

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

+ WRIT PETITION NO: 19417/2012

% 24.07.2024

Between:

...APPELLANT(S)

The State of Andhra Pradesh & 3 others

AND

...RESPONDENT(S)

M.Koti Reddy

Counsel for the Appellant(S): M. Srinivasa Rao

Counsel for the Respondents: Sri Ramachangeswara Rao Kocherlakota,
represented Sri R.S.Murthy

< Gist :

> Head Note:

? Cases Referred:

(2011) 4 SCC 644
2024 SCC OnLine SC 180
(2016) 8 SCC 471
MANU/AP/0885/2024
(2011) 14 SCC 709
2022 SCC OnLine SC 532
(2019) 17 SCC 696
(2023) 7 SCC 536

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION NO: 19417/2012

DATE OF JUDGMENT PRONOUNCED: **24.07.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

APHC010150172012



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3470]

WEDNESDAY ,THE TWENTY FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 19417/2012

Between:

Govt.of Ap,prl.scy,home,hyd,& 2 and Others

...PETITIONER(S)

AND

M Koti Reddy Prakasam Dist

...RESPONDENT

Counsel for the Petitioner(S):

1.GP FOR SERVICES I

Counsel for the Respondent:

1.R SATYANARAYANA MURTHY

The Court made the following:

**HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

W.P.No.19417 of 2012

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri M.Srinivasa Rao, learned Assistant Government Pleader for Services – I and Sri Ramachangeswara Rao Kocherlakota, learned counsel representing Sri R.S.Murthy, learned counsel for the respondent.

2. The respondent – M. Kotireddy, applied for the post of SCT PC (A.R.) (Men) from Prakasam District pursuant to the notification issued by petitioner No.2 herein. On 20.04.2011, petitioner No.3 herein issued proceedings cancelling his provisional selection on the ground that he had suppressed the fact of the involvement in the criminal case in the attestation form. The Criminal case was registered under Section 324 IPC arising out of Crime No.11/2010 of Chinaganjam Police Station. The police after investigation filed charge sheet and the same was taken on the file as C.C.No.264 of 2010 by the Additional Judicial Magistrate First Class, Chirala.

3. Challenging the said memo of cancellation, the respondent filed OA.No.7000 of 2011 which has been allowed by Andhra Pradesh Administrative Tribunal, Hyderabad vide order dated 19.01.2012.

4. The operative portion of the order dated 19.01.2012 reads as under:

“14. In the above circumstances, the orders passed by the respondents cancelling the selection of the applicant for the post of SCTPC (AR) (Men) is liable to be set aside and is accordingly set aside. The OA is accordingly allowed. The respondents are directed to send the applicant for SCTPC(AR)(Men) training by issuing selection order.”

5. Challenging the order dated 19.01.2012, the writ petition has been filed.

6. The Tribunal has allowed the petition on the ground that proceeding of the criminal case was challenged in CRL.P.No.13712 of 2010 before this Court which was allowed on 31.12.2010 and the proceeding in C.C.No.264 of 2010 was quashed. The respondent was discharged by the Court concerned. It also observed that on the date the application was submitted by the respondent there was no criminal case against him but at the time the attestation form was filed, there was the case filed under Section 324 IPC, which was not disclosed in the attestation form. The Tribunal placed reliance in ***Commissioner of Police V. Sandeep Kumar***¹ in which it was held that the offence was not of serious nature, mere non mention would not automatically disqualify. In such cases a more lenient view should be taken.

7. Learned Assistant Government Pleader raised the only submission that there was non-disclosure of the criminal case and the same being correct, there was no illegality in the cancellation memo. The Tribunal ought not to have interfered with the same.

8. Learned counsel for the respondent supported the order on the strength of ***Sandeep kumar*** (1st supra).

¹ (2011) 4 SCC 644

9. We have considered the submissions advanced and perused the material on record.

10. The law on the subject of non-disclosure of criminal case in the attestation form and its effect on the selection/appointment is well settled. We may refer the recent pronouncement in ***Ravindra Kumar v. State of U.P.***²

11. In ***Ravindra Kumar*** (2nd supra) the Hon'ble Apex Court observed and held that the nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered. It was emphasized, referring to the judgment in the case of ***Avtar Singh v. Union of India***³, that 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.

² 2024 SCC OnLine SC 180

³ (2016) 8 SCC 471

12. In **Government of AP, Prl. Scy, Home, Hyderabad and ors., vs. Vadde Pavan Kumar Anantapur Dist & ors**⁴, this Court after referring to the **Ravindra Kumar** (2nd supra) observed and held in paras 26 to 28 as under:

*“26. To consider the first submission of the learned GP, we would refer to the recent judgment in **Ravindra Kumar v. State of U.P** wherein the Hon’ble Apex Court observed that ‘the vexed question is back again’. “Is it a hard and fast and a cut and dried rule that, in all circumstances, non-disclosure of a criminal case (in which the candidate is acquitted) in the verification form is fatal for the candidate’s employment?”*

*27. In **Ravindra Kumar** (supra) on consideration of various previous pronouncements including Larger Bench Judgment in the case of **Avtar Singh v. Union of India**⁵, **Ram Kumar v. State of U.P.**⁶, **Pawan Kumar v. Union of India**⁷, **Mohammed Imran v. State of Maharashtra**⁸ and **Satish Chandra Yadav v. Union of India**⁹, the Hon’ble Apex Court observed and held that the nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered. It was observed that in **Satish Chandra Yadav** (supra) even the broad principles set out therein recognize that each case should be scrutinized thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. The Hon’ble Apex Court referred the case of **Avtar Singh** (supra), that while passing the order of cancellation of candidature for giving false information, the employer may take*

⁴ MANU/AP/0885/2024

⁵ (2016) 8 SCC 471

⁶ (2011) 14 SCC 709

⁷ 2022 SCC OnLine SC 532

⁸ (2019) 17 SCC 696

⁹ (2023) 7 SCC 536

notice of special circumstances of the case, if any, while giving such information, and further, the principle that in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. The emphasis was laid that though the 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 the facts of the cases.

28. Paragraph-21 of Ravindra Kumar (supra) is as follows:

“21. The law on this issue is settled by a three-Judge Bench of this Court in Avtar Singh (Supra). Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:—

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. 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.

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 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 recourses 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.*"

(Emphasis supplied)"

13. In **Sandeep Kumar** (1st supra), the Hon'ble Apex Court observed and held as under:

".....

As already observed above, youth often commit indiscretions, which are often condoned. It is true that in the application form the respondent did not mention that he was involved in a criminal case under section 325/34 IPC, probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

14. With respect to **Sandeep Kumar** (1st supra) also it was observed in paragraphs 23 and 24 of **Ravindra Kumar** (2nd supra) as under:

"23. Avtar Singh (Supra) also noticed the judgment in Commissioner of Police v. Sandeep Kumar. In Sandeep Kumar (supra), this Court set out the story of the character "Jean Valjean" in Victor Hugo's novel Les Miserables, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of Lord Denning in Morris v. Crown Office, [1970] 2 Q.B. 114 and concluded as follows:—

10... ..

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned. 12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

"24. Thereafter, in Avtar Singh (supra) dealing with Sandeep Kumar (supra), this Court observed as under:

This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people

often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [Morris v. Crown Office, [1970] 2 Q.B. 114 : [1970] 2 WLR 792 (CA)], the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course."

15. So, it is well settled that Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities. Each case will depend on the facts and of its own case.

16. In the present case we find that firstly at the time, the respondent applied for the post by submitting the application form there was no criminal case against him. The criminal case under Section 324 IPC was quashed by this Court in CrI.P.No.13712 of 2010 vide order dated 31.12.2010. The respondent was then discharged by the Court concerned. There is no dispute raised to the above facts. The nature of the offence is also not serious. After the discharge and quashing of the proceedings by this Court, the case of the respondent stands on a better footing than acquittal.

17. We do not find any illegality in the order of the Tribunal.

18. The writ petition is dismissed.

19. The petitioners are directed to complete the process within a period of two (02) months from the date of receipt of a copy of this order.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Dated: 24.07.2024

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184

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

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