Avtar Singh Vs. Union of India and others, (2016) 8 SCC 471,** cancelled the candidature of the appellant. It has also been submitted that the appellant had filled his online application form with the aid of computer operator. By the mistake of the computer operator in the column of disclosing criminal case against the candidate, *"No"* was mentioned in place of *"Yes"*. Although a criminal case had been registered against the appellant about two years ago. It has also been submitted that the appellant could not detect the mistake done by the computer operator. The appellant appeared in the examination and was declared finally selected. Vide letter dated 20.05.2023, the District Judge, Sultanpur directed the appellant for document verification and to file an affidavit regarding various particulars inter alia non-pendency of and conviction/acquittal in any criminal case against him. When the appellant was making preparation for document verification and for the affidavit, at this very stage, he noticed the mistake occurred in his online application. It has also been submitted that without any delay on 27.05.2023, the appellant/petitioner submitted an affidavit correctly admitting that a criminal case bearing Case Crime No. 166 of 2020 u/s 307, 323, 504, 506 & 325 I.P.C., Police Station- Mirzamurad, District-Varanasi, is registered against him in which charge-sheet has been submitted before the court. It has also been submitted that the appellant disclosed about the pendency of criminal case against him on 27.05.2023 i.e. before issuance of the notice of District Judge, Sultanpur dated 07.07.2023 calling upon an explanation from him why his candidature must not be cancelled for

concealing the criminal case pending against him. It has also been submitted that in reply to the aforesaid notice, the petitioner had explained the reasons for not mentioning the criminal case pending against him but in an arbitrary and illegal manner without applying judicial mind, the District Judge, Sultanpur vide order dated 03.08.2023 cancelled his candidature. It has also been submitted that paragraph no. 38.1 of the judgement of **Avtar Singh (supra)** is not applicable in the case of appellant and the case of appellant is covered with paragraph nos. 38.2 and 38.3 of the judgement of the same case which has not been considered by the learned Single Judge and he illegally dismissed his writ petition. It has also been submitted that due to pendency of a criminal case registered against him, his candidature should not be cancelled but an undertaking should be taken from the selected candidate that if the judgement in the criminal case goes against him, he shall be dismissed from his service and the candidate shall have no objection.

6. Per contra, learned counsel for the respondents has argued that the appellant filled the online application on 13.11.2022. Against the column regarding pendency of criminal case, the appellant deliberately filled in *"No"*. In the advertisement, it was provided that the particulars of the online application form could be corrected within the period from 15.09.2022 to 16.09.2022. However, the appellant did not make any effort to correct the erroneous entry made in the application form. It has also been submitted that the appellant was asked vide order dated 20.05.2023 by the District Judge, Sultanpur to file an affidavit regarding pendency of the criminal case against him and whether he has been convicted or acquitted in any criminal case. Only thereafter on 27.05.2023, he filed affidavit mentioning that a criminal case is pending against him. Therefore, the appellant did not disclose the pendency of criminal case against him within the prescribed period but after a gap of more than 10 months. Therefore, it cannot be presumed that the error in the application was not deliberate but inadvertently made. It has also been submitted that the learned Single Judge, after going through the facts and circumstances of the case and the law applicable thereto, had rightly dismissed the writ petition filed by the appellant.

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

8. From the perusal of the record it transpires that the High Court has issued an advertisement on 30.10.2022 inviting applications for appointment to the Class-IV post of Orderly/Peon/Office Peon/Farrash. The appellant submitted in his application form against the column 'whether any criminal/ complaint case have ever been registered against you?'. The appellant gave reply as "No". The appellant appeared in two rounds of selection process held on 17.12.2022 & 2.4.2023 and qualified for being appointed as a Class-IV Post.

9. The office of Respondent No.2 vide letter dated 20.5.2023 required the appellant to fulfil certain formalities prior to his appointment to the aforesaid post. One of the formalities was of submission of an affidavit in the shape of undertaking that no criminal case is pending against the appellant neither in any case he has been convicted or acquitted. It is only then that the appellant submitted his affidavit on 2.6.2023 indicating about pendency of a criminal case i.e. Case Crime No. 0166 of 2020 under Sections 307, 323, 504, 506 & 325 IPC registered in Police Station, Mirzamurad, District-Varanasi. In his affidavit dated 2.6.2023, the appellant has indicated that while filling in the online application form he had inadvertently filled the column against the criminal case as "No" which as per the appellant is incorrect as a criminal case i.e. Case Crime No. 0166 of 2020 is pending against him and his reply should be treated as "Yes".

10. The competent authority, respondent no.2 after considering the appellant's affidavit dated 2.6.2023 as well as paragraph no.6 of the guidelines issued by the High Court regarding concealment has cancelled the candidature of the appellant.

11. A three Judges Bench of the Hon'ble Apex Court in **Avtar Singh Vs. Union of India and others, (2016) 8 SCC 471,** after examining different views expressed by the Bench of Hon'ble Apext Court from time to time, has laid down the broad guidelines as yardstick to be applied for verification of disclosure made by a candidate to the employer for deciding as to whether the cancellation of candidature or termination of service of the

incumbent should be done or not? In this context, it may be useful to extract the following observations made in ***Avtar Singh (supra);***

> *32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.*
>
> *36.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 authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*
>
> *"38. 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:*
>
> *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 ?suppressio veri? or suggestio falsi?, knowledge of the fact must be attributable to him."

12. In paragraph no.16 of the judgment of Hon'ble Apex Court in **State of Madhyra Pradesh and Ors. Vs. Bhupendra Yadav, 2023 (SCC Online) SC 1181** has given credence to of the judgment of Hon'ble Apex Court in Avtar Singh case (supra) which is as follows:-

16. As can be discerned from the above decision, an employer has the discretion to terminate or condone an omission in the disclosure made by a candidate. While doing so, the employer must act with prudence, keep in mind the nature of the post and the duties required to be discharged. Higher the post, more stringent ought to be the standards to be applied.

> *Even if a truthful disclosure has been made, the employer is well within its right to examine the fitness of a candidate and in a concluded criminal case, keep in mind the nature of the offence and verify whether the acquittal is honourable or benefit has been extended on technical reasons. If the employer arrives at a conclusion that the incumbent is of a suspect character or unfit for the post, he may not be appointed or continued in service."*

13. In **Daya Shankar Yadav Vs. Union of India; 201014 SCC 103,** the Court has held that where the candidate has given correct or false or half backed information with respect to his antecedents, the following consequences will take place.

> *"15. 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 therefore lead to any of the following consequences:*
>
> > *(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."*

14. **In Rajasthan Rajya Vidhut Prasaran Nigam Limited Vs. Anil Kanwaria (2021) 10 SCC 136** where the respondents after qualifying for the post was appointed as a probationer trainee, technical helper in the course of his police verification it had transpired that he had been convicted by the trial court for the offences under Sections 323 and 341 of IPC but was extended benefit under the Probation of Offenders Act, 1958 and released on good conduct. The respondent withheld these facts in his application form for appointment. After distilling the law on appointments obtained by fraud or misrepresentation/ by suppression of material facts. The Hon'ble Apex Court proceeded to quash the appointment and set aside the order passed by the learned Single Judge and upheld the order passed by the Division Bench of High Court stating that the decision of learned Single Judge directing the reinstatement of the respondent- employee was unsustainable in view of the fact that the employee had not disclosed/suppressed the fact that he has been convicted by a competent court and had filed a false declaration in this regard. In this case, the Hon'ble Apex Court expressed its view that even where there is a subsequent acquittal, the employee having furnished false information/indulged in suppression of material fact of his conviction in a criminal case, cannot claim appointment as a matter of right. Following observation was made regarding credibility of such an employee from the perspective of the employer:

> *"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."*

15. From considering the law laid down by the Hon'ble Apex Court in **Avtar Singh (supra)** and **Rajasthan Rajya Vidhut Prasaran Nigam Limited (supra)** it can be concluded that the information given to the employer by a candidate as to the conviction/acquittal or arrest or pendency of criminal case whether before or after entering into the service must be true and there should be no suppression or false mention of required information. Any contravention made by the candidate shall cause cancellation of his candidature, dismissal from service if already appointed.

16. The discloser made by the appellant while applying for the Class-IV post regarding pendency of criminal case was clearly false as he had mentioned/replied "No" to the query regarding the criminal case pending against him. The advertisement itself provided space for correction of error between period 15.11.2022 to 16.11.2022 but no efforts were made by the appellant for correction of the said reply/answer in his online application form. The appellant appeared in two rounds of selection process and despite having been qualified in the same, no effort was made by him to indicate the pendency of criminal case to the respondent no.2 competent authority. It is only when on 20.5.2023, the appellant was asked to furnish an affidavit/undertaking regarding his conviction/acquittal or pendency of criminal case against him. The appellant submitted his affidavit on 2.6.2023 indicating the pendency of criminal case. Thus, the appellant from the date of the submission of application form i.e. 13.11.2022 until 02.06.2023 persisted on giving wrong information about the pendency of criminal cases

against him and for the first time on 02.06.2023, he disclosed the criminal case pending against him. The competent authority respondent no.2 after considering the said affidavit as well as paragraph no.6 of the guidelines issued by the High Court has rightly cancelled the candidature of the appellant.

17. From the above discussion, it is obvious that the appellant has deliberately furnished false information about the non-pendency of criminal case against him, therefore his case is squarely covered under the paragraph no. 38.1 of **Avtar Singh case (supra).** There is no special circumstances in favour of the appellant which may extenuate him from his aforesaid mislead. The appointing authority- respondent no.2 has taken into consideration the guidelines of High Court before passing impugned order. There is no substance in the plea of the appellant that his case is not covered under paragraph no. 38.1 and it is covered under paragraph nos. 38.2 and 38.3 of **Avtar Singh case (supra)** and his candidature should not be cancelled. Therefore, his plea cannot be taken into consideration in favour of him.

18. The High Court had issued guidelines for verification of antecedent testimonials of the candidate and if required cancelling of his candidature. The paragraph No. 6 of the guidelines is as follows:

> *"An undertaking on affidavit shall be taken from the selected candidates declaring that neither any criminal case/proceeding is pending against him/her nor he has been convicted/acquitted by any Court. In case any criminal case/proceeding is found pending against him/her in any court which has not been declared by the candidate in the application form, a show cause notice shall be issued to such candidate by the appointing authority as to why their candidature be not canceled. The decision of the appointing authority about the candidature of such candidate shall be treated as final. Further, if such a candidate has not disclosed the information of criminal case/proceeding in the Undertaking on Affidavit submitted at the time of joining, the candidature/appointment of such*

candidate shall be forfeited/cancelled by the appointing authority at their end."

19. The respondent no.2 appointing authority after following procedure provided in the paragraph no.6 of the aforesaid guidelines after giving the appellant opportunity to explain false statement regarding pendency of criminal case in his application for appointment has rightly cancelled the candidature of the appellant.

20. From the discussion of the aforesaid facts it is thus, obvious that the appellant had given false information regarding pendency of criminal case in his application form and he did not make correction within the time prescribed in the advertisement and also he did not disclose the facts regarding pendeny of criminal case till declaration of the result. For the first time he made disclose regarding pendency of criminal case against him. When on 20.5.2023, the appellant was directed by the respondent no.2 to give undertaking by an affidavit regarding pendency of criminal case. Apart from this, from the testimonials filed by the appellant, it is clear that he is computer knowing person and has done C-Grade course of computer in June, 2017 i.e. before submitting an online application for appointment.

21. Thus, the explanation given by the appellant that he has no knowledge about the online filling form and he gave all the relevant information/documents to the person who filled his online form and inadvertently error crept in by the person filling the application form regarding non pendency of criminal case against him, cannot be accepted.

22. Thus, considering conduct of the appellant and in light of the law laid down by the Hon'ble Apex Court in **Avtar Singh (supra)** and **Rajya Vidyut Prasaran Nigam Ltd. (supra),** it can be concluded that the appellant deliberately made concealment of fact regarding pendency of criminal case in his application form.

23. Considering the law laid down by the Hon'ble Apex Court in the aforesaid cases, and in the facts and circumstances of the case, we do not find any illegality or irregularity in the impugned order 18.9.2023 passed by the learned Single Judge in WRIT - A No. - 15566 of 2023.

24. There is no merit in the Special Appeal. It is accordingly dismissed.

Order Date :- 25.1.2024
KS/Akbar