

(2001) 12 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1213 of 2001

Jai Singh

APPELLANT

Vs

Director General, Headquarters Central Reserve Police Force
and Others

RESPONDENT

Date of Decision : 14-12-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 294, 307, 323

Citation : (2002) 2 MPHT 203

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; R.S. Patel, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—Sole question involved for decision in the instant case is whether the order of removal of petitioner owing to receipt of adverse character verification report is proper.

2. Petitioner was selected as Constable in the Central Reserve Police Force; he was appointed as Constable on 4-4-2000 and commenced his training with effect from 30th April, 2000. While he was undergoing the training, he was removed as per Order P-2 dated 5-1-2001. His services were terminated on expiry of one month period on receipt of the order dated 5-1-2001. Petitioner submitted a reply P-3 on 25-1-2001 and contended that he stood acquitted in the criminal case by the Judicial Magistrate 1st Class, Satna on 30th June, 2000 in Case No. 418/99. A copy of order of Judicial Magistrate 1st Class was also filed. Perusal of the order passed by the Judicial Magistrate 1st Class indicates that offence was compounded as parties entered into compromise. Offence was under Sections 147, 323, 325, 294/149, IPC. The Court considered it fit to give the permission to compound the offence as the same was not against the public interest. That is how the matter terminated. It appears that as to character verification, District Magistrate, Satna sent the report on 21-11-2000 in which it was mentioned that

a challan was filed under Sections 147, 148, 323, 324, 294, IPC and J.M.F.C. has decided the case in the manner mentioned above. It was opined that in the application form column No. 12 pendency of the said case was not disclosed which was objectionable. In that regard, it is for the employer to take a decision. On the basis of this report of District Magistrate (R-1), dated 21-11-2000, adverse action was taken, and the petitioner's services were terminated by giving him one month's notice as per Order P-2 dated 5-1-2001. It appears that the representation filed by the petitioner was not taken into consideration.

3. Petitioner submits that it was a petty case which has nothing to do with public order and as a matter of fact petitioner was falsely implicated in the case, and the involvement in the said case does not involve any moral turpitude, and the J.M.F.C. found that permission to record the compromise was not against the public interest and matter was dropped. Since the matter was dropped pursuant to compromise between the parties, it cannot be said that petitioner has incurred any disqualification on the basis of said criminal case and the gravity of suppression of such a fact which by itself if disclosed was not enough to deny the employment to the petitioner. Petitioner should not have been removed from the service. Learned counsel places reliance on a Division Bench decision of this Court in Lachmandas Vs. State of M.P. and Another,

4. Learned counsel for respondents submits that the factum of acquittal is not much material; petitioner rendered himself unfit by making a deliberate suppression; while submitting the application form he did not disclose the material fact which by itself is enough to render the petitioner unfit for service in the Central Reserve Police Force.

5. After hearing learned counsel for parties, I am of the opinion that in the facts and circumstances of the case, the petty nature of the case which was registered against the petitioner which did not involve any moral turpitude and the pendency of the said criminal case was not enough to deprive the employment to the petitioner even if he would have disclosed the fact of the pendency of the said criminal case against him, the pendency of the case was not in any manner adversely affect the service prospects and it cannot be said that due to involvement in the said criminal case, petitioner became unfit to be retained in the service of Central Reserve Police Force. No doubt true it is that petitioner should have disclosed in all fairness the said fact in column No. 12 of the form of certification. However, that lapse cannot come in the way since the case itself is found to be of petty nature which did not involve moral turpitude and moreover it had already ended in discharge of the petitioner as the matter was compounded owing to compromise entered between the parties and the Judicial Magistrate 1st Class has given a categorical finding that the compromise was not against the public interest. The fact of acquittal and gravity of offence in which petitioner was involved ought to have been taken into consideration by the respondents before passing the order of removal of the petitioner. In more or less similar circumstances, Supreme Court in Regional Manager, Bank of Baroda v. Presiding

Officer, Central Govt. Industrial Tribunal and Anr. AIR 1999 SCW 474, considered the question. In the said case, false statement was given about a pending criminal prosecution with intention to secure employment in the Bank. Their Lordships of the Supreme Court in the facts and circumstances of the said case came to the conclusion that pendency of the case u/s 307, IPC was not having direct impact on appointing Bank. Employee was ultimately acquitted in the criminal case. The Supreme Court set aside the order of termination of the employee and he was directed to be reinstated. In Regional Manager, Bank of Baroda (supra), the Supreme Court held as under :--

"The facts which are well established on record and which have weighed with us for coming to the aforesaid conclusion may now be noted. It is true that the respondent made a wrong statement while replying to query No. 27 of the application form that he had not been prosecuted at any time. It is equally true that the Labour Court itself found that giving a false statement should not be deemed to be such a grave misconduct which may be visited with extreme punishment of termination from service. However, it has also to be noted that the appellant/Management while issuing show-cause notice for the first time on 26-2-1980 has in terms noted in the said notice that not only the criminal proceedings were pending but had ultimately ended in conviction of the respondent. The appellant itself thought it fit to await the decision of the criminal case before taking any precipitate action against the respondent for his misconduct. Thus, according to the respondent this suppression was not so grave as to immediately require the appellant to remove the respondent from service. On the contrary in its wisdom, the appellant thought it fit to await the decision of the criminal proceedings. This may be presumably so because the charge against the respondent was that he was alleged to have involved himself in an offence u/s 307 of the IPC. It was not an offence involving cheating or misappropriation which would have a direct impact on the decision of the appointing Bank whether to employ such a person at all."

6. In T.S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre an incumbent was dis-qualified on the ground of conviction under Defence of India Rules for shouting slogan on one occasion during emergency, the Supreme Court held that denial of appointment on sole ground on non-disclosure of such conviction was not justified. In State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another, the Supreme Court observed that McCarthyism obnoxious to the philosophy of our Constitution. Only if such past affinities are considered likely to affect the integrity and efficiency of the individual's service can the incumbent be denied employment. A Division Bench of Allahabad High Court in Saligram and Ors. v. Union of India (1985) 2 SLR 712 held that principles of natural justice are attracted when services of temporary employee are terminated on the ground of furnishing false declaration. Rules of natural justice should be observed before terminating the services. A Single Bench of this Court in Deepak Kumar Pandey v. State of M.P., (1988) 4 SLR 303, considered the question of termination of services of temporary employee which

were terminated after eight years to the date of joining the service on the basis of character verification. The basis was bad antecedents during students' days prior to joining the services, this Court held termination to be punitive, arbitrary. In *Subhash v. State of Haryana* (1990) 4 SLR 525, there was concealment of the involvement in criminal case u/s 379, IPC in which the employee was acquitted; a decision was taken to remove the employee owing to concealment; the plea of concealment in the event of acquittal was held to be hypertechnical and the removal order was set aside. In *V. Venugopal Reddy v. Union of India* (1991) 1 SLR 222, a Division Bench of Punjab & Haryana High Court considered the impact of involvement in offence under Sections 324/34, IPC and came to the conclusion that the offence did not involve moral turpitude on part of the petitioner and at the time when the employee was recruited he had not been convicted of any criminal offence by any Court. Only the criminal case stood registered against him and the trial even had not commenced. Considering the totality of the circumstances the Judicial Magistrate has found the employee not to be guilty of the offence and he was fully exonerated; there was no stigma cast on the past career of the employee muchless indelible disqualifying him from the Government service; the removal order was set aside. What has been emphasized is that there should be some nexus between the concealment and dis-qualification which one may incur.

7. Similar situation was obtainable in case of *Jagdish Ram Sahu* (supra). This Court held that services of *Jagdish Ram Sahu* should not have been terminated since the case did not involve moral turpitude disentitling him from employment. Reliance was placed on another decision of this Court in *W.P. No. 4191/99* (*Ramratan Yadav v. Kendriya Vidyalaya Sangathan and Ors.*) decided on 25-7-2000.

8. Considering the overall view of the matter and in the facts and circumstances of the case, it is held that order of removal is excessively harsh and is quashed. Reinstatement of the petitioner is directed. However, without backwages.

9. Writ petition is allowed. Cost on parties.