



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, AT NAGPUR.**

**Writ Petition No. 4925 of 2019**

Buddheshwar S/o Babulal Lihare  
Aged about 35 yrs, Occ. Service,  
R/o Murpar, Po. Rajegaon  
Tah. & Distt. Gondia.

... Petitioner

... Versus ...

- (1) Maharashtra State Electricity  
Distribution Company through  
its Chief Engineer, Gondia.
- (2) Executive Engineer / The  
Competent Officer,  
Maharashtra State Electricity  
Distribution Company Sakoli,  
Tah. Sakoli, District – Bhandara.
- (3) The Deputy Executive Engineer,  
Maharashtra State Electricity  
Distribution Company, Sakoli,  
Dist. Bhandara.

... Respondents

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Mr. S. G. Karmarkar, Advocate for the petitioner  
Mr. S. V. Purohit, Advocate for respondents 2 and 3  
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**CORAM : ROHIT B. DEO AND  
ANIL L. PANSARE, JJ.**

**Date of reserving judgment : 30-8-2022**  
**Date of pronouncing judgment : 28-4-2023**

**JUDGMENT** (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith.

2. The petitioner secured appointment as Peon on compassionate ground in view of the death in harness of his father, Mr. Babulal Lihare, who was working with respondent 1 – Maharashtra State Electricity Distribution Company Limited (MSEDCL) as Lineman.

3. Condition 12 of the appointment order dated 6-10-2018 stipulates that the character and antecedents verification form included with the appointment order shall be filled in by the employee while reporting on duty and that if the verification reveals adverse character or antecedent, the employee shall be terminated. Column 11 of the attestation form reads thus :

*11.(a) Have you ever been arrested/prosecuted/kept under detention, or bound down/fined/convicted by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections or debarred from taking any examination/rusticated by any University or any other educational authority/institution ?*

*(b) Is any case pending against you in any court of law, University or any other educational authority/Institution at the time of filing up this attestation form ?*

*(c) Whether he/she is facing any criminal prosecution in any court and if yes to state details thereof such as case number, in which court the case is pending under which section, etc.,*

*[If the answer to (a) or (b) or (c) is Yes, fill particulars of the case, arrest, detention, fine, conviction, sentence, etc. and the nature of the case pending in the Court/*

*University/Educational authority etc. at the time of filling up this form should be given]*

*(Note :- Please also see the 'Warning' at the top of this Attestation Form)*

4. The warning to which attention of the employee is invited, reads thus :

**WARNING** :- *The furnishing of false information or suppression of any factual information in the Attestation would be a disqualification and is likely to render the candidate unfit for employment in the MSEDCL.*

2. *If detained, convicted, debarred etc. subsequent to the completion and submission of this form, the details should be communicated, immediately to the appointing authority or the authority to whom the attestation form has been sent earlier as the case may be. Failure to do so will be deemed to be, suppression of factual information.*
3. *If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time, during the service of a person, his service should be liable to be terminated.*

5. The service conditions of the employees are regulated by the Classification and Recruitment Regulations, 2005 (2005 Regulations). Clause 16 of the 2005 Regulations reads thus :

16. *Any candidate who is found to have knowingly furnished any particulars which are false or to have suppressed material information of a character which, if known, would ordinarily have debarred him from getting appointment in the service of the Company, is liable to be disqualified and if appointed, to be dismissed from service.*

6. It is not in dispute that the petitioner did not fill in the information specified in column 11 of the attestation form. The MSEDCL sought the report of the police as part of the verification of the character and antecedents of the petitioner. The police report dated 31-10-2018 revealed that the petitioner is arraigned as accused in Crime 99/2018 registered for offences punishable under Sections 143, 147, 149, 323, 294, 504 and 506 of the Indian Penal Code (IPC) read with Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [Atrocities Act] and the final report is filed under Section 173 of the Code of Criminal Procedure, 1973.

7. The petitioner was served with show cause notice dated 20-5-2019 asking him to show cause why he should not be terminated in view of the suppression of material information, particularly the fact that he is charge-sheeted for the offences noted supra, and the trial is pending.

8. The petitioner submitted reply dated 29-5-2019 *inter alia* justifying the purported suppression on the ground that he is a Class IV employee, who is not conversant with the English language. The petitioner then referred to the allegations in the charge-sheet to contend that he is falsely implicated and that his limited role in the

incident was to intervene in an attempt to end the physical altercation. The petitioner referred to the statement of the complainant recorded during the investigation to buttress the said contention. The petitioner further contended that he was appointed on compassionate ground since his father died in harness due to cancer and that the entire family is depending on petitioner for their survival. The employer – MSEDCL was not satisfied with the explanation to the show cause notice and vide order dated 1-6-2019 terminated the services of the petitioner, which order is impugned herein.

9. The facts are broadly admitted or irrefutable. The petitioner did suppress material information. We are not impressed by the justification that the petitioner committed an inadvertent error. We are further not inclined to accept the submission of the learned counsel for the petitioner, Mr. Karmarkar that the role attributed to the petitioner is limited to the petitioner intervening in the altercation, much less with the pious intention of putting an end to the altercation. The allegations against the petitioner, who is one of the eight accused, may be generally worded, but then it is for the trial Court to take an appropriate call at an appropriate stage. The limited issue which arises in the petition is whether the employer is justified in terminating the

services of the petitioner on the ground that the pendency of the prosecution was suppressed.

10. While considering the question of implication and repercussions of the suppression of information or submitting false information on the aspect of pending criminal prosecution or arrest and prosecution, various two Judges Bench decisions of the Hon'ble Supreme Court have spoken in different voices. In view of the resultant conundrum, a two Judge Bench of the Hon'ble Supreme Court in *Jainendra Singh Vs. State of U.P [(2012) 8 SCC 748]* referred the issue to a Larger Bench.

11. The reference is answered by the three Judges Bench of the Hon'ble Supreme Court in *Avtar Singh Vs. Union of India and others [(2016) 8 SCC 471]*.

12. In *Avtar Singh*, the following observations in *Jainendra Singh* which formulate the issues referred are extracted

*“29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:*

*29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the*

*employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.*

29.2. *Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.*

29.3. *When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.*

29.4. *A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.*

29.5. *The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.*

29.6. *The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.*

29.7. *The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the*

*ultimate decision of the appointing authority cannot be faulted.*

*29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.*

*29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.*

*29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable.*

*30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.*

*31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues.”*

13. The Hon'ble Supreme Court endeavoured to explain and reconcile the various decisions and summarized the 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.*

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

14. ***Avtar Singh*** considers diverse situations in which the employee is terminated on the ground of suppression of material information or securing employment on the basis of fraudulent documents. The effect of culmination of the criminal prosecution, either in conviction or acquittal, prior to the filling in of the attestation form, is considered by the Hon'ble Supreme Court *in extenso*. We need not delve deeper in the articulation of the Hon'ble Supreme Court on the said aspect and suffice it would be to consider the enunciation in respect of the suppression by the employee of pending prosecution/s.

15. It would be apposite to notice the following observations in ***Avtar Singh*** :

*32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent*

*has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.*

16. The well entrenched principle is that the observations in the judgment shall not be read as if the same are statutory provisions. While the observations supra do indicate that the non-disclosure of pending criminal case would assume significance and may by itself be a ground for the employer to cancel the candidature or to terminate the employment, the said observations will have to be read and understood in juxtaposition with, and in the context of the observations to follow.

17. The Hon'ble Supreme Court emphasized that the verification of character and antecedents is an important criterion to assess suitability, the ultimate action should be based upon objective criteria on due consideration of all relevant aspects and while an employee who suppressed material information cannot claim unfettered right for continuity in service, he has a right not to be dealt with arbitrarily. It is further emphasized that for lower positions which are not sensitive, nature of duties, impact of suppression on suitability has to be considered in the context of nature of duties. It is further

articulated that McCarthyism is antithesis to constitutional goal and chance of reformation has to be afforded to young offenders in suitable cases. We may fruitfully reproduced the relevant observations in ***Avtar Singh***.

*34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.*

*35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/ instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts 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.*

*37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the*

*factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*

18. Pertinently paragraph 38.7 of ***Avtar Singh*** while summarizing the conclusion, the Hon'ble Supreme Court observes that 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. (emphasis supplied)

19. We are of the considered view, that the observations in paragraph 32 extracted supra, cannot be read or understood as laying down as an absolute proposition that the employer has no option but to terminate the employment, if the employee suppressed the pendency of a singular criminal prosecution. The decision will have to be taken by the employer on relevant considerations which we are not inclined to place in a straitjacket. Suppression by an aspirant to uniformed service or disciplined force or to higher post may conceivably stand on a different pedestal than a suppression by a Class IV employee, who is aspirant for a post which is not *per se* sensitive. The fact that the petitioner was appointed as Peon on compassionate ground could be

one relevant consideration. The nature of accusation in the pending trial may fall for consideration in an appropriate case.

20. Learned counsel for the petitioner, Mr. Karmarkar would invite our attention to *Pawar Kumar Vs. Union of India and another [2022 SCC OnLine SC 532]* which draws support from the decision of the Larger Bench in *Avtar Singh*.

21. However, we note from the factual matrix culled out in the said decision that the alleged suppression was of criminal case in which the employee was honourably acquitted by the trial Judge nearly three years prior to the employee filling in of the attestation form. While the process of selection was initiated pursuant to employment notice dated 27-2-2011, no criminal case was either instituted or pending against the employee when he applied pursuant to the said employment notice and the registration of offence was on 4-4-2011. The mistake which the employee committed was that when he filled in the attestation form at a later stage on 27-5-2014, he did not disclose that he was prosecuted and honourably acquitted. Considering the glaring facts which fell for consideration in *Pawar Kumar, inter alia* that the allegation was of trivial nature and the prosecution ended in clean acquittal, we are not inclined to accept the submission of Mr. Karmarkar that the said decision furthers the cause of the petitioner.

22. Learned counsel for the employer – MSEDCL, Mr. Shridhar Purohit has pressed in service the decision of the Hon'ble Supreme Court in *Union of India Vs. Dilip Kumar Mallick* passed in *Civil Appeal 2754 of 2022* dated 5-4-2022. The factual matrix was that the employee was appointed under the Central Reserve Police Force (CRPF). The employee did not disclose that he was charge-sheeted for offences punishable under Sections 341, 323, 294, 337, 506 read with Section 34 of the IPC and that the criminal case was pending. The employee was terminated and the departmental appeal preferred by the employee was dismissed. The first writ petition preferred by the employee was partly allowed and the matter was remitted to the appellate authority for reconsideration. The appellate authority reconsidered the issues and again dismissed the appeal. The learned Single Judge of the High Court of Orissa at Cuttack dismissed the writ petition preferred by the employee and the intra-court appeal was dismissed. The Division Bench of the High Court referred to the observations in *Avtar Singh* and took a view that the punishment of removal from service was harsh and what weighed with the Division Bench of High Court was that the employee had been acquitted in the criminal case prior to awarding of punishment in the disciplinary proceedings.



22.1. The Hon'ble Supreme Court observed that the employee cannot feign ignorance about the pending criminal case. The Hon'ble Supreme Court extracted the observations in paragraph 32 of ***Avtar Singh*** and emphasized that it is laid down in ***Avtar Singh*** that non-disclosure by itself may be a ground for employer to terminate the employment.

22.2. The observations in paragraph 14 of ***Dilip Kumar Mallick*** reads thus :

*14. In case of suppression, when the facts later come to the knowledge of employer, difference courses of action may be adopted by the employer depending on the nature of fault as also the nature of default; and this Court has indicated that if the case is of trivial nature, like that of shouting slogans at a young age etc., the employer may ignore such suppression of fact or false information depending on the factors as to whether the information, if disclosed, would have rendered incumbent unfit for the post in question.*

22.3. The Hon'ble Supreme Court, however, observed in the immediate next paragraph that the observations in paragraph 14 do not lead to the corollary that in a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings and on the contrary, a non-disclosure of material information itself could be a ground for

cancellation of employment or termination of services. Mr. Shridhar Purohit has further relied on the decision of the Hon'ble Supreme Court in *Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs. Anil Kanwariya [(2021) 10 SCC 136]*.

22.4. High Court of Judicature at Rajasthan had set aside the termination of the employee who suppressed that he was convicted by the trial Court for offences punishable under Sections 341 and 323 of the IPC and was given benefit under the Probation of Offenders Act, 1958. The High Court heavily relied on the decision in *Avtar Singh*.

22.5. The Hon'ble Supreme Court did not agree with the view taken by the High Court and after considering the factual matrix threadbare articulated thus :

*14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or*

*suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.*

22.6. Mr. Shridhar Purohit would rely on three Judges Bench decision of the Hon'ble Supreme Court in ***Chief Manager, Punjab National Bank and another Vs. Anit Kumar Das [2020 SCC OnLine SC 897]***. However, we note that the suppression of the information which was considered was pertaining to the eligibility criteria mentioned in the advertisement. The Hon'ble Supreme Court found that the employee disclosed to the bank that he was a graduate, he would not have been considered for selection in view of the eligibility criteria stipulated in the advertisement. The following paragraphs in the said decision are relevant.

*21. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess*

*expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.*

*22. Even on the ground that respondent–original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent–original writ petitioner to discharge his duties as a Peon. In the application/bio-data, the respondent-original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent–original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for*

*the job. In fact, by such conduct on the part of the respondent–original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of Ram Ratan Yadav (supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service. Thus, on the ground of suppression of material information and the facts and as the respondent–original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his candidature and rightly did not permit him to resume his duty.*

22.7. The decision in **Anit Kumar Das** turns on facts and is not an authority for the proposition that suppression of material information in the attestation form or application seeking employment *per se* warrants termination of employment. What has weighed with the Hon'ble Supreme Court is that the suppression was of the educational qualifications, and had true disclosure being made, the employee would not have been considered at all.

23. In our considered view, there do exist certain special circumstances which could have been considered by the employer while deciding to terminate the employment. We would consciously refrain from making further observations in view of the order which we

propose to make, which is directing the employer to reconsider the issue afresh consistent with the observations of the Hon'ble Supreme Court in *Avtar Singh* which we have analyzed supra.

24. We would gently remind the employer not to labour under the impression that employer has no choice in the matter muchless discretion and that the suppression *per se* and *ipso facto* must entail termination of employment.

25. While we are setting aside the order of termination and are directing the employer to reconsider the issue within three months from the date of uploading of the judgment, we clarify that the employee shall not be entitled to reinstatement or any other relief till the employer has a fresh look at the matter. The order which may be passed after reconsidering the issues shall, however, relate back to the date of termination, if the fresh decision is in favour of the employee.

26. We partly allow and dispose of the writ petition in the afore-stated terms.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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