

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 23192/2012

(Arising out of impugned final judgment and order dated 18/04/2012 in WP No. 2234/2012 passed by the High Court of Delhi at New Delhi)

SUNIL KUMAR RAI

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.
(With office report)

Respondent(s)

WITH

SLP(C) No. 34250/2012
(With Office Report)

SLP(C) No. 34251-34252/2012
(With Office Report)

SLP(C) No. 37054/2012
(With Office Report)

SLP(C) No. 37960-37961/2012
(With Office Report)

SLP(C) No. 8316/2013
(With Office Report)

SLP(C) No. 9750/2013
(With appln.(s) for directions and Office Report)

SLP(C) No. 18594/2013
(With Office Report)

SLP(C) No. 34931/2013
(With Interim Relief and Office Report)

SLP(C) No. 20252/2013
(With Interim Relief and Office Report)

SLP(C) No. 9835-9836/2015
(With Office Report)

SLP(C) No. 36818/2013
(With Interim Relief and Office Report)

SLP(C) No. 24555/2013
(With Office Report)

SLP(C) No. 21996/2013
(With Interim Relief and Office Report)

SLP(C) No. 18593/2013
(With Office Report)

SLP(C) No. 8364/2013
(With Office Report)

SLP(C) No. 32752/2013
(With Office Report)

SLP(C) No. 33404/2013
(With Office Report)

SLP(C) No. 2348/2014
(With Office Report)

S.L.P.(C)...CC No. 4413/2015
(With Office Report)

SLP(C) No. 22528/2013
(With Interim Relief and Office Report)

SLP(C) No. 31563/2013
(With Interim Relief and Office Report)

SLP(C) No. 34443/2013
(With Interim Relief and Office Report)

SLP(C) No. 26853/2013
(With Interim Relief and Office Report)

SLP(C) No. 33418/2013
(With Office Report)

SLP(C) No. 20130/2013
(With Interim Relief and Office Report)

SLP(C) No. 7967/2013
(With Interim Relief and Office Report)

SLP(C) No. 36484/2012
(With Office Report)

SLP(C) No. 27252/2012
(With Office Report)

SLP(C) No. 34248/2012
(With Interim Relief and Office Report)

SLP(C) No. 5393/2015

Date : 22/11/2016 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

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Mr. Chandan Kumar, Adv.
Ms. Shama Sharma, Adv.
Mr. Santosh Kumar Tripathi, Adv.

Mr. V.K. Mishra, Adv.
Mr. Chander Shekhar Ashri, Adv.

Mr. Vikrant Yadav, Adv.
Mr. M. C. Dhingra, Adv.

Mr. Rajesh Srivastava, Adv.
Ms. Suresh Kumari, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

We have heard learned counsel for the parties and have gone through the judgment of a larger Bench of 3 learned Judges of this Court in *Avtar Singh v. UOI & Ors.* [(2016) 8 SCC 471].

The issues that have been raised in the present petitions had arisen before the larger Bench and after going through various decisions, the Bench gave its conclusions in para 30 of the Report read with para 38 of the Report.

Para 30 reads as follows:

"30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. 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."

Para 38 reads as follows:

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

We are of opinion that the cases of the writ petitioners deserve to be reconsidered in the light of the above decision. The reconsideration should be done by the State within a period of two months from today and it should be by a speaking order so that in case any writ petitioner is aggrieved, he can approach the appropriate authority in accordance with law.

We also make it clear that the effect of the speaking order passed by the State shall not be given effect to for a period of four weeks.

The writ petitioners may make a representation to the State within a maximum period of one week from today.

The special leave petitions are disposed of with the above directions.

Pending applications, if any, are disposed of.

(Meenakshi Kohli)
Court Master

(Jaswinder Kaur)
Court Master