
(2019) 02 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4232 Of 2009

Umesh Prasad Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 427, 447
Explosive Substances Act, 1908 — Section 3, 4

Citation : (2019) 02 JH CK 0035

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : A.K.Sahani, Ajit Kumar, Neelam Tiwary

Final Decision : Disposed Off

Judgement

The present writ petition has been filed for quashing the order of termination dated 04.10.2007 passed by the original authority and also the appellate order dated 30.04.2009, wherein the appeal filed by the petitioner had been rejected.

It has been submitted by learned counsel for the petitioner that against rejection of appeal, petitioner had preferred memorial vide Memorial dated 15.07.2009 (Annexure-5), which is still pending before the concerned authority i.e. respondent No.2.

As per pleading, petitioner had been appointed in pursuance of Advertisement No.1 of 2004 on the post of Constable. Subsequently, it had come to light of the authority that the petitioner was an accused in Manpur P.S. Case No.19 of 2000 under Sections 427, 447, 307/34 of the IPC and Section 3/ 4 of the Explosive Substances Act. On the basis of suppression of material fact, show cause was issued to the petitioner and he had dismissed vide order dated 04.10.2007. The order of dismissal had been upheld by the appellate authority vide order dated 30.04.2009.

Learned counsel for the petitioner has relied upon the judgment passed by the

Apex Court in the case of Avtar Singh vrs. Union of India reported in AIR 2016 SC 3598.

Para-30 of the said judgment is quoted hereinunder:-

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

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.

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

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 : -

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.

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

(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.

(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.

(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.

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

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.

In pursuance of above order passed by the Apex Court, the Apex Court had directed the authorities in following terms.

"In order to enable the Appointing Authority to pass orders, as above, we direct the appellant to file an appropriate representation before the Appointing Authority and the Appointing Authority will pass orders, in accordance with law, within four months from the date of receipt of a representation after affording an opportunity of hearing to the appellant."

In view of above settlement of law by the Apex Court, the present writ petition is disposed of by giving liberty to the petitioner to file a representation before the original authority. Original authority is directed to take into consideration the order of Apex Court as indicated above and apply the same to the facts of the present case and take an informed decision in accordance with law within twelve weeks from the date of receipt/production of copy of this order.

With above observations and directions, the present writ petition stands disposed of.