

(2021) 12 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4125 Of 2016

Rinku Boro

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 07-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 394, 395, 397

Citation : (2021) 12 GAU CK 0046

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : T Ali

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Choudhury, learned counsel for the petitioner as well as Mr. D. Borah, learned counsel for the respondents.
2. The petitioner's case is that he was selected to undergo training for the post of AB Constable. Pursuant to final select list dated 13.07.2015 in the District of Nalbari, the petitioner was not allowed to undergo training as he was involved in a criminal case. Being aggrieved, the petitioner has approached this Court.
3. The petitioner's counsel submits that charge sheet has been filed against the petitioner under Section 394 IPC and he does not know the stage of the proceedings of the case. However, the case is pending before the Court of the CJM as G.R. Case No. 342/2014 arising out of Nalbari P.S Case No. 144/14. He also submits that the petitioner should be considered innocent until proven guilty.
4. Mr. D. Borah, learned counsel for the State respondents submits that before appointment and training, character antecedent of the candidates is required to be verified. As per direction of the Assam Police Headquarters communicated vide Deputy Inspector of Police, Govt. of Assam, letter dated 03.08.2015 regarding police verification etc. of selected candidates for recruitment of Armed Branch Constables, the details of all the selected candidates was sent to their

concerned police stations. As per verification report submitted by the Nalbari Police Station, the petitioner was found to be an accused in criminal case arising out of Nalbari P.S Case No. 144/14 IPC. Thus, the petitioner was not allowed to undergo training.

5. The learned counsel also submits that charge sheet has been filed against the petitioner and other accused persons under Section 395/397 IPC and their case are presently under trial in the Criminal Court.

6. Mr. D. Borah, learned counsel for the State respondents has submitted a status report with regard to Nalbari P.S Case No. 144/2014 on the basis of the letter dated 04.12.2021, issued by the Superintendent of Police, Nalbari. As per the letter dated 04.12.2021, charge sheet has been filed in the said case and the petitioner is one of the 8 accused persons. As can be seen from the case records and the submissions made by the counsels for the parties, Nalbari P.S Case No. 144/2014 was registered under Section 394 IPC on the basis of an FIR, which had been submitted on 12.03.2014. The Selection process undertaken for filling up the post of AB Constable had been made in pursuant to an Advertisement dated 24.12.2014, issued by the Chairman, State Level Police Recruitment Board. General Instructions - III and V of the Advertisement dated 24.12.2014 states as follows:

"iii. The select lists confer no right to appointment unless the department is satisfied about suitability of the candidate after a thorough medical examination and such enquiry and verification as may be considered necessary before appointment to the service/posts.

v. Candidature will be summarily rejected at any stage of the recruitment process for not conforming to the official format/having incomplete information / wrong information / incomplete requisite certificate / misrepresentation of facts / impersonation."

A perusal of the above General Instructions clearly show that no right of appointment is conferred on a person who is selected and that verification of the person can be done before appointment order is issued. Further, as per Clause 5 of the General Instructions, giving of incomplete information or wrong information can lead to the candidature being summarily rejected at any stage of the recruitment process.

7. In the present case, the final recommended list of candidates for appointment as (AB) Constable, which was issued on 13.07.2015 shows that the petitioner's name was included at Sl. No. 9. However, charge sheet in Nalbari P.S Case No. 144/2014 was submitted in the Court of the CJM on 27.08.2015 vide Nalbari P.S CS No. 305/2015. Prior to the training to be given in pursuant to the final recommended list of candidates, police verification regarding the antecedents and character of all the selected candidates was required to be done and in this regard, the Nalbari Police Station verification report brought to light the fact that the petitioner was an accused in Nalbari P.S Case No. 144/2014, in which charge

sheet has been submitted.

8. The question here is as to whether the petitioner has a right to be sent for training and to be eventually appointed to the post for which he was selected by the Selection Committee. In the case of *East Coast Railway vs. Mahadev Appa Rao*, reported in (2010) 7 SCC 678, the Apex Court has held that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. State's decision not to make an appointment is not beyond judicial review and selection should not be scuttled for malafide reasons or in an arbitrary manner.

9. In the present case, the petitioner has taken a stand that he was not aware of Nalbari P.S Case No. 144/2014 and that he became aware of the case only when he was arrested on 16.07.2015.

10. As stated earlier, charge sheet was filed in the case on 27.08.2015 and that the criminal case is in the trial stage for examining prosecution witnesses. There is nothing produced to prove that the petitioner was aware of the Nalbari P.S. Case No. 144/2014, prior to his being arrested by the police. In view of the above, it cannot be said that there was suppression of information on the part of the petitioner regarding his involvement in a criminal case at the time he applied for the post. The select list of the successful candidates was published on 13.07.2015 and the petitioner was apparently not allowed to take part in the training due to the report made by the Nalbari Police Station, showing that the petitioner was involved as an accused in Nalbari P.S Case No. 144/2014.

11. The above being said, in the case of *Avtar Singh vs. Union of India & Others*, reported in (2016) 8 SCC 471, the Apex Court has laid down the principles to be followed, regarding suppression of information or submission of false information by candidates who apply for appointment to vacant posts, with regard to criminal prosecution, arrest or pendency of any criminal cases against them. The Apex Court in para 38 has stated as follows:

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

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.

38.2. 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.

38.3. The employer shall take into consideration the Government orders/ instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. 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 recourses appropriate to the case may be adopted :-

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

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.

38.8. 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.

38.9. 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.

38.10. 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.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

Para 38.8 clearly states that if a criminal case was pending, but not known to the candidate at the time of filling up the form, the same may still have adverse impact on the person and the appointing authority would have to take a decision, after considering the seriousness of the crime. In the present case, the charge sheet filed in respect of Nalbari P.S Case No. 144/2014, is with regard to a prima facie case being found against the accused persons under Section 395/397 IPC, which pertains to dacoity, where punishment can be meted out for upto 10 years with fine. The respondents decision not to allow the petitioner to undergo training cannot be said to be a malafide or arbitrary decision. However, as there is nothing to show that the State respondents have passed any order in writing, with regard to the reason for not allowing the petitioner to undergo training, the respondent No. 3 is directed to take a decision, in terms of para 38.8 of the judgment in Avtar Singh (supra), as to whether the petitioner should be allowed to undergo training and whether he should be appointed to the post of Constable (AB) in the Assam Police. The decision should be taken by the respondent No. 3 within a period of 6 weeks from the date of receipt of a certified copy of this Order. Further, it is not known as to when the criminal case pending against the petitioner would be decided/completed and as such, waiting indefinitely for a decision by the Criminal Court would not be in public interest. Also, as held by the Apex Court in East Coast Railway vs. Mahadev Appa Rao (supra), no candidate acquires an indefeasible right to a post even if he is selected and put in the select list for appointment, when reasonable reasons are given for the same.

Writ petition is accordingly disposed of.