

(2019) 03 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11554 Of 2014

Abhishek Kumar

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 PAT CK 0040

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Niranjana Kumar, Smita Prasad, Raj Nandan Prasad

Final Decision : Allowed

Judgement

Madhuresh Prasad, J

1 The writ petition seeks quashing of the order dated 12.05.2014 issued by the Assistant General Manager, Punjab National Bank invoking Clause 11 of Appointment Letter dated 02.08.2013 whereby and where under the petitioner was communicated his selection for the post of Agriculture Officer in Junior Management Grade Scale I (for brevity AO in JMG Scale - I). Clause 11 of the Appointment Letter contains stipulation which is as follows:

"In the event of any adverse report from present employer/referees/Caster Certifying Authorities/Police Authorities or in the event of any information/particulars stated in your Application is found to be materially incorrect or false if there is suppression of any relevant fact, your services are liable to be terminated any time during Probation or extended period of Probation or even after Confirmation."

2 The petitioner has been paid one month's emoluments in lieu to the notice period in accordance with Clause 3 of the said Appointment Letter and his services have been terminated.

3 In order to appreciate this submission, this Court would make a note of the

sequence of events leading to invocation of Clause 11 read with Clause 3 of the Appointment Letter.

4 Admitted fact is that when the petitioner was declared successful for appointment in the respondent-Punjab National Bank, he was already employed in the services of the Indian Bank as a Probationary Officer. The petitioner was relieved from services of the Indian Bank on 12.11.2013 that is about two months after he had submitted his joining by filling up and submitting his bio data at the ZTC, Kolkata on 16.09.2013. Prior to 12.11.2013, petitioner had applied for being relieved from the Indian Bank and his application was being processed as he was obliged to make some payments to the erstwhile employer before he could have been relieved from its services.

5 It is no nobody's case that the petitioner could not have been in employment at the time of submitting his bio data/joining in services of the Bank on 16.09.2013. Petitioner, however, was required to disclose details of his present or past employment in the bio data/joining which was being submitted by him. The requirement in the bio data form is as follows:

If employed, give the name Position held, exact Nature of business & address of your present designation and nature of & past employer (s), work including PNB. Also, give your avocation, business or

otherwise including employment after completion of your education upto the date of your joining the bank.

If you have worked with more than one employer, give your employment history as above in a separate sheet of paper may we refer to your present employer

6 The petitioner, in all the columns provided in the bio data has mentioned NA. Even in the column whereby question has been asked whether the respondent may refer to his present employer, petitioner has mentioned NA. Petitioner has, therefore, not disclosed any detail regarding his past employment with the Indian Bank which was very much subsisting at the time of submission of his bio data at ZTC, Kolkata. It would be relevant to mention here that all this happened while the petitioner was pursuing the erstwhile employer (Indian Bank) for being relieved from their services. Being conscious of his employment with the Indian Bank, petitioner, in his bio data/joining submitted at ZTC, Kolkata has suppressed the fact of his erstwhile/present employer/employment at the time of his joining. He has not only suppressed this fact but has misrepresented the fact of his present employment at the time of joining in the Bank by consciously filling up the said columns by writing NA. Fact that the petitioner was in the services of the Indian Bank and was corresponding for relieving orders which is evident from Annexure 1, Annexure 4; and Annexure 6 that is the relieving order from the petitioner's earlier employer, namely, Indian Bank issued on 12.11.2013.

7 In the bio data/joining, the petitioner has also given a certificate which reads as follows:

"I certify that the information given by me in this form is correct and complete to the best of my knowledge and belief. I understand and agree that misrepresentation, falsification, or omission of material fact may be cause for rejection of my application or termination of service after employment. The statements made in this Form may be verified from each of my former employers and any other persons who may have information concerning me."

8 Petitioner was, therefore, also conscious of the fact that for such suppression and misrepresentation, he was liable to be terminated from service after employment.

9 The bio data submitted by the petitioner has been placed on record as Annexure A to the counter affidavit. There is no rejoinder to the counter affidavit. Petitioner's bio data (Annexure A to the counter affidavit) submitted at ZTC, Kolkata at the time of his joining on 16.09.2013 stands admitted since no dispute has been raised in this regard by the petitioner. After submission of his joining/bio data, the petitioner was terminated by invoking Clause 11 read with Clause 3 of the Appointment Letter on 08.10.2013. Petitioner challenged the said order by a writ proceedings. CWJC No 1045 of 2014 filed by the petitioner was allowed on 04.04.2014, on the limited ground that in terms of Clause 11 read with Clause 3 of the Appointment Letter, neither one month's notice nor payment of one month's emoluments in lieu thereof was given to the petitioner before passing the impugned order.

10 This fact was admitted by the respondent-Punjab National Bank in the said proceedings and on this limited ground, the petitioner's writ petition was allowed and the order dated 08.10.2013 terminating the petitioner's services by invoking Clause 11 read with Clause 3 of the Appointment Letter was quashed. The petitioner, thereafter, submitted his joining before the Authorities on 22.04.2014. The Authorities, after giving one month's salary in lieu of the notice period, have terminated the petitioner's services by a fresh order dated 12.05.2014 once again by invoking Clause 11 read with Clause 3 of the Appointment Letter.

11 Learned counsel for the petitioner submits that the order terminating the petitioner's services are legally unsustainable. It is submitted that Clause 9 C of the Appointment Letter makes it clear that petitioner's appointment was provisional and subject to submission of relieving order from his present employer, if employed. The Appointment Letter afforded the petitioner an opportunity to submit his relieving order from the present employer and, therefore, the reasons assigned in the termination order dated 12.05.2014 that the petitioner had violated the terms of Clauses 9 (a), 9 (c) and (i) of the Appointment Letter dated 02.08.2013 is not sustainable. It is his submission that the fact that the petitioner, at the time of his joining in services of the respondent-Punjab National Bank, was already in the service of the Indian Bank since before, cannot be made the ground for resorting to the petitioner's termination by invoking Clause 11 read with Clause 3 of the Appointment Letter, as his earlier employment in the Indian Bank at the time of his joining in the

Punjab National Bank, was not a bar or disqualification for his employment in the Punjab National Bank. Petitioner could not; and did not gain any advantage by suppression of the fact of his past employment. Suppression was inconsequential and not attended with any ill motive. This aspect has not been considered by the Punjab National Bank while invoking Clause 11 read with Clause 3 of the Appointment Letter.

12 It is submitted by Mr Raj Nandan Prasad representing the Punjab National Bank that in the instant case, in the background of the fact that employment in question is for a Bank, the respondents have arrived a considered opinion that admitted suppression/misrepresentation is liable to be dealt with by invoking Clause 11 read with Clause 3 of the Appointment Letter. The level of care/diligence/discipline/character required from a person being employed or in employment of the Bank is of a very high standard. In the circumstances and having considered the nature of the suppression/misrepresentation, it is a case where no leniency can be shown to the petitioner. The appointment in question is also in the officer cadre being in AO in JMF Scale I that is the entry grade in Scale I in the officer cadre of the Bank. The nature of the job carries with it various responsibilities dealing with monetary/financial transaction involving safe custody of public money. In the circumstances, no leniency can be shown to the petitioner.

13 Learned counsel for the petitioner has placed reliance upon certain judgments of the Apex Court which are reported in the cases of State Bank of India & Others -Versus- Palak Modi & Another, (2013) 3 Supreme Court Cases 607, Ratnesh Kumar Choudhary -Versus- Indira Gandhi Institute of Medical Sciences, Patna, Bihar & Others, (2015) 15 Supreme Court Cases 151, Avtar Singh -Versus- Union of India & Others, (2016) 8 Supreme Court Cases 471 and Avtar Singh -Versus- Union of India & Others, (2018) 1 Supreme Court Cases 268 (hereinafter referred to as Avtar Singh 2).

14 The judgment in the case of Palak Modi (supra) deals with a different situation, i e termination of service on the grounds of alleged misconduct of use of unfair means in the evaluation/confirmation test. This is not the case here.

15 The case of Ratnesh Kumar Choudhary (supra) also deals with punitive termination based on determination of misconduct and without going into veracity of the allegations. That is not the case in hand. As noticed above, the suppression/misrepresentation of the erstwhile employment is not disputed.

16 The case of Avtar Singh (supra) deals with the issue regarding suppression of criminal antecedents by a person while obtaining appointment. The Apex Court has emphasized the fact that the declaration must be true and that there should be no suppression or false mentioning of required information. It has held that when the verification form requires information to be furnished, declarant is duty bound to furnish it correctly. The Apex Court has held that submitting false information by itself may lead to termination of services or cancellation of

candidature in appropriate case.

17 While exercising such discretion, however, the Apex Court has observed that the employer is required to consider Government orders/instructions/Rules applicable to the employee at the time of taking the decision. The Apex Court has also considered that the nature of the conviction constituting antecedent was also required to be considered while exercising discretion to terminate on suppression of details in respect of antecedent or to ignore the same in certain circumstances.

18 In the instant case, the issue is not one of suppression of antecedents. As taken note of, the petitioner has suppressed information of his past employment.

19 In this connection, this Court would refer to judgment of the Apex Court in the case of Avtar Singh 2. The Apex Court has considered in detail the circumstances under which stringent action could be taken against such persons who have indulged in suppression of facts at the time of his employment. To what extent and how the employer can exercise his jurisdiction has also been laid down by the Apex Court. The relevant portion of the judgment in the case of Avtar Singh (supra) reported in (2018) 1 Supreme Court Cases 268, wherein the Apex Court has considered earlier judgment in the case of Avtar Singh (supra), is as follows:

"3. In Avtar Singh v Union of India this Court has considered in detail as to the circumstances under which the stringent action could be taken and to what extent the employer can exercise its discretion. Relevant portion reads as follows: (SCC pp 507-08, para 38)

"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 filing 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 employees.

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 in original)

20 In view of the judgment in the case of Avtar Singh 2 relying upon earlier decision in case of Avtar Singh (supra), the Appointing Authority was required to consider the claim of the petitioner having regard to the facts and circumstances raised by the petitioner in the instant case such as the fact that the petitioner's

employment with the Indian Bank, at the time of his joining for training at ZTC, Kolkata, per se, did not constitute a disqualification for appointment in question as per the extant provisions contained in the Appointment Letter. Further, the fact that in order to avail of appointment with the respondent-Punjab National Bank, the petitioner has diligently obtained relieving from the Indian Bank, where he was serving as a Probationary Officer after discharging all dues of the Indian Bank as per requirement. Also the fact that petitioner has also given up his job with the Indian Bank after discharging substantial dues, only to obtain employment in the respondent-Punjab National Bank. The petitioner's plea that he did not gain any advantage by suppressing the fact of his earlier employment is also to be considered in terms of the law laid down by the Apex Court in the case of Avtar Singh (supra).

21 Respondent authority was also required to consider whether in the circumstances, and the age at which suppression was done, can be considered to be a mitigating factor, which has not been done.

22 The petitioner should make a detailed representation before the Appointing Authority and upon such representation being filed, within four weeks from today, Appointing Authority should consider the same and dispose it of by a reasoned and speaking order in accordance with law laid down by the Apex Court after affording an opportunity of hearing to the petitioner within a period of four months from the date of its filing.

23 Order dated 12.05.2014 stands quashed.

24 Since the order has been quashed to facilitate consideration of the matter by the respondent-authorities in view of admitted suppression by petitioner, and admittedly, he has not worked in the meantime, this Court would direct that as a consequence of quashing of the order dated 12.05.2014, petitioner, upon reinstatement forthwith, should be given all due benefits for the post on which he was working at the time of his dismissal. For the intervening period, he would be entitled to all notional benefits except salary from 12.05.2014 till today.

25 Writ petition is allowed with the aforesaid observations/directions.