

Court No. - 29

Case :- SPECIAL APPEAL No. - 471 of 2023

Appellant :- Shailesh Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri P. Pandey, learned counsel for the appellant and Sri N.K. Pandey, learned Advocate appearing for respondents.

2. Challenging the order dated 16.05.2023, passed by the learned Single Judge in dismissing the *Writ A No. 14884 of 2017 (Shailesh Kumar v. State of U.P. and Others)*, with the observation that no indulgence can be granted to the writ petitioner as he has suppressed the material fact of pendency of criminal case at the time of seeking appointment, it is argued by the learned Senior Counsel that the procedure prescribed in the Government order dated 28.04.1958 for verification of character and antecedents of Government servants before their first appointment, has not been followed. Clause (c) of Notes attached to Clause (3) of the aforesaid Government order has been placed before us to submit that the District Magistrate is the competent authority to submit a verification report, that too after giving an opportunity of hearing to the candidate, before sending his report. Reliance is placed on the judgement of this Court in *Writ A No. 17092 of 2021* wherein direction has been given to the District Magistrate concerned to issue a show cause notice calling upon reply of the candidate and then proceed in accordance with the Government order dated 28.04.1958.

3. It is further argued by the learned Senior Counsel that there is no observation in the order impugned with regard to suppression of any material fact, i.e. pendency of the criminal case, to cancel the appointment of the writ petitioner nor the show cause notice mentions the same. The submission is that in any case for character verification of the petitioner, before cancellation of his appointment, it was incumbent upon the District Magistrate to grant opportunity of hearing to the writ petitioner. Reference has been made to

the decision of the Apex Court in **Avatar Singh vs. Union of India & Others : (2016) 8 SCC 471**, to submit that mere suppression of pendency of criminal case cannot be a reason to cancel the appointment, in a routine manner. As per the observation made by the Apex Court therein, the action taken by the competent authority should be based on objective criteria on due consideration of all relevant facts. Reference has been made to the observations in paragraph nos. '34', '35' & '36' of the said decisions, which read as under:

"34. No doubt about it that verification of character and antecedent is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material information presuppose that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uninformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects."

4. It is, thus, vehemently argued by the learned Senior Counsel appearing for the writ petitioner that the order for cancellation of appointment of the writ petitioner, on the premise of pendency of criminal case, was a result of mechanical exercise on the part of the respondents. The procedure prescribed in the aforesaid Government order has not been followed and further that no consideration has been given on the criterias relevant for the decision. The order passed by the learned Single Judge is, thus, liable to be set-aside relegating the matter for fresh inquiry after obtaining report of the District Magistrate, who is required to grant opportunity of hearing to the writ petitioner.

5. Learned Standing Counsel appearing for the State respondents, however, justified the order of the learned Single Judge for the reasoning given therein. Having considered the submissions of the learned counsels for the parties and perused the record, we are first required to take note of the findings returned by the learned Single Judge for dismissing the writ petition, arriving at the conclusion that the writ petitioner is guilty of suppression of material fact and refusing to interfere in the order of cancellation of appointment for violation of the procedure prescribed in the Government order dated 28.04.1958.

6. We may note that there is no challenge to the finding returned by the learned Single Judge to the effect in the Self Attestation Form, filled by the writ petitioner, in Column '10', the petitioner was required to disclose as to whether he was ever arrested, prosecuted, detained, bound, fined or convicted in any criminal case. The application form also carried a declaration which was duly signed by the writ petitioner which states that in case the details given in the application form are found false, the petitioner should be declared ineligible and if selected then he shall be removed from service. There is a categorical finding in the order impugned that in the Self Attestation Form in Column '10' the petitioner has remarked 'No'. This Self Attestation Form was submitted by the writ petitioner on 06.06.2016 and he was finally selected and appointed vide appointment letter dated 09.12.2016.

7. From the abovenoted findings returned by the learned Single Judge, it is more than evident that the writ petitioner had secured appointment by making a false declaration in the Self Attestation Form and the information given by the writ petitioner having been found false, his appointment could be cancelled. The learned Single Judge has, thus, rightly concluded that the writ petitioner being guilty of suppression of material fact, of concealment of fact of pendency of the criminal cases in the nature of offence like the one under N.D.P.S. Act that involves moral turpitude, cannot claim indulgence of this Court.

8. Having noted the above findings, we are further required to note the observation of the Apex Court in the case of **Avatar Singh (Supra)** wherein it is observed in paragraph no. '36' noted above that the yardstick which is to be applied to take a decision in the matter of cancellation of appointment on suppression of material fact, would depend upon the nature of post. For the post which are higher category or uniformed services, higher criteria can be

adopted. In a case which is trivial in nature, even after recording conviction, the competent authority may ignore the factum of suppression of fact or false information by condoning the lapse.

9. The guidelines provided by the Apex Court in the case of **Avatar Singh (Supra)**, to deal with a matter for cancellation of candidature or appointment of a candidate on suppression of material information, shows that such matters which are technical or trivial can be ignored. In any case, there cannot be two views in the matter that the candidate who is seeking Government employment is required to furnish detailed information and in case any declaration given by him is found false, that may be a reason for cancellation of appointment. There can be no two views that the disciplinary authority or the appointing authority is the competent authority to take a decision, keeping in mind the nature of services, the misrepresentation or concealment in individual cases, depending upon the facts of each case. This Court in exercise of power of judicial review under Article 226 of the Constitution of India cannot scrutinize the decision of the competent disciplinary authority as a Court of appeal. The scope of interference in the decision of disciplinary authority is confined to the decision making process.

10. As in the instant case, for the above noted facts, we are of the considered view that flaw in the decision making process as pointed out by the learned Senior Counsel based on the Government order dated 28.04.1958, will have no bearing in the instant case, inasmuch, as the present is a case of suppression of material fact knowingly and willingly on the part of the writ petitioner. No benefit can be derived from the judgment and order *dated 03.01.2022 in Writ A No. 17092 of 2021* passed by this Court, inasmuch, as the writ petitioner therein had disclosed full details of the criminal case by means of an affidavit filed before the competent authority prior to the selection/appointment.

11. In view of the above discussion, the appeal is found devoid of merits and **dismissed**.

Order Date :- 17.7.2023

Shubham Arya