

(2016) 10 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 202 of 2016.

**Ganesh Ram Ahirwar - Appellant/Petitioner @HASH State of M.P. and
Others - State/Respondents**

Date of Decision : 18-10-2016

Acts Referred:

Division Bench

Citation : (2016) 4 MPLJ 452

Hon'ble Judges : Shri Rajendra Menon, ACJ. and Smt Anjuli Palo, J.

Advocate : Shri Shyam Yadav, counsel, for the Appellant/Petitioner; Shri Amit Seth, Panel Lawyer, for the State/Respondents, On advance notice

Final Decision : Allowed

Judgement

1. Seeking exception to order-dated 7.1.2016, passed by the writ Court in Writ Petition No. 9687/2014, this appeal has been filed under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005.

2. Appellant herein was a candidate, who had appeared in the Selection Process conducted for appointment of Samvida Shala Shikshak. However, on account of a criminal case registered against the appellant under section 337 IPC and consequential imposition of fine of Rs. 500/- in the aforesaid case, the candidature of the appellant/petitioner for appointment to the post in question, has been rejected.

3. Challenging rejection of his candidature, the writ petition was filed and the learned writ Court found that under Clause 6(6)(3) of the M.P. Samvida Shala Shikshak (Employee and Conditions of Service) Rules, 2005 [hereinafter referred to as "Rules of 2005"], conviction of a person in a criminal case is a disqualification for seeking appointment to the post in question. The learned writ Court after considering the aforesaid Clause and taking note of the judgment of the Supreme Court in the case of Pawan Kumar v. State of Haryana and another, (1996) 4 SCC 17, has refused to interfere into the matter and, therefore, seeking indulgence this appeal has been filed by the appellant/petitioner.

4. Having heard learned counsel for the parties, we find that in the matter of

principle to be followed for debarring a candidate or a person from seeking appointment on various grounds pertaining to involvement or conviction in a criminal case, in the case of Jainendra Singh v. State of UP - (2012) 8 SCC 748, matter was referred by the Hon''ble Supreme Court for reconsideration to a Larger Bench and in SLP(C) No. 525/2011 - Avtar Singh v. Union of India and others, [reported in 2016 (4) M.P.L.J (S.C.) 332], a detailed analysis of the entire law on the question has been laid down and on 21.7.2016, Hon''ble Supreme Court after evaluating various aspects of the matter pertaining to the yardstick to be applied and the principle to be followed for examining certain cases, has laid down a detailed principle in paragraph 30.

5. In paragraphs 28 and 29, in the case of Avtar Singh (supra), the Hon''ble Supreme Court has observed as under:-

"28. 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 concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in to nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service."

6. Thereafter, in paragraph 30 of the aforesaid judgment, the yardstick and 11 principles have been laid down, which are to be examined by the employer and a decision taken, reproduced here in under:-

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarise our conclusion thus:

(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.

(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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi,

knowledge of the fact must be attributable to him."

7. In the light of the aforesaid legal principle laid down by the Hon"ble Supreme Court, we are of the considered view that the matter should be remanded back to the competent authority of the Department to re-examine the entire case of the appellant/petitioner in the light of the law down by the Supreme Court in the case of Avtar Singh (supra) and take a decision, as the discretion in the matter at the first instance has been given to the employer in the matter.

8. In view of the above, we allow this appeal, quash the order passed by the Department and the learned writ Court and remand the matter back to the Departmental Authorities to consider the case of the appellant/petitioner, evaluate it in the light of the principle laid down by the Supreme Court, take a decision and communicate it to the appellant/petitioner, within a period of six weeks from the date of receipt of certified copy of this order.

9. With the aforesaid observations, this appeal stands allowed and disposed of.