



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3757 of 2013****Reserved on 13.01.2022****Pronounced on 31.01.2022**

- Chandrika Prasad Patel, S/o Ganpat Lal Patel, aged about 32 years, resident of village Pandripani, P.O. Godhi, P.S. Pandripani, Korba, District Korba (Chhattisgarh)

---- Petitioner**Versus**

1. Chhattisgarh State Power Holding Company Limited, through the Deputy General Manager, (Human Resources Department)-2, Raipur (Chhattisgarh)
2. Chhattisgarh State Power General Company Limited, through the Chief Engineer, (Human Resources Department), Shed No.3, Danganiya, Raipur (Chhattisgarh)
3. The Chief Engineer (Generation), Hasdev Thermal Power Station, Chhattisgarh State Power General Company Limited, Korba (West).

---- Respondents

For Petitioner

:Ms. Reena Singh, Advocate.

For Respondents

:Shri K.R.Nair appears along with Dr. Veena Nair, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Order/Judgment**

1. Challenge to this petition is the order dated 07.10.2013 (Annexure P/1) passed by respondent No.2, whereby the appointment of the petitioner as Office Assistant Grade-III has been cancelled.

2. Briefly stated the facts of the case are that the petitioner and his brothers, namely, Omprakash Patel and Mani Prakash Patel jointly owned a land at village Pandripani, which was acquired by the respondents Electricity Company under the Rehabilitation Policy of the Government for laying pipeline for 2 x 250 MW Dr. Shyama Prasad Mukherjee Thermal Power Station, Korba. It is pleaded that as per the said Rehabilitation Policy, the family members of owners of the land, whose land was acquired for the public purpose, are



entitled for employment in the Industry and in view of the acquisition of the petitioner's land, an appointment order dated 31.07.2012 was issued appointing the petitioner on the post of Office Assistant Grade-III and in compliance thereof, the petitioner appeared in the Office of respondent authorities in order to submit his joining. The respondent No.3, vide its order dated 14.08.2012 posted the petitioner at Office of the Superintending Engineer, Korba (West). Further contention of the petitioner is that along with the joining letter dated 13.08.2012, the petitioner in accordance with appointment order also submitted the Attestation Form, Declaration Form, affidavit required for Character Verification, Medical Certificate and other necessary documents disclosing the facts regarding pendency of criminal case against him, wherein it was informed by the petitioner specifically that in the year 2000, he was convicted for the crime registered against him by the police station Balco for commission of offence under Sections 323, 326 read with Section 34 of IPC and against the order of conviction, Criminal Appeal No.464/2003 "Omkishore Patel & ors. Vs. State of Chhattisgarh" is pending before the Hon'ble High Court. It is contended further that despite disclosing the material facts, a show-cause notice dated 21.02.2013 was issued to the petitioner calling explanation of him as to why his appointment on the post of Office Assistant Grade-III be not cancelled. In reply to the alleged show-cause notice, it was stated by him that he had not suppressed any fact regarding the registration of the criminal case and conviction thereof and also submitted that the criminal appeal against the said conviction order is pending before the Hon'ble High Court. It is contended further that the respondent authorities, without considering the reply of the said show-cause notice, had passed the order impugned dated 07.10.2013 (Annexure P/1) cancelling the appointment order of the petitioner, and therefore, the petitioner has been constrained to file the instant petition seeking quashment of the alleged order (Annexure P/1).



3. In reply to the aforesaid contentions of the petitioner, it is submitted by the respondent authorities in their return that one of the conditions of the appointment order is that the joining report of the petitioner be accepted only after verification of his Character Antecedents and the petitioner was required to submit at the time of his joining, Attestation Form duly filled, Declaration Form, affidavit required for Character Verification, Medical Certificate and other relevant documents along with joining report. It is contended further that although the petitioner had disclosed the same, but the petitioner had manipulated his joining report in collusion with the dealing clerks and it was not brought to the notice of them that he was a convicted person and not eligible to join his duties as Office Assistant Grade-III and, the said fact came to the knowledge of the respondents only when his brother, namely, Mani Prakash Patel, who was also issued an appointment order to the post of Office Assistant Grade-III, came to join the post that both were convicted persons and the respondents refused to accept his joining report. It is contended further that as the petitioner was convicted of a criminal offence and sentenced to rigorous imprisonment and fine, therefore, the petitioner is not eligible to continue in service as such, and, after issuing a show-cause and upon due consideration of his explanation, the order impugned (Annexure P/1) has been issued cancelling his appointment order. The petition is, therefore, liable to be dismissed.

4. I have heard learned counsel for the parties based upon the aforesaid pleadings and perused the entire papers annexed with the petition carefully.

5. The main question which arises for determination in this petition is as to whether the cancellation of appointment order of the petitioner issued vide order dated 07.10.2013 (Annexure P/1), is validly passed?

6. Admittedly, the land held by the petitioner was acquired by the



respondent authorities under the Rehabilitation Policy and according to the said policy issued by the State Government, if the land of the owners was acquired for the public purpose, then in the said eventuality the family members of the said land owners would be entitled to get an employment in the Industry. In view of acquisition of petitioner's land, an appointment order dated 31.07.2012 (Annexure P/2) was issued by the respondent authorities appointing him as Office Assistant Grade-III initially for the period of two years in the pay-scale and as per the terms and conditions stipulated therein.

7. According to condition No.4 of the aforesaid appointment order (Annexure P/2), the petitioner was required to furnish the Attestation Form, Declaration Form, Affidavits etc. at the time of his joining, which are required for ascertaining his character verification with a further stipulation that if his character certificate is not found to be fit for his appointment in the Company, then in the said event, his appointment would be cancelled forthwith even without issuing a prior notice for it.

8. In pursuance of the aforesaid condition, the petitioner at the time of his joining, i.e., 13.08.2012, has submitted the Declaration Form along with affidavit disclosing the fact with regard to the alleged offence punishable under Sections 323, 326 read with Section 34 of IPC, whereby he was convicted vide judgment dated 25.03.2003 passed by the Additional Sessions Judge, Korba (C.G.) in Sessions Trial No. 354 of 2000 and, also regarding the pendency of appeal preferred there against before the High Court, which was registered as Criminal Appeal No. 464 of 2003 "Omkishore Patel & ors. Vs. State of Chhattisgarh". It, thus, appears that the petitioner has disclosed all the necessary information as required at the time of his joining and upon its due consideration, the respondent authorities, vide its order dated 14.08.2012 (Annexure P/4) has posted the petitioner as such in the Office of Superintending Engineer, Korba (West).



9. A show cause notice dated 21.02.2013 (Annexure P/8), however, appears to be issued after six months of his posting calling upon him as to why his appointment order should not be withdrawn and cancelled forthwith as he was found to be convicted with regard to the offence punishable under the aforesaid offences. In reply to the said show-cause notice, it is stated by the petitioner that he has disclosed all the necessary information as required at the time of his joining, and therefore, the alleged notice be dropped. However, his appointment order has been cancelled vide order impugned dated 07.10.2013 (Annexure P/1) owing to his conviction in the alleged crime.

10. What is, therefore, reflected from the aforesaid facts that although the petitioner was found to be convicted with regard to the offence punishable under Sections 323, 326 read with Section 34 of IPC vide judgment dated 25.03.2003 in Sessions Trial No. 354 of 2000 and the appeal is pending against it, but the petitioner has in fact not suppressed any material fact in this regard and instead has disclosed all that truthfully before the respondent authorities. It, therefore, cannot be said that the petitioner in order to get an employment illegally has suppressed any materials to the concerned authorities. Be that as it may, the respondent authorities even without arriving at a conclusion that the petitioner was not a fit person for his appointment on the post of Office Assistant Grade-III, yet the order impugned has been passed cancelling his appointment. It is, however, to be observed here that the purpose of seeking the information is to ascertain the character and antecedents of the candidate so as to assess the suitability for his appointment in a particular post, but I do not find any such assessment was made by the respondent authorities before cancellation of petitioner's appointment.

11. In the matter of **Daya Shankar Yadav vs. Union of India and others**



reported in (2010) 14 SCC 103, it was observed by the Supreme Court at para 15 (a) and (b), which are relevant for the purpose read as under :-

“15. 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 therefore lead to any of the following consequences:

(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 the 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) xxxx xxxx xxxx xxxx xxxx xxxx
(d) xxxx xxxx xxxx xxxx xxxx xxxx

12. Similar is the view taken by the Supreme Court in the matter of **Avtar Singh vs. Union of India and others** reported in **AIR 2016 SC 3598**, wherein it has been observed at para 22, which reads as under :-

“22. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence,





whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

13. In view of the principles laid down in the above mentioned decisions, it is thus evident that the employer is required to take a decision while considering various aspects before arriving at a conclusion that the employee was unfit for the post. However, no effort as such was ever made by the respondent authorities before passing a cancellation order of the petitioner.

14. It is to be noted here further that the appeal being Criminal Appeal No.464 of 2003 preferred by the petitioner and his brothers against their conviction for an offence punishable under Sections 323, 326 read with Section 34 of IPC has been decided on 10.01.2020, whereby the petitioner and his brothers have been acquitted from the alleged charges as they have found to be exercised the right of private defence under Section 101 of IPC with regard to the incident occurred near the field of the petitioner on 22.06.2000. The petitioner is, therefore, not found to be a habitual offender or could be held to be unfit for his appointment on the post of Office Assistant Grade-III.

15. In view of the aforesaid background, the petition is allowed and the respondent authorities are directed to reinstate the petitioner as Office Assistant Grade-III forthwith alongwith the consequential benefits, if any, as provided under the rules.

No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge