
(2016) 12 MP CK 0036
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12032 of 2014

Ankur Chourasia

APPELLANT

Vs

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Citation : (2017) 1 MPWN 58

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri Ashok Lalwani, learned counsel, for the Petitioner; Shri Prateek Dubey, learned counsel, for the Respondents

Final Decision : Disposed Off

Judgement

Sujoy Paul, J. - In this petition filed under Article 226 of the Constitution, the petitioner has challenged the order dated 31.05.2014 (Annexure-P/8), whereby the petitioner's contract of appointment was cancelled and he was dismissed from service on the ground that he has not disclosed about pendency of criminal case while submitting the verification form.

2. The admitted facts between the parties are that the petitioner submitted his candidature in prescribed format. In requisite column, the petitioner did not disclose that he is facing a criminal case vide Crime No.66/2012. The department appointed the petitioner by order dated 24.09.2013. However, the said verification form was sent to the Police Authorities for examining the correctness of the declaration given by the petitioner. As per the police report, it is found that against the petitioner, Crime No.66/2012 was registered for the offences punishable under Section 34(34)(1)(d) of the M.P. Excise Act, 2015. The Court found the petitioner as guilty and by judgment dated 03.05.2012, inflicted a fine of Rs.5,000/- with further direction that the petitioner will undergo imprisonment till rising of the Court.

3. Shri Ashok Lalwani, learned counsel for the petitioner by placing reliance on

recent order passed by this Court reported in 2016 (4) MPLJ 431 (Ravindra Kumar Pandoria v. State of M.P. and others), contended that the allegations against the petitioner were trivial in nature. The petitioner is not found guilty for any offence which amounts to moral turpitude. Hence, this petition may be allowed in terms of the order passed in Ravindra Kumar Pandoria (supra).

4. Shri Prateek Dubey, learned counsel for the respondents relied on recent judgment of Supreme Court reported in 2016 (4) MPLJ 332 (Avtar Singh v. Union of India and others).

5. No other point is pressed by the learned counsel for the parties.

6. The judgment of Ravindra Kumar (supra) shows that it is solely based on the recent judgment of Supreme Court in the case of Avtar Singh (supra). The Gwalior Bench after considering various judgments which were considered in the case of Avtar Singh (supra) and the judgment of Avtar Singh, opined as under:

"12. Since in the larger Bench decision of the Apex Court in Avtar Singh case (supra) the employer has been given discretion to consider the suitability of the candidate who has been acquitted in criminal case prior to his selection for appointment and has made truthful declaration, this Court is left with no other option but to relegate the matter to employer for re-consideration."

[Emphasis Supplied]

7. A plain reading of this judgment shows that in the said case before the Gwalior Bench, the petitioner was acquitted honourably whereas in the present case, the petitioner was held guilty. However, as held in Avtar Singh (supra), it is for the employer to decide whether the criminal case was trivial in nature and whether it will render the incumbent unsuitable for the post in question. The employer may in its discretion ignore such suppression of fact or false information by condoning the lapse.

8. In view of the principle laid down in Avtar Singh (supra), I deem it proper to remit the matter back for reconsideration before the employer. The employer shall reconsider the aspect of suppression of fact in the light of judgment of Avtar Singh (supra) and take a fresh decision in accordance with law without getting mechanically influenced by its earlier order. The respondents shall take a fresh decision in accordance with law within 60 days from the date of communication of this order.

9. Petition is disposed of.