

(2017) 04 RAJ CK 0165
In the Rajasthan High Court
Case No : 195 of 2012

Bhanu Prakash Barot

APPELLANT

Vs

Jodhpur Vidhyut Vitran Nigam Limited & ors.

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 147](#),
[Section 323](#), [Section 148](#), [Section 325](#),
[Section 149](#), [Section 427](#)

Citation : (2017) 04 RAJ CK 0165

Hon'ble Judges : Nirmaljit Kaur

Bench : SINGLE BENCH

Advocate : Nishant Bora, Shubham Modi

Judgement

1. For the reasons mentioned in the application (APPLW No.1783/17), the same is allowed. The matter is taken up today itself for hearing.
2. The petitioner was appointed on the post of Technical Helper (Wireman) as probationer trainee. However, vide letter dated 29.4.2010, the petitioner was informed by the Assistant Engineer that he does not fulfill the condition No.3 of the appointment letter. The condition No.3 of the appointment letter reads as under:- "Services of the above Probationer-Trainees can be terminated at any time by giving one month's notice in writing or by giving one month's remuneration in lieu thereof; except in case of misconduct of any description where services could be terminated as per relevant provisions, without giving any kind of notice and such persons would not be entitled to any kind of compensation."
3. Thereafter, the petitioner was not allowed to join the duties. It is further stated that no order of termination or dismissal from service has been passed till date but the petitioner was verbally informed by the Assistant Engineer that he has been relieved.

4. Reply has been filed. As per the reply, the character/antecedents of the candidate were got verified by the Superintendent of Police and it was informed that at the time of appointment, the petitioner was facing two criminal cases under Sections 147, 148, 452, 325, 323, 427/149 IPC in the trial pending before Judicial Magistrate, First Class, Abu Road in Criminal case No.511/2004 and another case No.510/2004 before Judicial Magistrate, First Class, Abu Road under Section 147, 148, 452, 323, 336, 427/149 IPC. Thus, the character/antecedents of the petitioner was found to be unsatisfactory and the petitioner being on probation, his services were liable to be terminated without giving any notice in view of condition mentioned above. It is further stated in the reply that the petitioner had not disclosed the fact at the time of joining his duties that two cases were registered against him and this fact was concealed by him.

5. It is evident from the pleadings that,- a) no termination order has been served upon the petitioner till date;

b) it is disputed that the petitioner did not inform about the pendency of the two cases against him;

c) it is evident from the reply that the petitioner stands acquitted in both the cases.

6. However, the petitioner was allowed to join back on duty in pursuance to the interim order passed by this Court on 16.1.2012 but he has not been confirmed in view of the petition pending before this Court.

7. The Apex Court in the case of Avtar Singh Vs. Union of India & ors. (Special Leave Petition [C] No. 20525/2011) decided on 21.07.2016 has specifically held as under :- "(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 : -

(a) 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."

8. In the present case, as observed above, the cases registered against the petitioner were Sections 147, 148, 452, 325, 323, 427/149 IPC and under Section 147, 148, 452, 323, 336, 427/149 IPC. He has already been acquitted in

the said cases.

9. It is evident that the judgment rendered by the Apex Court in the case of Avtar Singh (supra) was not before the authorities at the relevant point of time and has not been considered by the authorities till date. Moreover, there is no order of termination till date.

10. Accordingly, the present writ petition is disposed of with a direction to the respondents to consider the case of the petitioner for confirmation keeping in mind the judgment rendered in the case of Avtar Singh (supra) as also taking into account that the petitioner has since been acquitted in the criminal cases. The needful be done within two months from the receipt of copy of this order. However, the petitioner will be at liberty to file fresh in case of adverse order, if any.