

(2018) 03 RAJ CK 0131

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8190 of 2017

Ram Charan Nayak @APPELLANT@Hash Ajmer Vidhyut Vitran Nigam Limited

Date of Decision : 06-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 323, 324, 342
Probation of Offenders Act, 1958 — Section 4, 12

Citation : (2018) 03 RAJ CK 0131

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : S.K.M.Vyas, Mrigraj Singh

Final Decision : Allowed

Judgement

This writ petition is directed against the order dated 1/6/2017 (Annex.7) passed by the Superintending Engineer (O & M), Ajmer Vidhyut Vitran

Nigam Limited, Udaipur, whereby, the representation made by the petitioner has been rejected. The petitioner was accorded appointment on the post

of Technical Helper by order dated 2/6/2015 (Annex.1). On 12/6/2015, the petitioner gave a declaration that no criminal investigation/case against him

was pending in any police station or court and that he has not been punished on conviction by any court.

Whereafter, on police verification, by report dated 5/9/2016 (Annex.3) it was reported that petitioner was tried in case no. 127/2006 under Section 323,

324, 342 and 147 IPC, wherein, on 24/10/2008 offences under Section 323, 324 and 342 IPC were compromised and petitioner was found guilty for

the offence under Section 147 IPC and was granted benefit of probation under Section 4 of the Probation of Offenders Act, 1958 (the Act,

1958). On receipt of said police verification, by order dated 6/1/2017, the

services of the petitioner were terminated with immediate effect.

Thereafter, petitioner filed S.B.Civil Writ Petition No. 1746/2017, which came to be decided by order dated 27/3/2017, wherein, it was observed that

the judgment rendered by the Apex Court in Avtar Singh vs. Union of India & Others : (2016) 8 SCC 471 and Ashok Kumar vs. State of Rajasthan &

Ors. : SB. Civil Writ Petition No. 1603/2011, decided by Jaipur Bench of this Court on 27/8/2012 were not before the authority at the time when the

order terminating the services of the petitioner was passed and consequently the order dated 6/1/2017 was set aside with liberty to the respondent

authority to pass fresh order keeping in view the observations and in terms of the judgments rendered in the case of Avtar Singh (supra) and Ashok

Kumar (supra).

Pursuant to the order dated 27/3/2017 passed by this Court, the respondents passed the impugned order dated 1/6/2017 (Annex.7) and inter alia

observed that as the petitioner was convicted for the offence under Section 147 IPC, his character was in the category of moral turpitude, despite

being aware of the said matter, he deliberately did not disclose the same, the case of Ashok Kumar (supra) pertained to matrimonial dispute and as

such the same had no application to the facts of the case and therefore, the petitioner was not entitled to any relief, the order dated 6/1/2017

terminating the services of the petitioner was justified.

It is submitted by learned counsel for the petitioner that the respondents have passed the order impugned in a mechanical manner without taking into

consideration the law laid down by Honâ??ble Supreme Court in the case of Avtar Singh (supra). It is further submitted that so far as the other

offences were concerned, the petitioner was acquitted and qua offence under Section 147 IPC he was given benefit of probation and in terms of

Section 12 of the Act of 1958, once the petitioner has been dealt with under the provisions of Section 4 of the Act, 1958, the disqualification, if any,

attached to the conviction goes away and, therefore, the respondents were not justified in rejecting the representation made by the petitioner.

It was submitted that the offence had taken place in 2006 and the judgment was delivered in 2008 and as the petitioner was granted benefit of

probation, the same was not indicated in the declaration and, therefore, the case of the petitioner deserves to be dealt with in terms of the law laid

down by Honâ??ble Supreme Court in the case of Avtar Singh (supra).

Learned counsel for the respondents supported the order impugned. It was submitted that the petitioner was convicted for the offence under Section

147 IPC, though the benefit of probation was granted to him, in view of the fact that the petitioner did not disclose the said fact of conviction, the same

was sufficient for the respondents to terminate the services of the petitioner and, therefore, the order impugned does not call for any interference. In

have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The facts are not in dispute, wherein, the petitioner while giving declaration regarding pendency of criminal case/conviction by criminal court gave out

information that neither any investigation was pending nor he was convicted at any point of time. In police verification it was revealed that the

petitioner in fact had been subjected to criminal trial, wherein, part of the offences were compromised, he was convicted for the offence under Section

147 IPC, but was granted benefit of probation. On receipt of the said police verification, straightway the services of the petitioner were terminated.

The petitioner filed writ petition, which was disposed of with a direction to the respondents to deal with the representation in light of the law laid down

in the case of Avtar Singh (supra) and Ashok Kumar (supra).

The respondents have, though dealt with the said judgments in the order impugned but the same have not been considered in right perspective.

Honâ??ble Supreme Court in the case of Avtar Singh (supra) inter alia laid down as under:

â??(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.â??

In the present case, the offence had taken place in the year 2006 and order of conviction along with probation was passed in the year 2008. Section 12 of the Act of 1958 reads as under:

â??12. Removal of disqualification attaching to conviction â?" Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.â?"

A bare look at the said provision reveals that once the person is granted benefit of probation, he does not suffer disqualification, if any, attached to a conviction of an offence under such law. The conviction in the year 2008 along with grant of probation in view of the provisions of the Act, 1958 indicates that the disqualification, if any, attached to such conviction is not suffered by the petitioner. The respondents, while relying on the conviction has not taken into consideration the said provision of law, which vitiates the order impugned.

Further, the observations made in the case of Avtar Singh (supra) also have been construed in a very narrow sense and the judgment in the case of

Ashok Kumar (supra) has been distinguished on the ground that the offence alleged was not same, which cannot be a ground for not following the case/distinguishing the same. In view of above discussion, the order impugned passed by the respondents rejecting the representation made by the petitioner cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed, the order dated 1/6/2017 (Annex.7) is quashed and set aside, resultantly order dated

6/1/2017 (Annex.5) terminating the services of the petitioner is also set aside and it is held that the petitioner would be entitled to all consequential benefits, as if the order dated 6/1/2017 was never passed. No order as to costs.