

STATE OF ODISHA AND ORS.

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v.

GOBINDA BEHERA

(Civil Appeal No. 893 of 2020)

JANUARY 31, 2020

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[DR. DHANANJAYA Y CHANDRACHUD AND
K. M. JOSEPH, JJ.]

Service Law – Respondent applied for appointment to the post of Constable in Odisha State Police specifically stating in his application that he was not involved in any criminal case – Appointed – During verification, it was found that he was involved in a case u/ss.294/323/324/326/336/337/427/379/506/34, IPC – Respondent was discharged from service – Odisha Administrative Tribunal rejected Original Application (OA) filed by the respondent – Reversed by High Court – On appeal, held: Respondent was seeking public employment in the State police service – His duties, on appointment to the service, would be of a responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens – To expect that an applicant for such a position would be truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of personality and character – Case against the respondent cannot be regarded as being trivial in nature – Despite being involved in the criminal case, the respondent suppressed these facts – Criminal case was quashed in exercise of jurisdiction u/ s.482, CrPC on the basis of compromise between the parties much after the order of discharge – Impugned order set aside – Order of the Tribunal maintained – OA filed by the respondent is dismissed – Orissa Police Rules – r.673.

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Allowing the appeal, the Court

HELD: 1.1 The respondent was seeking public employment in the State police service. His duties, on appointment to the service, would be of a responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens. To expect that an applicant for such a position would be truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of

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- A personality and character. The employer can legitimately conclude that a person who has suppressed material facts does not deserve to be in its employment. In the present case, the case against the respondent cannot be regarded as being trivial in nature. That apart, it is evident that, despite being involved in the criminal case, the respondent suppressed these facts from the authorities
- B while applying for the post of a Constable in the State Police. The criminal case was quashed in exercise of the jurisdiction under Section 482 of CrPC on the basis of a compromise between the parties much after the order of discharge. Hence, the view which has been taken by the High Court is palpably unsustainable. The
- C Tribunal was justified in rejecting the application. The impugned judgment and order of the High Court is set aside. While maintaining the order of the Tribunal, the OA filed by the respondent shall stand dismissed. [Paras 7, 8][647-H; 648-A-D]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 893 of 2020.

From the Judgment and Order dated 29.03.2018 of the High Court of Orissa at Cuttack in W.P. (C) No. 21868 of 2015.

Shibashish Misra, S. Debabrata Reddy, Chandan Kumar Mandal, Advs. for the Appellants.

E Azim H. Laskar, Sachin Das, Aditya Kumar Archiya, Ms. Sampa Sengupta Ray, Chandra Bhushan Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

F 1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment and order of a Division Bench of the High Court of Orissa dated 29 March 2018.

G 4. The respondent applied for appointment to the post of a Constable in the Odisha State Police in the 6th IR Battalion, Khurda on 29 October 2011. In response to a query, the respondent specifically stated in his application that he was not involved in any criminal case. He was appointed on 14 December 2011. A verification roll was provided

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to him, which was to be filled up in terms of Rule 673 of the Orissa Police Rules. On 22 May 2012, the Superintendent of Police, Puri informed the Commandant that during the course of the verification of the character and antecedents of the respondent, it was found that he was involved in Balanga PS Case No 46 of 2009 under Sections 294/323/324/326/336/337/427/379/506/34 of the Indian Penal Code 1860¹. On 6 July 2012, the respondent was called upon to explain why he had submitted a false statement in the verification roll and in the application for appointment to the post of Constable. The respondent was discharged from service on 26 July 2012, upon which he filed a proceeding before the Odisha Administrative Tribunal². The Tribunal rejected the Original Application³ on the ground that the respondent had furnished a false declaration. This decision of the Tribunal was reversed by the High Court, by its impugned judgment. The High Court did so on the basis of a judgment of this Court in **Avtar Singh v Union of India**⁴ (**Avtar Singh**). The High Court held that the Tribunal had not taken note of the fact that the criminal proceeding had already been quashed and that the suppression in the circumstances was of a technical and trivial nature. The authorities were directed to consider the case of the respondent for reinstatement in his former post and to grant consequential service and financial benefits.

5. Upon hearing the learned counsel appearing on behalf of the appellant and the respondent, the factual position, which has emerged before the Court, is that the First Information Report in the criminal case was lodged on 16 June 2009. The respondent surrendered before the JMFC on 3 August 2009 and was released on bail in view of an order dated 28 July 2009 which had been passed by the High Court in Bail Application 10246 of 2009. The respondent applied for the post of a Constable thereafter on 29 October 2011 and was appointed on 14 December 2011. The respondent moved the High Court under Section 482 of the Code of Criminal Procedure 1973⁵ for quashing the criminal proceedings. The High Court, by its order dated 22 November 2013, quashed the criminal proceedings on the basis of a compromise between the parties. This was after the order of discharge from service on 26 July 2012.

¹ “IPC”

² “Tribunal”

³ “OA”

⁴ (2016) 8 SCC 471

⁵ “CrPC”

- A 6. The position in law has been considered by this Court in a decision of a three-Judge Bench in **Avtar Singh**. The summary of the conclusions is contained in the following extract:
- B “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.
- C 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.
- D 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 recourses appropriate to the case may be adopted:
- E 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.
- F 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.
- G 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.
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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. A

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. B

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. C

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. D

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. E

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. F
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38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

7. The respondent was seeking public employment in the State police service. His duties, on appointment to the service, would be of a H

- A responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens. To expect that an applicant for such a position would be truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of personality and character. The employer can legitimately conclude that a person who has suppressed material facts
- B does not deserve to be in its employment.

8. In the present case, the case against the respondent cannot be regarded as being trivial in nature. That apart, it is evident that, despite being involved in the criminal case, the respondent suppressed these facts from the authorities while applying for the post of a Constable in
- C the State Police. The criminal case was quashed in exercise of the jurisdiction under Section 482 of CrPC on the basis of a compromise between the parties much after the order of discharge. Hence, the view which has been taken by the High Court is palpably unsustainable. The Tribunal was justified in rejecting the application.

- D 9. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 29 March 2018. While maintaining the order of the Tribunal, we order and direct that the OA filed by the respondent shall stand dismissed. There shall be no order as to costs.

Divya Pandey

Appeal allowed.