

The State of M.P. & Ors. Vs. Pankaj Shukla

16 .12.2016

Shri Praveen Newaskar, Govt. Advocate for the appellant.

Shri Prashant Sharma with Shri Devendra Sharma, counsel for the respondent.

2. This intra Court appeal assails the final order dated 27.06.2016 passed in WP No. 5984/2015 whereby petition in question assailing the order dated 26.07.2014 declaring the petitioner during the course of recruitment to be ineligible for appointment as Constable in the police force due to negative character verification, has been allowed by quashing of the impugned order and directing for appointment of the petitioner with all consequential benefits except backwages.

3. Learned counsel for the State relying upon the recent decision in the case of **Avtar Singh Vs. Union of India and Ors. [(2016) 8 SCC 471]** submits that the Apex Court after considering the conflicting views on the issue of entitlement of appointment to candidates who have criminal antecedents has laid down certain guidelines. It is submitted that while doing so, the Apex Court considered even those decisions which pertain to recruitment and appointment to disciplined forces.

4. Learned counsel for the respondent / petitioner, on the other hand, does not dispute the law laid down in the case of Avtar Singh (supra) but defends the order of the writ court by contending that petitioner had been acquitted of the offences which involved no element of moral turpitude and that the petitioner never suppressed the fact of criminal antecedents.

5. It is seen from the record that the impugned order of the writ court derives strength from an earlier judgment of this Court

passed on 05.08.2014 in WP No. 10342/2013 which was attended with similar factual matrix of candidate not suppressing the factum of criminal antecedents.

6. The Apex Court in Avtar Singh (supra) while taking into account all the cases involving recruitment to services varied nature including disciplined forces where the question of criminal antecedents was raised, rendered a considered finding in the following terms :-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourse 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."

7. Single Bench of this Court in **WP. No.1016/2009 (Deepak Singh Tomar Vs. Union of India & Ors.)** has dealt with similar matters by issuing directions based upon the verdict in the case of Avtar Singh (supra) after holding that some of the earlier decisions of the Apex Court involving similar issues pertaining to disciplined forces which have not been considered in Avtar Singh (supra) case by the Apex Court, are impliedly overruled by Avtar Singh.

8. The law in respect of criminal antecedents causing reflection on the prospects of a person to secure appointment in service under the State is now authoritatively laid down by the Apex Court as enumerated above in the case of Avtar Singh. Thus, any decision of this Court or the Apex Court rendered on the same issue prior to the decision in the case of Avtar Singh except for those cases which are distinguishable on facts are impliedly overruled.

9. True it is that the case of Avtar Singh was decided on 21.07.2016 which was subsequent to the passing of the impugned order by the writ Court and therefore, for obvious reason the writ court did not have the advantage of the said judgment. However, since the issue raised in the writ petition in question continues to

be pending in the instant appeal awaiting adjudication, this Court cannot turn a Nelson's eye towards the law laid down in Avtar Singh's case especially when the Apex Court has not made its verdict in Avtar Singh to be prospective in application.

10. Every judgment of a court of law acts retrospectively unless it is provided otherwise in expressed terms. This principle is based on Blackstonian theory that the Courts do not pronounce a new rule but merely expound and discover the old one to find the correct law. When the subsequent decision alters the earlier one the later decision does not make new law but merely rectifies the mistake by discovering correct principle of law and therefore applies retrospectively. This Court is bolstered in its view by the decision of the Apex Court in the case of **Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited, (2008) 14 SCC 141**. The relevant paragraphs are reproduced below :-

35. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a "new rule" but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states;

"(T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of

the supposed rule are governed by the law established in the overruling decision. *The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime*". (emphasis supplied)

37. It is no doubt true that after a historic decision in *Golak Nath v. Union of India, (1967) 2 SCR 762*, this Court has accepted the doctrine of "prospective overruling". It is based on the philosophy:

"The past cannot always be erased by a new judicial declaration".

It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.

38. Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality.

11. Accordingly, in the present case where there is no suppression about the criminal antecedents, which have ended in acquittal by way of compounding, yet the appointing authority cannot be denuded of its power to consider suitability of the respondent herein for employment in disciplined force on various factors including relevancy of the offences, their gravity and bearing upon the service in question and whether offenses were trivial or not. The said exercise for obvious reason ought not to be conducted by this Court while exercising writ jurisdiction and it should be left for experts in the field to be undertaken.

12. That apart the power of judicial review under Article 226 is exercisable against the decision making process by executive authority and not against the decision *per se*. Thus it was improper on the part of the writ court to have directed the respondents to appoint the petitioner on the post of Constable. Such direction deprives the administrative authority of its power to consider the suitability of the candidate. The writ Court ought to avoid stepping into the shoes of the administrative authority.

13. Accordingly, this Court is of the considered view that para

38.5 and 38.6 of the decision of Avtar Singh appear to be applicable to the facts of this case which for ready reference is reproduced below once again :-

“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. ”

14. This Court hastens to add that we have not rendered any opinion on the suitability of the respondent for appointment in the disciplined force and thus the competent authority is free to take a decision either way provided the same is in accordance with law as explained supra.

15. In terms of above discussion, this Court allows the present writ appeal in the following terms :-

1. The impugned order of the writ Court and the impugned order dated 26.07. 2014 are set aside.
2. The appointing authority is directed to consider the case of the applicant for appointment on the post of constable in the attending facts and circumstances by deciding the case on the anvil of law laid down by the Apex Court in the case of Avtar Singh.
3. The above said exercise shall be completed within three (3) months of production of copy of this order.

(Sheel Nagu)
Judge

(S.A. Dharmadhikari)
Judge