

## Fakirchand Solanki Vs The state of Madhya Pradesh And others

**Court:** Madhya Pradesh High Court (Indore Bench)

**Date of Decision:** Jan. 20, 2025

**Acts Referred:** Constitution of India 1950 " Article 226  
Indian Penal Code 1860 " Section 323, 325, 504, 506

**Hon'ble Judges:** Vijay Kumar Shukla, J

**Bench:** Single Bench

**Advocate:** Swati Ukhale, Ashi Vaidya

**Final Decision:** Disposed Off

### Judgement

#### JUDGMENTTAG-JUDGMENT

Vijay Kumar Shukla, J

In the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 17/9/2024 passed by respondent

No.2/Chief Engineer, PHE, Indore whereby the services of the petitioner have been terminated on the ground of suppression of fact of criminal case

in the verification form at the time of appointment wherein a criminal case bearing crime No.309/2021 for commission of offences punishable under

Section 323, 504, 506 of IPC is registered.

2. The facts in nutshell are that the petitioner was appointed on 21/3/2023 as "Cleaner" in work charge establishment by order dated 10/3/2023 on

compassionate ground after the death of his father. As per the condition No.2 of the appointment order, the appointment of the petitioner was subject

to the character verification report of police. From the facts and documents of the case floating on the surface, it has come on the record that on

7/9/2021 against the petitioner, a criminal case was registered for commission of offences under Section 323, 325, 504, 506 of IPC. On 1/10/2024, the

charge-sheet was filed in the Court. The petitioner filed verification form and mentioned that no criminal case is pending against him. Thus, the

aforesaid criminal case was suppressed in the verification form and the same was also not mentioned in the affidavit. On the aforesaid ground, the

services of the petitioner were terminated.

3. Counsel for the petitioner argued that the petitioner has been acquitted by the Court of law in the said criminal case for commission of offences

under Section 323, 325, 504, 506 of IPC. It is urged that the petitioner is a class IV employee and was engaged on compassionate appointment on the

post of "Cleaner" by the respondents and he was charge-sheeted for offences of 'trivial nature' and, therefore, as per the clause 6(II)(a) of circular

dated 24/7/2018, his compassionate appointment ought to have not been cancelled.

4. The relevant clause 6(II)(a) is reproduced as under:-

5. The aforesaid clause confers discretion on the employer to consider such candidates as suitable for appointment if the alleged offences are of trivial

nature and candidate has been acquitted whether he has disclosed the same or not in the verification form. In support of her submission, she relied on

the judgment passed by the Division Bench of this Court at Gwalior passed in the case of Pankaj Singh Tomar vs. The State of M.P and Ors.

(W.A No.723/2021) and also the judgment passed by the Apex Court in the case of Ravindra Kumar vs. State of U.P and Ors. (Civil Appeal

No.5902/2012).

6. Per contra, counsel for the State submitted that admittedly on the date of filing of the application for appointment by the petitioner, a criminal case

was pending which was suppressed in the verification form, therefore, he has been rightly terminated from service.

7. After hearing learned counsel for the parties, this Court considers apposite to survey the judgments passed on the issue involved in the present case

that whether in case of suppression of pendency of criminal case which is of trivial nature, an employee would be disentitled for claim of

compassionate appointment or for the same reason his services are liable to be terminated ?

8. A three-Judges Bench of Supreme Court in Avtar Singh v. Union of India and Ors. reported in (2016) 8 SCC 471 where broad guidelines were

laid down regarding the yardstick to be applied for verification of disclosures made by a candidate to the employer so as to decide as to whether the

applicant would be fit for appointment or not. Following were the pertinent observations made in Avatar Singh (supra):

“29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good

moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date

of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in

which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been

convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether

employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already

conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects

in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness

for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice

then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of

antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial

offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with

all kinds of cases? 36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous

criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on

suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due

consideration of various aspects.

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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

recourses 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.Ã¢â‚¬â€œ

(emphasis added)

9. Ultimately, the purpose of seeking the relevant information with respect to the antecedents of a candidate/employee is to enable the employer to

ascertain the suitability of the candidate/employee for the subject post. In *The State of Madhya Pradesh v. Bhupendra Yadav* reported in (2023)

SCC Online SC 1181, citing the decision in *Avtar Singh* (supra), the following observations were made:

Ã¢â‚¬Å“16. As can be discerned from the above decision, an employer has the discretion to terminate or condone an omission in the disclosure

made by a candidate. While doing so, the employer must act with prudence, keep in mind the nature of the post and the duties required to be

discharged. Higher the post, more stringent ought to be the standards to be applied. Even if a truthful disclosure has been made, the

employer is well within its right to examine the fitness of a candidate and in a concluded criminal case, keep in mind the nature of the

offence and verify whether the acquittal is honourable or benefit has been extended on technical reasons. If the employer arrives at a

conclusion that the incumbent is of a suspect character or unfit for the post, he may not be appointed or continued in service.Ã¢â‚¬â€œ

10. In *Daya Shankar Yadav v. Union of India* reported in (2010) 14 SCC 103 where the consequences of examining the information received

from a candidate with respect to his/her antecedents regarding suitability for the post have been discussed as follows:

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 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) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer

may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is

acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes

a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his

involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the

declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant

information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant,

the employer can have recourse to courses (a) or (b) above.

(emphasis added)

11. The aforesaid judgments confers discretion to the employer to consider a candidate suitable for appointment even he has not disclosed the criminal

case in the verification form depending on the facts of each case. As per clause 6(II)(a) if the alleged criminal case is of 'trivial nature' the employer

can still consider suitability of the selected candidate and can appoint him.

12. In the light of the aforesaid judgments as discussed hereinabove and considering the clause 6(II)(a) of circular dated 24/7/2018, this Court is of the

view that the alleged offences against the petitioner were of trivial nature and he has been acquitted by the Court of law, further he was appointed on

the post of a "Cleaner" on compassionate appointment. The post of "Cleaner" is not a post of any disciplinary or Armed forces. The judgments on

which the appointment has been denied on the ground of concealment in verification form are in respect of appointment in armed forces or of a post

where a high degree of integrity and discipline is required. The respondents have not considered the aforesaid aspects and also the clause 6(II)(a) of

circular dated 24/7/2018. Hence the impugned order dated 17/9/2024, Annexure P-6 is quashed. The respondent No.2 is directed to consider the case

of the petitioner as per circular dated 24/7/2018 within period of 2 months from the date of communication of the order passed today and if the

petitioner is found otherwise eligible, the appointment order shall be issued to him.

13. With the aforesaid, present petition stands allowed and disposed off.