

**(2012) 03 CHH CK 0012**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (S) No. 5790 of 2011**

Ram Kumar Choubey

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

**Date of Decision :** 26-03-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323

**Citation :** (2012) 3 CGBCLJ 183

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** P.K.C. Tiwari and Mr. Shashi Bhushan, for the Appellant; A.V. Shridhar, Panel Lawyer for the State, for the Respondent

**Final Decision :** Allowed

## Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 20.04.2011 (Annexure P/1) whereby, the services of the petitioner, who was regularized on the post of Sthal Sahayak, by order dated 13.08.2008, was cancelled holding that he was not fit to be retained in service under the condition No. 8 of the appointment order dated 13.08.2008. The brief facts, relevant for adjudication of the lis is that the petitioner was regularized on the post of Sthal Sahayak by order dated 13.08.2008 (Annexure P/3) subject to several terms and conditions. Condition No. 8 of the aforesaid order provides that the appointment of the petitioner was subject to character verification by the police and on verification, if any adverse remark is found, the services would be cancelled without any notice. Accordingly, by order dated 20.04.2011 (Annexure P/1) the services of the petitioner was cancelled under condition No. 8 of the appointment order dated 13.08.2008 (Annexure P/3).

2. In the year 1974, a charge sheet was filed u/s 147, 148, 149/ 323 of the Indian Penal Code against the petitioner alongwith others before the Chief Judicial Magistrate, Class I, Rajnandgaon. However, the petitioner was let off with a warning under the provisions of the Bal Adhiniyam, holding that the petitioner

was aged about 10 years at the time of commission of offence. The petitioner submitted application for character verification on 21.06.2010 (Annexure R/1) wherein against the column of his antecedents about registration of crime against him, filing of challan in the Court, whether he was convicted, decision of the Court, etc. the petitioner responded in negative, stating therein that there was no case registered, nor any charge sheet was filed and no case was registered nor was he punished by any criminal court. On that basis, the employer found that the petitioner has deliberately concealed the fact of his conviction, though, he was let off with a warning. Thus, on account of concealment of the facts, as aforestated, the petitioner was not found fit to be retained in service under condition No. 8 of the order dated 13.08.2008, and cancelled the order of regularization, by order dated 20.04.2011 (Annexure P/1). Hence, this petition seeking quashing of the impugned order dated 20.04.2011 (Annexure P/1)

3. Shri P.K.C. Tiwari, learned Senior counsel appearing with Shri Shashi Bhushan, learned Advocate for the petitioner would submit that the petitioner was 10 years old when the alleged offence was committed and the Chief Judicial Magistrate, Rajnandgaon, has also let him off without conviction and sentence, with a warning having regard to his age, under the provisions of the Bal Adhinyam. The instant application was filed in January, 2010 after a period of 33 years, wherein, by mistake, since the petitioner was not convicted, it was mentioned that there was no charge sheet filed against the petitioner, no offence was registered nor was he convicted. For such a simple mistake committed by the petitioner during his childhood, he should not be punished with such a serious penalty of removal from service.

4. On the other hand, Shri Shridhar, learned Panel Lawyer appearing for the State/respondent submits that condition No. 8 of the appointment order dated 13.08.2008 clearly provides that the appointment was in anticipation of verification of character of the candidate and if something adverse was found, the appointment would stand cancelled without notice to the candidate. Thus, having regard to the antecedent of the petitioner, as aforestated, the order of regularization dated 13.08.2008 was cancelled.

5. Condition No. 8 of the order dated 13.08.2008 (Annexure P/3) reads as under:

6. The petitioner was held guilty for the offence committed by him when he was aged about 10 years, though, he was let off with a warning and no sentence was imposed upon him. The appointment of the petitioner was subject to police verification as prescribed in condition No. 8 of the terms and conditions of the order dated 13.08.2008 (Annexure P/3).

7. On considering the rival submissions made by learned counsel appearing for the parties, perusal of the pleadings and documents appended thereto, it is evident that the petitioner was tried for the offences u/s 147, 148, 149/ 323 of the I.P.C. and he was let off with a warning as he was minor at the time of

commission of the said offence.

Commr. of Police and Others Vs. Sandeep Kumar,

8. The Supreme Court, while considering the identical issue in Commr. of Police and Others Vs. Sandeep Kumar, held that young people often commit indiscretions, and such indiscretions can often be condoned. In the instant case, the indiscretion, committed by the petitioner is a minor indiscretion.

9. In Ram Kumar Vs. State of U.P. and Others, the Supreme Court held that the appointing authority must take a decision with regard to suitability for appointment with reference to the nature of suppression and nature of the criminal case. In the case on hand, the acquittal order was passed on 05.07.1977 and the character verification form was filled up in 21.06.2010. It is possible that the petitioner could not have understood the required information to be filled in the verification form as the petitioner was not imposed with any sentence and he was let off with a warning. There is no antecedent of any criminal activity from 1977 till 2010 which may lead to the conclusion that the petitioner was not suitable to be retained in service. Thus, this Court is of the considered view that the impugned order dated 20.04.2011 (Annexure P/1) deserves to be quashed.

10. It is ordered accordingly.

11. Consequently, the writ petition is allowed with a direction to the respondent authorities to take the petitioner back in service. However, it is made clear that the petitioner shall not be entitled to any backwages. No order as to costs.