



1

WP-4202-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 27th OF MARCH, 2025WRIT PETITION No. 4202 of 2013*NITIN GAUTAM**Versus**STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Shri B.P.Singh - Advocate for petitioner.

Shri G.K.Agrawal - Government Advocate for the State.

Shri Shivendra Singh Raghuvanshi - Advocate for respondents No.6 to

10.
.....

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

"(i) That, this Hon'ble Court may kindly be pleased to allow this petition and further be pleased to issue the appropriate writ calling the record of the selection process from the respondents for the post of Malaria Technical Supervisor.

(ii) That, impugned order Annexure P-1 dated 14.02.2013 appointing respondent No.6 to 10 as Malaria Technical Supervisor and selection list Annexure P-2 to that extent may kindly be declared as illegal and the same may kindly be quashed.

(iii) That, a further direction may kindly be given to the respondents to grant proper marks for work experience to the petitioner and select and appoint the petitioner as Malaria Technical Supervisor in place of respondent No.6 to 10.

(iv) Any other relief, which this Hon'ble Court may deem fit and proper, may also be given to the petitioner along with costs.



2. It is submitted by counsel for petitioner that an advertisement was issued for recruitment to the post of Malaria Technical Supervisor. As per the advertisement, the educational qualification for candidate was Graduation in Science with Biology Subject. It was also mentioned that the persons having the work experience shall be given preference. In the note appended to the said advertisement, it was specifically mentioned that the appointment shall be on contractual basis for a period of one year which can be extended subject to good performance by the candidate. It was also required that the candidate applying for Malaria Technical Supervisor must have a license to drive two wheeler vehicle and preference shall be given to the resident of the said districts. In note No.9, it was also mentioned that the candidate would be required to appear for interview on his own expenses. By referring to the final result, it is submitted by counsel for petitioner that although the petitioner has secured maximum marks in written examination but he was deliberately given less marks in interview, as a result he could not compete with other candidates and was ultimately declared unsuccessful. It is submitted that petitioner is aggrieved by the less marks given by the Selection Committee in the interview.

3. Heard learned counsel for petitioner.

4. Per contra, petition is vehemently opposed by counsel for the State. By referring to the note sheet, which is at page 30 of the return, it is submitted by Shri G.K.Agrawal that since the Selection Committee was competent to develop its own procedure for selection therefore, the interview was conducted.



5. Shri S.S. Raghuvanshi has also supported the selection of the respondents No.6 to 10. However it is submitted by Shri Raghuvanshi that respondent No.6 has already left the job, therefore, this petition so far as it relates to respondent No.6 is concerned, has rendered infuctuous.

6. In view of the aforesaid submissions, it is made clear that this petition shall be considered only with regard to appointment of respondents No.7, 8, 9 and 10.

7. Heard learned counsel for the parties.

The first question for consideration is as to whether the Selection Committee was competent to develop its own procedure for making his selection or not ?

8. The petitioner himself has filed the guidelines which also govern the recruitment to the post of Malaria Technical Supervisor (MTS). The guidelines pertaining to selection reads as under:-

"Malaria Technical Supervisor (MTS)

Selection:

Selection of the MTS will be done at the district level. A selection committee will be formulated under the Chairmanship of the District Collector with the CMO/DHO and DVBDCO/DMO as members. The committee will develop its own procedure of selection through interview/written examination/multiple choice questions etc.

The vacancy would be widely advertised to get the best available skills in the market.

In tribal areas, preference would be given to local candidates who belong to ST category.

Training:

The MTS would be trained on the technical and supervisory aspects of Malaria prevention and control. Modules for the training will be developed. A 10 days induction training to be imparted including extensive visits.

Three day annual reorientation training will also be provided to



enhance the skills found to be specifically deficient."

9. Thus it is clear that Selection of MTS was to be done at a District Level. A selection committee was to be constituted under the chairmanship of the District Collector with the CMO/DHO and DVB DCO/BMO as members. The committee was competent to develop its own procedure of selection through interview/written examination/multiple choice questions etc. In the advertisement itself, it was specifically mentioned that candidates will be required to appear for interview on their own expenses and as per the guidelines for recruitment to the post of Malaria Technical Supervisor, the Selection Committee had full authority to develop its own procedure for selection through interview/written examination/multiple choice questions etc.

10. It is submitted by counsel for petitioner that since petitioner was deliberately given less marks for interview, therefore his sum total was less than that of respondents No.6 to 10 whereas respondents No.6 to 10 have been awarded exorbitant marks with a solitary intention to oust the petitioner from the selection process.

11. Considered the aforesaid submissions made by counsel for petitioner.

12. It is well establish principle of law that in case if any allegation of malafide or bias is made against a person, then that person is necessary party and if the said person is not impleaded then question of malafide cannot be considered.

13. The Supreme Court in the case of **State of Bihar and another Vs.**



P.P. Sharma and another , reported in 1992 Supp (1) SCC 222 has held as under :-

"55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded ~~eo~~ nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them....."

14. The Supreme Court in the case of **Dr.J.N. Banavalikar Vs. Municipal Corporation of Delhi and another**, reported in AIR 1996 SC 326 has held as under:-

"21.....Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. 'malice in fact' should not be countenanced by the Court....."

15. The Supreme Court in the case of **All India State Bank Officers' Federation and others Vs. Union of India and others**, reported in JT 1996 (8) S.C. 550 in para 22, has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observations of the Apex Court are reproduced as under : -

"22.....the person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the



Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.”

Furthermore, the petitioner is alleging against the selection committee which is a body consisting of multiple members. Even the selection committee has not been made a party. It is very difficult to prove allegation of malafide against a body. Since the marks were awarded by the selection committee on the basis of performance of petitioner in interview and in absence of any material as well as in absence of necessary parties, this Court is not in a position to adjudicate as to whether the members of the selection committee had deliberately awarded less marks to the petitioner or not ?

16. It is next contended by counsel for the petitioner that respondent No.9 Shri Gaurav Bhargav had submitted a forged experience certificate and inspite of that he was granted three marks for his past experience. It is further submitted that if a candidate has submitted forged documents then that, by itself, it is a serious matter requiring the rejection of his candidature.

17. It is submitted by Shri S.S. Raghuvanshi that the return filed by respondents No.6 to 10 in W.P.4156/2013 has been adopted by them in the present petition also. By referring to paragraph 7 of return filed in W.P.No.4156/2013, it is submitted that respondent No.9 had submitted a certificate which was issued with regard to volunteer services rendered by him under the instructions of the Specialist, without there-being any written appointment and payment.

18. Considered the experience certificate relied by the respondent No.9 Gaurav Bhargav which has been filed as Annexure P/9 as well as reply



issued under the Right to Information Act.

19. The Supreme Court in the case of State of Rajasthan and Others

Vs. Chetan Jeff, reported in 2022 LiveLaw (SC) 483 has held as under :-

"6.2. The question is not whether the offences were trivial in nature or not. The question is one of suppression of material fact by the original writ petitioner in respect of his criminal antecedents and making a false statement in the application form. If in the beginning itself, he has suppressed the material fact in respect to his criminal antecedents and in fact made an incorrect statement, how can he be appointed as a constable. How can he be trusted thereafter in future ? How it is expected that thereafter he will perform his duty honestly and with integrity? "

6.3. Therefore, as such the authorities were justified in rejecting the candidature of the respondent for the post of constable.

6.4. At this stage the decision of this Court in the case of **Daya Shankar Yadav (supra)** is required to be referred to. In paras 14 and 16, it is observed and held as under:

"14. Rule 14 of the Central Reserve Police Force Rules, 1955 relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below:

"14. **Verification.**—(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The verification roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The verification roll shall be in CRP Form 25 and after verification shall be attached to the character and service roll of the member of the force concerned."

The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbecoming for a uniformed security service.



16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment : (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

6.5 In *State of A.P. v. B. Chinnam Naidu*, (2005) 2 SCC 746 , this Court has observed that the object of requiring information in the attestation form and the declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.

6.6 In *Devendra Kumar v. State of Uttaranchal*, (2013) 9 SCC 363, while joining the training, the employee was asked to submit an affidavit giving certain information, particularly, whether he had ever been involved in any criminal case. The employee submitted an affidavit stating that he had never been involved in any criminal case. The employee completed his training satisfactorily and it was at this time that the employer in pursuance of the process of character verification came to know that the employee was in fact involved in a criminal case. It was found that the final report in that case had been submitted by the prosecution and accepted by the Judicial Magistrate concerned. On the basis of the same, the employee was discharged abruptly on the ground that since he was a temporary government servant, he could be removed from service without holding an enquiry. The said order was challenged by the employee by filing a writ petition before a Single Judge of the High Court which was dismissed. The Division Bench upheld that order, which was the subject matter of appeal before this Court. Dismissing the appeal,



this Court observed and held that the question is not whether the employee is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. It is further observed that the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information and in that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

6.7 In the case of **Jainendra Singh v. State of U.P., (2012) 8 SCC 748**, in para 29.4, this Court has observed and held that “a candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. In para 29.6, it is further observed that the person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service. In para 29.7, it is observed and held that “the standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

6.8 In **Daya Shankar Yadav v. Union of India, (2010) 14 SCC 103**, this Court had an occasion to consider the purpose of seeking the information with respect to antecedents. It is observed and held that the purpose of seeking the information with respect to antecedents is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. It is further observed that when an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can lead to any of the following consequences: (SCC pp. 11011, para 15)

“15. ... (a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit



having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or nondisclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant. (d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

Thereafter, it is observed and held that an employee can be discharged from service or a prospective employee may be refused employment on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

6.9 In *State of M.P. v. Abhijit Singh Pawar*, (2018) 18 SCC 733, when the employee participated in the selection process, he tendered an affidavit disclosing the pending criminal case against him. The affidavit was filed on 22-12-2012. According to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered.



However, within four days of filing such an affidavit, a compromise was entered into between the original complainant and the employee and an application for compounding the offence was filed under Section 320 CrPC. The employee came to be discharged in view of the deed of compromise. That thereafter the employee was selected in the examination and was called for medical examination. However, around the same time, his character verification was also undertaken and after due consideration of the character verification report, his candidature was rejected. The employee filed a writ petition before the High Court challenging rejection of his candidature. The learned Single Judge of the High Court of Madhya Pradesh allowed the said writ petition. The judgment and order passed by the learned Single Judge directing the State to appoint the employee came to be confirmed by the Division Bench which led to appeal before this Court. After considering a catena of decisions on the point including the decision in **Avtar Singh v. Union of India**, (2016) 8 SCC 471, this Court upheld the order of the State rejecting the candidature of the employee by observing that as held in **Avtar Singh (supra)**, even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

6.10 After reproducing and/or reconsidering para 38.5 of the decision in **Avtar Singh (supra)**, in **Abhijit Singh Pawar (supra)**, in para 13, this Court observed and held as under:

“13. In **Avtar Singh** [**Avtar Singh v. Union of India**, (2016) 8 SCC 471, though this Court was principally concerned with the question as to nondisclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.”

6.11 Recently, in the case of **Rajasthan Rajya Vidyut Prasaran Nigam Limited v. Anil Kanwariya**, (2021) 10 SCC 136, this Court had an occasion to consider the submission on behalf of an employee whose services were terminated on the ground of filing a false declaration to the effect that neither a criminal case is pending against him nor has he been convicted by any Court of law, that subsequently he has been granted the benefit of Section 12 of the Probation of



Offenders Act and therefore his services ought not to have been terminated. This Court has observed in paras 13 & 14 as under:

“13. Even otherwise, subsequently getting the benefit of Section 12 of the 1958 Act shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14-4-2015 that neither any criminal case is pending against him nor has he been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of Section 12 of the 1958 Act. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

20. Respondent No.9 has submitted an experience certificate dated 25.04.2006 purportedly issued by CMHO, Shivpuri to the effect that the



respondent No.9 has worked as a Dresser in District Hospital Shivpuri from 24.01.2006 to 24.04.2006. In reply to the application filed under the Right to Information Act, it was informed by the concerning department that the attendance register of the period on 24.01.2006 to 24.04.2006 does not contain the signatures of Gaurav Bhargav. It was also mentioned that record pertaining to services rendered by Gaurav Bhargav was also not available in the office.

21. Accordingly, counsel for the State was directed to point out as to whether the respondents No.1 to 5 have adjudicated the aforesaid objections with regard to forged certificate submitted by Shri Gaurav Bhargav or not ?

22. By referring to the various note sheets which have been filed alongwith the return, it is fairly submitted by counsel for the respondents No.1 to 5 that there is no finding with regard to the objection of submission of forged experience certificate submitted by Shri Gaurav Bhargav.

23. In view of the specific return filed by Shri Gaurav Bhargav in W.P.No.4156/2013, it is clear that he has not worked as Dresser. An evasive return has been filed by Gaurav Bhargav in W.P.No.4156/2013, thus it is clear that he had merely claimed that he had worked as Volunteer under the instructions of the Specialist without there being any written appointment. How the CMHO or Specialist can allow any private person to work in a District Hospital has not been explained either by counsel for the State or by counsel for respondent No.9. Even if respondent No.9 was allowed to work as volunteer then how he was allowed to work as a Dresser without there being any record as the work of dresser is an important part of treating the



wounds of patients. Further when the objection was raised, no decision was taken by the respondents No.1 to 5 in that regard. Under these circumstances, it is held that the respondent No.9 Gaurav Bhargav had filed forged experience certificate on the basis of which three additional marks were given to him.

24. It is really surprising that the respondent No.9 was granted three additional marks on the ground that he is having an experience of 2 years and 10 months whereas even the certificate which has been filed by petitioner as Annexure P/9 merely says that the respondent No.9 had worked only for a period of three months i.e. 24.01.2006 to 24.4.2006. The respondent No.9 has also not claimed that he has worked somewhere else for a period of 2 years and 10 months. He has also not filed copy of any experience certificate alongwith return. Therefore, it is clear that not only the experience certificate relied upon by the respondents No.9 was forged but the selection committee has also wrongly given three marks for having an experience of 2 years and 10 months.

25. Now the only question for consideration is as to whether this Court should reassess the merit lists after deducting the three additional marks which were granted to the respondent No.9 or whether the finding of forged document by itself would make respondent No.9 ineligible to participate in his selection process.

26. Playing fraud on the selection committee or filing the forged documents is a serious matter which cannot be ignored. It is not a simple case of a wrong award of three marks only on the basis of some genuine



documents. Fraud vitiates everything. Therefore, instead of reducing three marks from the total of respondent No.9 which was awarded to him while preparing the merit list, this court is of the considered opinion that since the respondents No.9 had filed a forged experience certificate, therefore his candidature as well as selection is liable to be quashed. Accordingly, selection of respondent No.9 Shri Gaurav Bhargav is hereby quashed and the post held by Shri Gaurav Bhargav is hereby declared vacant. Shri Gaurav Bhargav will stop performing work as MTS with immediate effect.

27. Now the next question of consideration is as to whether respondents should be allowed to reprepare the merit list on the basis of marks obtained by candidates or not. Since one of the contentions of counsel for petitioner is that he was deliberately awarded less marks, therefore in the fitness of things, this Court does not find it fit to direct the respondents to award appointment to the petitioner on the post which was held by Shri Gaurav Bhargav. Therefore, the post which was held by Shri Gaurav Bhargav is declared as open for fresh recruitment.

28. Petition succeeds and is **allowed to the extent indicated above.**

(G. S. AHLUWALIA)
JUDGE

AK/-