

(2017) 02 MP CK 0198

In the Madhya Pradesh High Court

Case No : 752 of 2002

Ideal Carpets Ltd. Vs Union of India &? others

Date of Decision : 09-02-2017

Acts Referred:

Citation : (2017) 02 MP CK 0198

Hon'ble Judges : Sanjay Yadav

Bench : Division Bench

Advocate : J.K.Jain, Rajneesh Gupta

Judgement

1. With consent of learned counsel for the parties, the matter is finally heard.
2. Petitioner takes exception to Award dated 1.11.2001 passed by the Central Government Industrial Tribunal-cumLabour Court; whereby, while answering the industrial dispute reference in favour of respondent the Tribunal has directed for his reinstatement.
3. The background facts briefly are that the Quality Assurance Establishment Ministry of Defence, Government of India issued advertisement for filling up vacant post of unskilled Labour reserved for Scheduled Tribe candidate. The name of respondent was sponsored by the employment exchange. He was interviewed on 27.03.1992 (Ex.M-1) subject to condition stipulated therein Paragraph 4 and 5 of the offer of appointment clearly stipulated : "4. If you are willing to accept the appointment offered to you, please report for duty at this Establishment on or before 30th April, 92 with the following documents :-
 - (a) A written declaration that you have not more than one wife living, if married at the time of your appointment.
 - (b) original certificate in proof of your age.
 - (c) original certificate in proof of your academic qualification and subsequent experience if any.
 - (d) Original Civil Motor driving licence.

(e) Original Military discharge certificate.

(f) Attested copies of (b), (c), (d) & (e) for official record. The original certificates will be returned to you.

5. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have willfully suppressed any material information, he/she will be liable to removal from service and such other action as Government may deem necessary."

4. On 29.04.1992 the petitioner was called upon to fill character verification form with the further stipulation that the tendering of form is not a guarantee of service "VERNACULAR MATTER OMITTED". Petitioner submitted the form on 30.04.1992. As regard the information sought vide clause 12 as to whether he was prosecuted, kept under detention, fined by Court of law, cases pending in Court of law, committed by any Court of law, the petitioner informed in the negative by endorsing "No".

5. The management vide its communication dated 30.04.1992 sought information from Superintendent of Police, Jabalpur as to antecedent of the respondent-workman whereon it was informed that 45 criminal cases were found registered against the respondent. The communication dated 16.10.1992 is on record marked as Ex.R/1 which is reproduced for ready reference. "VERNACULAR MATTER OMITTED"

6. Consequently, the offer of appointment was withdrawn and the letter of appointment was cancelled on 16.02.1993. The withdrawal of offer of appointment and the cancellation of appointment led the respondent raise an industrial dispute as to : "Whether the action of the management of Senior Quality Assurance Establishment, GCF, Jabalpur in treating the workman Shri Vijay Kumar to be involved in criminal cases and for terminating him on the basis of the Police Verification Report vide order dated 16.02.1993 is legal and justified ? If not, what relief the workman is entitled to ?

7. The Tribunal after considering the material evidence on record observed : " ... In all these criminal cases, the workman was acquitted of all the charges by the competent court the management has not been able to prove that the workman was convicted for any criminal offence. Merely registration of criminal case and filing the challan against the workman is not enough to dis-entitle him for getting employment in any Government service. The appointment order dated 24.05.92 (M-1) was issued to the workman by the management and in pursuance of this order, he joined his duty on 28.05.92. Subsequently, his services were terminated on 16.2.93 on the basis of police verification report received from District Magistrate, Jabalpur. The workman has not been convicted for any offence by any Court. ..."

8. Accordingly, the Tribunal set aside the order dated 16.02.1993 and directed for his reinstatement.

9. Petitioner calls in question the correctness of the Award on the ground that the appointment of the respondent was subject to character verification and since he was not cleared as was found having 45 criminal cases registered against him and these facts being concealed by him while filling the verification form, the Tribunal was not justified in directing his reinstatement.

10. The respondent on his turn has defended the Award. It is contended that he was not convicted for any of the charges framed against him. The appointment therefore ought not to have been cancelled without holding any enquiry.

11. True it is that the respondent workman was not convicted of the alleged offences registered against him. But equally true it is that these cases were pending against him when he was called to furnish the information which he concealed.

12. It has been held in *Avtar Singh vs. Union of India* : (2016) 8 SCC 471, that : "32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

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.

...

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.

38.7. 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."

13. The impugned Award in the given facts of present case when adjudged on the basis of the law laid down in Avtar Singh (supra), it cannot be given the stamp of approval. Consequently, impugned Award is set aside. The withdrawal of offer of appointment and the cancellation of appointment order is upheld.

14. Petition is allowed to the extent above. No costs.