



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HONOURABLE SRI JUSTICE A.V. SESA SAI**
And
***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ W.P.No.16275 of 2016

% Dated:30.08.2019

Between:

#Sri M. Prasad, S/o. Late M.Varadha Rajulu,
Working as Special Judicial Magistrate of
II Class (for Excise Cases),
Chittoor – 517001 – A.P.

... PETITIONER

AND

\$ 1. The State of Andhra Pradesh, rep. by its Secretary to
Government, Home (Courts-A) Law Department, Secretariat,
Hyderabad.

2. High Court of Judicature, at Hyderabad for the State of Telangana
and the State of Andhra Pradesh, rep. by the Registrar General.

3. The Principal District and Sessions Judge, Chittoor.

4. The Chief Judicial Magistrate, Chittoor–cum–Principal Senior Civil
Judge, Chittoor.

... RESPONDENTS

! Counsel for Petitioner : Mr. Krishna Devan

^Counsel for Respondent No.1 : G.P. for Home

^Counsel for Respondent No.2: Standing Counsel for High Court

^Counsel for respondent No.3 : Swaroop Oorilla

<GIST :

>HEAD NOTE:

? Cases referred:

1. AIR 2003 SC 1416

2. AIR 1995 SC 2390

3. (1992) 1 SCC 119

4. (2016) 8 SCC 471

5. (2012) 8 SCC 748

6. (2010) 2 SCC 169



HONOURABLE SRI JUSTICE A.V. SESA SAI
And
HONOURABLE SRI JUSTICE M. VENKATA RAMANA
W.P.No.16275 of 2016

ORDER: (per MVR,J)

This writ petition is filed by the petitioner for the following relief:

“..... to issue an order, direction or a W.P. more particularly in the nature of Writ of Mandamus by declaring the action of the 1st respondent in cancelling the appointment of the petitioner as Special Judicial 2nd class Magistrate, (Excise) Chittoor, vide Proc.No.GORT No.244, dt.13.04.2016 and the action of the 2nd respondent vide ROC No.3/SO-2/2014, dt.29.04.2016 as communicated in proceedings disc.No.6043/Estt/2016, dt.2.05.2016 of R-3 and also the Disc.No.6108, dated 04.05.2016 of 3rd Respondent as arbitrary, illegal, void, unconstitutional, unsustainable being violation of Principles of Natural Justice and also Article 14,16 and 21 of the Constitution of India and set aside the same and consequently direct the respondents to continue the Petitioner as Special Judicial Magistrate of 2nd Class, (Excise) Chittoor in terms of the order of appointment subsisting and pass such other or further orders as deemed fit and proper in the circumstances of the case.”

2. The petitioner is ordinarily a resident of Gangadhar Nellore Village in Chittoor District and is a non-practising Advocate. He applied for appointment as Special Judicial Magistrate of II Class in Chittoor District, by application dated 24.08.2013. This application along with applications of other candidates was forwarded to the Registrar General of High Court at Hyderabad, by the then District Judge, Chittoor, by his letter dated 10.02.2014 along with antecedent reports furnished by the Superintendent of Police, Chittoor. Upon its consideration, High Court forwarded such material to the Secretary to the Government, Law (L.A. & J-Home Courts-C) Department, Government of A.P., Hyderabad, by its letter dated 26.03.2014, duly recommending those applicants, including



the petitioner for appointment to the post of Special Judicial Magistrate of II Class in Chittoor District.

3. Pursuant to it, G.O.Rt.No.1381, Law (LA&J-Home-Courts-A) Department, dated 16.12.2014, was issued by the Government of Andhra Pradesh, after careful examination of the proposal so forwarded from the High Court, appointing the candidates who were so recommended for the above posts in Chittoor District including the petitioner, for a period of two years from the date of assuming charge of the post or till they attained the age of 65 years, whichever is earlier, on a consolidated honorarium of Rs.10,000/- per month. This notification, along with the G.O. referred to above was communicated by an endorsement in Endt.Dis.No.11085/Estt /2014, dated 23.12.2014 to all concerned including the petitioner. Pursuant thereto, powers were conferred on the petitioner by the Chief Judicial Magistrate, Chittoor by his proceedings in Dis.No.1457, dated 31.12.2014.

4. Thereupon, the petitioner assumed charge as the Special Judicial Magistrate of II Class (for Excise), Chittoor on 02.01.2015.

5. Basing on a complaint submitted by one Sri B. Subhash Chand Jain, dated 05.10.2015 to the Registrar General, High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad and others, a discrete enquiry was ordered and the Principal District and Sessions Judge, Chittoor was directed to conduct such enquiry and to submit a report in respect thereof. The essence of the complaint of Sri B. Subhash Chand Jain was that the petitioner was found guilty for an offence under Section 138 of N.I. Act, and was convicted and sentenced to undergo imprisonment for six (6) months and to pay a fine of Rs.14,00,000/- in C.C.No.281 of 2013 on the file of the Court of learned



Judicial Magistrate of I Class (Prohibition and Excise Cases) Chittoor and that the petitioner was involved in several other cases in different Courts. It was further complained by him that without considering the antecedents properly, the petitioner was appointed for the above post. Principal District and Sessions Judge, Chittoor by his letter dated 27.11.2015 informed the Registrar General, High Court at Hyderabad confirming above fact among other things. By another letter dated 11.12.2015 of learned Principal District and Sessions Judge, Chittoor, the Registrar General of the High Court at Hyderabad was also informed that Criminal Appeal No.338 of 2015 preferred by the petitioner, pending on the file of VIII Additional District and Sessions Judge, Chittoor against conviction and sentence in C.C.No.281 of 2013, was settled in Lok Adalat.

6. Upon considering such material, the High Court at Hyderabad decided and directed to terminate the services of the petitioner since he has been convicted in Criminal Case. A letter was addressed by the Registrar General, High Court at Hyderabad on 21.01.2016 to the Secretary to the Government, Law (L.A. & J-Home Courts-A) Department, Government of A.P., Hyderabad, requesting to issue orders rescinding the appointment of the petitioner as Special Judicial Magistrate of II Class (for Excise), Chittoor, citing reasons as are described above. Pursuant thereto, the Government have issued G.O.Rt.No.244, Home (Courts-A) Department, dated 13.04.2016, cancelling the appointment of the petitioner from the above post. This G.O was communicated to all concerned including the Principal District and Sessions Judge, Chittoor as well as the Special Judicial Magistrate of II Class (Excise Court), Chittoor, by the High Court at Hyderabad, vide its endorsement dated 29.04.2016. Thereupon, the petitioner was communicated of the cancellation of his



appointment, serving a copy of the above G.O. by the District Court, Chittoor, by its endorsement dated 02.05.2016. Necessary in-charge arrangements were also made on 05.05.2016 placing the Special Judicial Magistrate of II Class (Prohibition and Excise Court), Chittoor, directing the petitioner to handover the charge of his post and necessary communication was also served on the petitioner on 05.05.2016.

7. Above orders of cancellation of his appointment are now assailed by the petitioner mainly on two grounds, viz., (1) the orders so passed against the petitioner are not speaking orders and when the term of his appointment is two years, which period he did not complete nor he attained the age of 65 years, without assigning any reason or citing the circumstances prompting the respondents to take such action against him is not proper; and (2) that he was not issued any show cause notice nor heard before passing such order, violating the principles of natural justice, more particularly the principle of *audi alteram partem*, as well as violating the Articles 14, 16 and 21 of the Constitution of India.

8. Separate counters have been filed by respondents 2 and 3, raising identical objections opposing the writ petition. Referring to the Rules prescribed by the High Court for appointment of Special Judicial Magistrate of II Class in R.O.C.No.2589/95/E1, dated 29.03.1997, particularly, Clause-2(5), which refers disqualification on account of conviction and sentence by a Court for an offence involving moral delinquency or facing a charge for any offence constituting moral turpitude where proceedings is pending and asserting that having regard to the grave nature of allegations, it is stated that no such relief as sought by the petitioner to claim a right to continue in service, can be accepted. It is further stated that when C.C.No.281 of 2013 was pending against



him, the petitioner could have informed at the time of submitting the proposals for consideration of his name, which fact he has fraudulently suppressed knowing full well that the said post presupposes a high level of integrity and being sacrosanct. It is further stated that having regard to the nature of employment as well as other aspects, the employer has the discretion to terminate the services of the petitioner and further on the basis of such fraudulently obtained employment the petitioner cannot get any equity or any estoppel against his employer. It is also pointed out in the counter that without handing over the charge of his post, when he was served the order of cancellation of his appointment, he applied for leave on medical grounds for 16 days from 09.05.2016 to 24.05.2016 to the I Additional District Judge, Chittoor while marking a copy to the Principal District and Sessions Judge, Chittoor, which was returned by the learned I Additional District Judge, Chittoor with a direction to comply with the earlier directions. Thus mainly stating, both these respondents requested to dismiss this writ petition as being devoid of merit.

9. The 1st respondent did not choose to file any counter.

10. A reply affidavit is also filed on behalf of the petitioner, opposing the counter of the 2nd respondent, mainly stating to the effect that neither the 1st respondent nor the 2nd respondent has provided an opportunity to put forth his case, since no notice was issued to him prior to making a recommendation of termination and issuing order of termination on the ground of suppression of material information, which is stigmatic and punitive. It is also stated in this reply affidavit that the 1st respondent being the appointing authority did not follow the principles of natural justice nor pass reasoned order of termination on 13.04.2016, who in fact failed to exercise its authority upon an independent decision of its



own on the material forwarded by the 2nd respondent. It is further stated that at the influence of the 2nd respondent, the 1st respondent abdicating its responsibility and duty, mechanically issued such orders. It is further stated that the 1st respondent did not furnish a copy of recommendations so sent by the 2nd respondent to the petitioner and in fact the application form given to him to be filled, did not disclose any column to make a reference as to the pendency of any criminal case or fact of conviction and sentence by the candidate. It is also claimed that the disqualification alleged did not apply to him in as much as the offence alleged was only under Negotiable Instruments Act, which was pending in C.C.No.281 of 2013, when he filed such an application on 24.08.2013, and police verification also discloses that no police case was pending against him. Thus it is stated that when it is a commercial and private dispute, it cannot be stated as a case involving moral turpitude attracting above disqualification. Thus mainly stating in this reply, the petitioner reiterated his request to allow the writ petition.

11. Heard learned counsel for the petitioner and learned Standing Counsel for the 2nd respondent, who also represented 3rd respondent.

12. In view of the rival contentions, the following points arise for determination:—

1. Whether the 1st respondent, the appointing authority of the petitioner, failed to independently consider his case on the material available and whether was influenced by the action and material supplied by the 2nd respondent in the process?
2. Whether the circumstances in this case call for giving an opportunity to the petitioner to be heard before initiating and in the course of pursuing any action against him canceling his appointment as Special Judicial Magistrate of II Class (for Excise), Chittoor?



3. What shall be the consequences of the findings on points 1 and 2 above vis-à-vis the petitioner and the respondents?

Point No.1

13. It is the strenuous contention of Sri Krishna Devan, learned counsel for the petitioner that there was complete abdication of responsibility by the 1st respondent, being the appointing authority of the petitioner, in this matter which merely proceeded on the material supplied by the 2nd respondent on behalf of the High Court, without application of mind. It is further contended that the 1st respondent did not even choose to contest the matter by filing a separate counter. It is further contended that when it is settled law that the competent authority alone can exercise the power to terminate an employee by following the principles of natural justice affording an opportunity to the affected employee, inaction on the part of the 1st respondent has caused any amount of prejudice to the petitioner. Thus it is contended that it has seriously vitiated the decision making process vis-à-vis the petitioner.

14. Sri P.S.P. Suresh Kumar, learned counsel appearing on behalf of respondents 2 and 3 sought to repute the said contentions mainly on the ground that the circumstances in this case did not warrant to infer, as sought to be drawn on behalf of the petitioner and that, it cannot be stated that in the process the 1st respondent merely and blindly followed the recommendations of the High Court forwarded through the 2nd respondent. Pointing out that the petitioner had resorted to such serious act of delinquency in suppressing his involvement in a criminal case on the date when he submitted application for the post and his subsequent conviction and suffering sentence, it is contended that in such an event, the petitioner cannot claim a right to continue in service, since a service



born in deceit and subterfuge cannot be tolerated. Thus highlighting that fraud was played by the petitioner in securing an appointment and when Section 13 Cr.P.C., clearly provides that an appointment of a Special Judicial Magistrate of II Class is by the High Court it is further contended that notification so issued by the High Court bearing No.57/SO-2/2014, publishing it in the shape of G.O by the 1st respondent on 16.12.2014 cannot be called in question by the petitioner, on such grounds, sought to be urged.

15. In this context, it is desirable to consider the effect of Section 13 Cr.P.C. It reads as under:

Special Judicial Magistrates:

1. The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government all of any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may by rules, specify.
2. Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.
3. The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

16. A close and careful reading of this Section manifests that it is upon recommendation of the High Court, a person having such qualifications specified by the Rules framed by the High Court for such purpose shall be appointed as the Judicial Magistrate of II Class. Such appointment shall be in respect of particular cases or particular classes of cases in any local area not being a metropolitan area.



17. Pursuant to proviso to Section 13(1) Cr.P.C, Rules and guidelines were framed by the High Court of composite State of Andhra Pradesh published in Andhra Pradesh State Gazette on 29.03.1997 as per R.O.C.No.2589/95/E1. Rule 2 of these Rules provides for disqualification. Clause (v) of Rule 2 is relevant in this context as to the effect of a person suffering conviction and sentence by a Court. It is as under:

“Clause-v: A person who has been convicted and sentenced by a Court for an offence involving moral delinquency or is charged of any offence constituting moral turpitude and proceedings are pending”

18. It further contemplates appointment of a person for the above post for a particular period as directed by the High Court. Undisputedly, the petitioner was appointed for a period of two years and when he assumed charge of this post on 05.05.2016, he should have continued in such position till 04.05.2018, in normal course.

19. In the light of these provisions and having regard to the fact that the tenure of the petitioner stood specified by the notification issued by the High Court for a period of two years in terms of Section 13(2) Cr.P.C., it can well be perceived that it is the High Court, which is the appointing authority in case of Judicial Magistrate of II Class. Apparently, the petitioner seeks to draw strength to support his contention, placing reliance on G.O.Rt.No.1381 Law (LA & J-Home-Courts-A) Department, dated 16.12.2014 of Government of A.P. which notified his appointment. Even upon a careful consideration of this G.O., it is explicit that it was a formal notification which was published by means of this G.O. refer

ing to appointment of the candidates, as reflected therein.

20. It is further to be noted that in terms of Section 13 Cr.P.C., it is only the High Court that can appoint the persons qualified in terms of the Rules framed for the purpose, as Judicial Magistrates of II Class for any



area, for the purposes mentioned therein. Neither the Central Government nor the State Government, on its own, can make such an appointment. To support such inference that High Court alone is the appointing authority of this class of Special Magistrates, assistance can be drawn from Section 34 Cr.P.C.

21. Section 34 Cr.P.C., provides for withdrawal of powers. It reads as under:

"Withdrawal of powers:

1. The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer subordinate to it.
2. Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

22. It is not in dispute that by virtue of notification issued by the High Court in terms of Section 13 Cr.P.C., the Chief Judicial Magistrate of the concerned District shall issue further notification in terms of Section 15 Cr.P.C., and also in terms of Section 14 Cr.P.C. Either the High Court or the Chief Judicial Magistrate, as the case may be, in terms of Section 34 Cr.P.C. can withdraw such powers conferred on any Judicial Magistrate either of First Class or Second Class. Unless, the High Court has the power of appointment, it cannot be construed that such power stood vested to withdraw the powers in it. A Chief Judicial Magistrate, as subordinate of the High Court, pursuant to the notification under Section 13, shall also exercise such powers under Section 34 Cr.P.C. Thus exercise of powers by the Chief Judicial Magistrate, in this context, shall be upon directions or instructions of the High Court, in such situations warranting exercise of such power. They too cannot independently resort to such action. In case of Executive Magistrates specified in Code of Criminal Procedure, the State



Government has authority to withdraw, magisterial powers conferred upon them, when warranted.

23. In the above circumstances, the contention advanced on behalf of the petitioner that it is the 1st respondent who stood as the appointing authority, who did not pass a reasoned order and not the High Court and that the 1st respondent was merely guided by the dictates of the High Court through the 2nd respondent, in acting against the interests of the petitioner, cannot stand.

24. Reliance placed on behalf of the petitioner in **Union of India v. B.N. Jha**¹, contending that it is the disciplinary authority alone, who shall apply its independent mind to the material on record to arrive at conclusion, as to whether any disciplinary action is necessary or not and to treat the 1st respondent as the appropriate authority, for the above reasons is not of any assistance. Even otherwise, the facts in the above ruling are quite different than that appear in the present case. It was a case where in the context of application of Boarder Security Force Act where a superior directed a subordinate to act in a particular manner prejudicial to an employee facing disciplinary action for an alleged delinquency, observations were so recorded.

25. Reliance is further placed on **Anirudhsinhji Karansinhji Jadeja v. State of Gujarat**² in the same context, on behalf of the petitioner. This ruling also cannot be made applicable to the given facts and circumstances of the present case.

26. Therefore, accepting the contention on behalf of respondents 2 and 3 in this respect, the submissions on behalf of the petitioner stand

¹ AIR 2003 SC 1416

² AIR 1995 SC 2390



rejected holding that it is the High Court in terms of Section 13 Cr.P.C., stands as the appointing authority for Special Judicial Magistrates of II Class and not the State Government. Therefore, in the backdrop of the events that lead to cancellation of appointment of the petitioner, it is not correct to state that 1st respondent toed the line of the High Court, since such situation did not arise. Thus this point is answered, favouring the respondents and against the petitioner.

POINT No.2

27. Strenuous contentions are advanced on behalf of the petitioner that at no stage in this matter, the petitioner was given any opportunity to be heard and thus sacrosanct requirement of *audi alteram partem*, which is an inseparable component in applying principles of natural justice, is seriously breached. It is also contended that neither the petitioner was called upon to explain the complaint made by Sri B. Subhash Chand Jain nor High Court gave an opportunity to him to present his version nor the 1st respondent. Thus, it is stated that the order of cancellation of his appointment and consequential action by the High Court as well as the officers in hierarchy down under, upon issuance of G.O.Rt.No.244, Home (Courts-A) Department, dated 13.04.2016, stand vitiated. It is also contended that the 1st respondent failed to supply a copy of recommendations received from the 2nd respondent in this respect, which also seriously affected the right of the petitioner.

28. It is to be borne in mind that the petitioner is not disputing that C.C.No.281 of 2013 on the file of the Court of learned Special Judicial Magistrate of I Class (Prohibition and Excise) Cases, Chittoor, was pending when he submitted an application for this post, on 24.08.2013. It was a case instituted under Section 138 of the Negotiable Instruments Act, by



Sri B. Subhash Chand Jain. The petitioner did not disclose the pendency of this case against him in his application. He chose to give a declaration in his application to the effect that he did not suffer any kind of disqualification referred to in Roc.No.2589/95/E1, dated 29.03.1997 of the High Court, cited supra. Disclosure of such information in the context of position and situation the petitioner then was expected to hold, should be considered in this context. It was a post of Special Judicial Magistrate and it was not a part of ordinary Government employment. The impact of its functions in discharge of duty and its influence on the society at large are quite enormous.

29. In this context, it is desirable to consider and refer the observations of the Hon'ble Supreme Court in **All India Judges Association v. Union of India**³, in paragraphs-68 to 71. They are:

"68. Surger, C.J. of the American Supreme Court once said:

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control to ensure it."

69. It is useful to remember what President Lincoln often said:

"If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem."

70. It is time we mention about society's expectation from the Judicial Officers. A judge ought to be wise enough to know that he is fallible and, therefore, even ready to learn and be courageous enough to acknowledge his errors.

71. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt

³ (1992) 1 SCC 119



and proper performance of his judicial duties, nor should be administer the office for the purpose of advancing his personal ambitions or increasing his popularity.”

30. When this appointment itself lives on public trust and thrives, the conduct expected of an officer shall be beyond reproach and to maintain high levels of impeccable integrity. Not only that these characteristics shall be maintained by such an individual but also in his deeds and actions at every stage in public life. His private life shall indeed reflect such disposition. When viewed against this perspective, suppression of such material fact of involvement in a serious criminal case under Section 138 of Negotiable Instruments Act, by the petitioner, as rightly contended for respondents 2 and 3, shall not be taken being condonable or to ignore.

31. Added to it, he was also found guilty for this offence after a full-fledged trial, convicted and sentenced for six months imprisonment while directing to pay a fine of Rs.14,00,000/-. These factors came to the notice of the High Court only upon the complaint presented by Sri B. Subhash Chand Jain and not otherwise.

32. It is curious to note that when the application of this petitioner was forwarded along with others by the then Principal District Judge, Chittoor, by his letter dated 10.02.2014 to the 2nd respondent, remarks in respect of merits or demerits of the candidates were noted against all those who were recommended for such appointments except in the case of the present petitioner. His name appears at Sl.No.3 in this letter in the tabulated statement and the remark made against him is that he is a non-practising advocate and a resident of Chittoor as well as a social worker. Even when this matter came up for consideration before the Committee of Hon'ble Judges in the High Court at Hyderabad, in the note placed by the



Registry for its consideration, similar discrete and discernible omission apparently was maintained.

33. It is further pertinent to note that information relating to antecedents as well as verification of character supplied by Superintendent of Police, Chittoor by his letter dated 03.12.2014 to the then District Judge, Chittoor did not refer to pendency of this criminal case except that the petitioner was involved in a criminal case vide Crime No.101/2004 under Section 406 IPC of G.D. Nellore Police Station and which was later on referred as false.

34. Further contention on behalf of the petitioner in this context is that he was not called upon either by the Rules or by a specific column in the application to mention, as to involvement in any of the criminal cases. It is further contended that what all required by the Rules framed by the High Court in this respect is that the person applying for this post should not have been convicted and sentenced for an offence involving moral delinquency or be charged of any offence involving moral turpitude and when proceedings are pending. Thus, it is sought to describe that an offence under Section 138 of the Negotiable Instruments Act did not fall within the purview of the above requirement nor by any stretch of imagination it can be treated as an offence involving moral delinquency or constituting moral turpitude.

35. The post held by the petitioner undoubtedly is a civil post. Though it was a tenure appointment, it can as well be described as one of contract between the petitioner and the State. In this context, it is useful to refer to the effect of second proviso to Article 311(2) of the Constitution of India. It carves out an exception from application of Article 311(1) & (2) when dismissal or removal or reduction in rank of persons



employed in civil capacities under the Union or State shall be, following due process as dictated by Article 311(1) & (2) of Constitution of India. This exception provides that the above requirement shall not apply when a person is dismissed or removed or reduced in rank on the ground of conduct which has lead to his conviction on a criminal charge.

36. Therefore, when this situation is clearly applicable to the case of the petitioner, contention so advanced on his behalf that he was not given opportunity, violating the principle *audi alteram partem* or principles of natural justice in this case, cannot stand.

37. Hon'ble Supreme Court in **Avtar Singh v. Union of India and ors.**⁴, pointed out factors to be taken into consideration, while exercising the power of cancelling the candidature or discharging an employee from service, in paragraph-30, as under:

".....

- (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.
- (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.
- (3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.
- (4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filing of the application/verification from and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:-
 - (a) 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

⁴ (2016) 8 SCC 471



question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

- (b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.
 - (c) 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.
- (5) In a case where the employee has made declaration truthfully of concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.
 - (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.
 - (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.
 - (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.
 - (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.
 - (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.



(11) Before a person is held guilty of *suppressio veri or suggestio falsi*, knowledge of the fact must be attributable to him.

38. Various earlier rulings of Hon'ble Supreme Court were considered in the above pronouncement of a Bench consisting of three Hon'ble Judges including **Jainendra Singh v. State of U.P. through Principal Secretary, Home**⁵ and **Kamal Nayan Mishra v. State of Madhya Pradesh**⁶.

39. When it was brought to the notice of the High Court, of involvement of the petitioner in the above criminal case and consequent conviction as well as sentence suffered by him, necessary action was initiated. Basing on the report received from the then District Judge, Chittoor by his letter dated 27.11.2015, the Committee of Hon'ble Judges recommended to the then Hon'ble Acting Chief Justice to terminate the services of the petitioner since he was convicted in a criminal case. It was accepted by then Hon'ble Acting Chief Justice, as seen from the note of the Registry dated 07.01.2016. Pursuant thereto, a letter was addressed to the Government to its Secretary, Law (LA&J-Home Courts-A) Department, at Hyderabad on 21.01.2016 requesting the Government to issue orders rescinding appointment of the petitioner, which was duly obliged by issuing G.O.Rt.No.244, dated 13.04.2013. Basing on the ruling of the Hon'ble Supreme Court above, there was no necessity to put the petitioner on notice of the intended action or to call for his explanation.

40. When it is crystal clear in this case that the petitioner had resorted to despicable form of suppression of a material fact which had any amount of bearing as well as significant effect in making him

⁵ (2012) 8 SCC 748

⁶ (2010) 2 SCC 169



unsuitable or unqualified for such an appointment, of which he had certain and definite knowledge on account of facing criminal case in one of the Courts at Chittoor, he cannot now be heard to say that there was violation of principles of natural justice. The petitioner himself had invited such a situation to his peril and he cannot now attempt to make or take advantage of such situation to his benefit.

41. The fact that he continued in service till his appointment was cancelled for nearly a period of 15 months, is not a factor by itself in this background.

42. Nonetheless, having due regard to the material on record, in this case cancelling the appointment of the petitioner by the High Court in the circumstances, is completely justified. It did not call for or warrant any inference as desired by the petitioner. Thus rejecting all the contentions of the petitioner in this context, this point is answered in favour of the respondents and against the petitioner.

POINT No.3

43. Consequence of findings on Point Nos.1 and 2 necessarily lead to the result, whereby the writ petition has to be dismissed.

44. In the result, the writ petition is dismissed with costs of the respondents. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

A.V. SESA SAI, J.

M. VENKATA RAMANA, J.

30th August, 2019
Js.
L.R. Copy to be marked



HONOURABLE SRI JUSTICE A.V. SESA SAI
And
HONOURABLE SRI JUSTICE M. VENKATA RAMAN

W.P.No.16275 of 2016
(Per MVRJ)

30th August, 2019

Js.