



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 13999/2020

CNR: RJHC020673362020 | URN: CW / 26571U / 2020

Kailash Chand Raigar Son Of Late Shri Sohanlal Raigar, Aged About 34 Years, Resident Of Vpo-Beer Via Srinagar, Tehsil And District Ajmer (Raj.)

-----Petitioner

Versus

1. The Ajmer Vidhyut Vitran Nigam Limited, Through Its Chairman, Jaipur Road, Ajmer (Raj.)
2. The Secretary (Administration), Ajmer Vidhyut Vitran Nigam Limited, Jaipur Road, Ajmer (Raj.)
3. The Superintending Engineer, Ajmer Vidhyut Vitran Nigam Limited, Jaipur Road, Ajmer (Raj.)

-----Respondents

For Petitioner(s) : Mr. R.K. Gouttam with
Mr. G.S. Gouttam,
Ms. Arati Bai Meena and
Ms. Saakshi Meena

For Respondent(s) : Ms. Priya Rastogi for (AVVNL)

HON'BLE MR. JUSTICE ANAND SHARMA

Order

25/09/2026

1. By way of filing this writ petition, the petitioner has assailed order dated 20.02.2017 passed by the Secretary (Administration), Ajmer Vidyut Vitran Nigam Limited, whereby, representation filed by the petitioner against termination order dated 24.11.2011 has been rejected. He has also challenged the legality and validity of order dated 24.11.2011.
2. It is stated that the petitioner was initially appointed on the post of Helper Grade-II/Peon vide order dated 25.03.2011 on



compassionate grounds in place of his deceased father, who was an employee of the respondent-Nigam. It is stated that in the application form submitted by the petitioner, there was no clause whatsoever requiring him to furnish details of criminal antecedents/past pending criminal cases. After processing the application submitted by the petitioner, appointment order dated 25.03.2011 was issued. Thereafter, he was required to fill a police verification form, on the basis of which an enquiry was made which revealed that the petitioner was involved in a criminal case relating to Sections 143, 341, 323 and 34 of IPC. In the above case, after investigation, challan was filed and vide judgment dated 03.07.2008, although, the petitioner was convicted for committing offence under Section 147 IPC, yet while granting benefit of Section 3 of the Probation of Offenders Act, 1958 (hereinafter to be referred as 'the Act of 1958'), he was released after due admonition.

3. On receiving such information through police verification report, the petitioner was called for personal hearing, and since, there was a condition in the appointment order that in case, during character verification through police, any fact with regard to criminal antecedents is pointed out then services of the petitioner were liable to be terminated. Accordingly, the services of the petitioner was terminated vide order dated 24.11.2011.

4. Feeling aggrieved by termination order dated 24.11.2011, the petitioner filed S.B. Civil Writ Petition No.1390/2012 before this Court, which was disposed of vide order dated 08.12.2016 by the Co-ordinate Bench of this Court directing the petitioner to file representation before the appointing authority



for consideration of his case in the context of judgment of the Apex Court in the case of **Avtar Singh Vs. Union of India & Ors.** reported in **2016 (8) SCC 471** and accordingly, the respondents were directed to pass a reasoned and speaking order. It is the case of the petitioner that thereafter, the petitioner filed representation before the appointing authority, however, the same was dismissed vide order dated 20.02.2017.

5. Learned counsel for the petitioner submitted that while deciding representation, the respondents did not confine themselves to the reasons assigned in order dated 24.11.2011 and rather enlarged the scope by giving additional reasons for denying benefits to the petitioner. Learned counsel further submits that the only reason assigned in order dated 24.11.2011 was that in the aforesaid criminal case, the petitioner was convicted under Section 147 IPC and was granted benefit of Section 3 of the Act of 1958, and has been released after admonition, yet in the impugned order dated 20.02.2017, the respondents have given an additional ground that responsibility to reveal the past criminal conduct resulting into moral turpitude solely rested upon the petitioner before seeking appointment; however, the factum of judgment dated 03.07.2008 in criminal case had never been disclosed by the petitioner.

6. Learned counsel for the petitioner emphasised that the respondents cannot be allowed to put additional ground, which was not there in original termination order dated 24.11.2011. Learned counsel submits that while terminating the services of the petitioner as well as at the time of deciding the representation of the petitioner, the respondents have ignored the implication and



effect of Section 12 of the Act of 1958, which removes any sort of disqualification attached to any conviction in the cases, where benefits of Section 3 or 4 of the Act of 1958 have been given to the incumbent.

7. Learned counsel for the petitioner reiterates that as there was no clause in the application form, therefore, there was no occasion for the petitioner to reveal the fact with regard to judgment dated 03.07.2008, hence, the allegation of suppression or concealment of fact levelled upon the petitioner is totally baseless and unfounded.

8. Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court in the case of **Pawan Kumar Vs. Union of India & Anr.** reported in **2023 (12) SCC 317** as well as in the case of **Umesh Chandra Yadav Vs. The Inspector General and Chief Security Commissioner, RPF, Northern Railway, New Delhi & Ors. (Civil Appeal No.1964/2022)** decided on 02.03.2022.

9. *Per contra*, learned counsel for the respondents seriously opposed the writ petition and submitted that the competent authority has meticulously examined the representation submitted by the petitioner and has committed no mistake in rejecting the same. While referring the judgment of Hon'ble Supreme Court in the case of **Avtar Singh (supra)**, learned counsel submits that any candidate seeking appointment in services of respondent-Nigam is expected to come with clear hands and was required to disclose all the relevant facts including of any judgment in the criminal case.



10. In the instant case, although the petitioner was having complete knowledge with regard to judgment dated 03.07.2008 passed by the competent Criminal Court against him, whereby he was convicted under Section 147 IPC, although released by granting benefit of Section 3 of the Act of 1958, yet the information was not disclosed by the petitioner. Learned counsel submits that the Hon'ble Supreme Court has taken such conduct of the candidates quite seriously and a clear observation has been given that the appointing authority can refuse to appoint a person who has concealed the relevant information with regard to criminal antecedents. Learned counsel further submits that commission of offence under Section 147 IPC comes within the purview of moral turpitude, hence, the petitioner was not entitled for appointment in the services of the respondent-Nigam.

11. Heard learned counsel for the parties and perused the material available on record.

12. Facts are undisputed to the extent that the petitioner was tried by the competent Criminal Court for committing offence under Section 147, 341 and 323 IPC, which was concluded vide judgment dated 03.07.2008, whereby he was acquitted by the charges under Section 341 and 323 IPC on the basis of compromise and so far as offence under Section 147 IPC is concerned, he was convicted yet was granted benefit under Section 3 of the Act of 1958 and was released after admonition.

13. At this stage, it would be relevant to refer Section 12 of the Act of 1958:-

"12. Removal of disqualification attaching on conviction.-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 has release under section 4 is subsequently sentenced for the original offence."

14. The language employed in the aforesaid provision would make it clear that the provision starts with non-obstante clause and makes it clear that when an accused is granted protection under Sections 3 or 4 of the Act of 1958, he shall not suffer any disqualification, if any, attached to a conviction of an offence under such law. By virtue of, Section 12 of the Act of 1958, despite conviction under Section 147 IPC, on account of granting benefit of Section 3, it shall be treated that no disqualification on the basis of such allegation can be presumed or applied.

15. Hence, it is clear that while passing order dated 24.11.2011, the respondents have ignored the applicability of Section 12 of the Act of 1958 by erroneously treating the conviction of the petitioner as disqualification for appointment. Now, the question comes as to whether this fact was concealed by the petitioner while seeking appointment or not.

16. Learned counsel for the petitioner has categorically stated that there was no clause whatsoever in the application form so as to require the petitioner to disclose any information with regard to past criminal cases. This fact has not been controverted by learned counsel for the respondents that there was no clause in the application form in this respect. Under these circumstances, it would be legally untenable to expect any person to disclose an



already decided criminal case in which he has been granted benefit of Section 3 of the Act of 1958, and thereby, no disqualification was attached with such conviction and there was no hurdle in seeking appointment on the basis of such judgment in criminal case. Allegation of concealment can be sustained only in the circumstances that; (i) where there was a specific requirement to disclose any particular fact and (ii) that fact was relevant for the purpose of assessing eligibility of the concerned candidate. On the basis of facts of this case, since the aforesaid two points are in favour of the petitioner, hence, the benefit of appointment cannot be denied to the petitioner by levelling allegation of concealment.

17. In the case of **Pawan Kumar (supra)**, considering the judgment of **Avtar Singh (supra)**, it was observed that while examining the eligibility of the candidate at the touchstone of alleged criminal antecedents, the trivial nature of the offence committed, nature of the post and nature of the duties to be discharged by the recruit are required to be objectively examined.

The Hon'ble Supreme Court has held as under:-

"13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What has been noticed by this Court is that mere suppression of material/false information in a given case



does not mean that the employer can arbitrarily discharge/terminate the employee from service.

19. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the 1987 RPF Rules to become a member of the force. Taking into consideration the exposition expressed by this Court in *Avtar Singh*², in our considered view the order of discharge passed by the competent authority dated 24-4-2015 is not sustainable and in sequel thereto the judgment¹ passed by the Division Bench of the High Court of Delhi does not hold good and deserves to be set aside."

18. In the case of **Umesh Chandra Yadav (supra)**, while taking note of nature of antecedents in that case, as well as the nature of the information sought, which was not disclosed by the incumbent, the finding of suppression of material information was considered to be unsustainable.

19. There is yet another aspect of the matter; while terminating the services of the petitioner initially vide order dated 24.11.2011, apparently there was no allegation whatsoever with regard to alleged suppression of fact in termination order, and when representation was subsequently filed by the petitioner in compliance of order passed by this Court in earlier round of litigation, the ground of concealment has been added in order dated 20.02.2017, which appears to be an afterthought on the part of the respondent authorities and is legally unsustainable.

20. For the reasons mentioned hereinabove, the writ petition filed by the petitioner is hereby allowed. Order dated 20.02.2017 as well as termination order dated 24.11.2011 are hereby quashed and set aside. The respondents are directed to



reinstate the petitioner on the same post and on the same terms, under which he was holding the post prior to passing of order dated 24.11.2011, by maintaining continuity in service. The petitioner shall also be entitled for notional benefits of pay fixation, seniority etc. for the intervening period. However, it is made clear that he shall not be entitled for actual monetary benefits for the aforesaid period. Compliance of this order shall be made by the respondents within a period of 60 days from the date of receipt of certified copy of this order.

21. Pending application(s), if any, also stand(s) disposed of.

(ANAND SHARMA),J

53/DIVYA