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WP(C) NO. 17573 OF 2023

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C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

THURSDAY, THE 23RD DAY OF JANUARY 2025 / 3RD MAGHA, 1946

WP(C) NO. 17573 OF 2023

PETITIONERS:

HARILAL S
AGED 38 YEARS
S/O. SOMARAJAN, KOKKATTUTHARA VEEDU, MEENATHUCHERRI
VEEDU, SAKTHIKULANGARA VILLAGE, KOLLAM., PIN - 691581

BY ADVS.
C.RAJENDRAN
B.GOPALAKRISHNAN
R.S.SREEVIDYA
MANU M.

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, DEFENCE DEPARTMENT, ROOM
NUMBER 234-SOUTH BLOCK, NEW DELHI., PIN - 110011
- 2 THE COMMANDING OFFICER/ OFFG OFFICER AE (CIV)
1519 ROAD MAINT PLATOON, CARE 112 RCC (GREF), C/O 56
APO., MAHARASHTA, PIN - 930112
- 3 THE COL COMMANDER
HEAD QUARTERS 753 BORDER ROADS TASK FORCE ENDS, GREF
CENTRE, PUNE -15, MAHARASHTRA STATE., PIN - 930753
- 4 THE ASSISTANT COMMISSIONER OF POLICE
SPECIAL BRANCH KOLLAM CITY, KOLLAM DISTRICT., PIN -
691001



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BY ADVS.
K.S.PRENJITH KUMAR

DAYASINDHU SHREEHARI CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner was appointed in General Reserve Engineer Force (GREF) on 17.02.2022 as Driver Mechanical Transport (DVRMT) OG against the vacancy for the year 2019 under OBC category. Thereafter, he was posted at RCC (GREF) Records vide the order dated 29.06.2022. Before the petitioner was appointed, he was an accused in Crime No. 210/2015 registered at Sakthikulangara Police Station, Kollam, for offences punishable under Sections 452, 294, 325 and 324 of IPC. After completing the investigation, the investigating officer submitted the final report in the Court of Judicial First Class Magistrate Court, Kollam II, and the learned Magistrate took cognizance of the case as C.C No.1083/2015. The petitioner and others filed Criminal Miscellaneous Case No. 4208/2022 before this Court under Section 482 Cr.PC for quashing the final report and further proceedings in the case. This court, vide the judgment dated 07.07.2022, quashed the final report in Ext.P1 in Crime No.210/2015 registered at Sakthikulangara Police Station, Kollam and further proceedings before the Judicial First Class



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Magistrate Court II, Kollam, against the petitioner.

2. After the petitioner got the appointment, on police verification, it was reported that the petitioner was involved in a case registered as Crime No. 92/2011 under Sections 143, 147, 188, 283 of IPC, registered at Sakthikulangara Police Station, Kollam. The allegation in the FIR was that during the temple Festival, the petitioner, along with other accused persons, caused blockage to smooth the movement of vehicles through the road. The said case was compounded, and it was closed on payment of fine by the petitioner. On 07.09.2022, the 2nd respondent, Commanding Officer, issued a show cause notice to the petitioner, giving an opportunity to submit his written reply that why the actions should not be taken against him as per Sub rule (1) of Rules (5) of the Central Civil Service (Temporary Service) Rules, 1965, by terminating his services for suppressing the material information regarding his involvement in two criminal cases, and therefore, he was not suitable for appointment as he obtained the Government job by concealing the material facts.

3. Thereafter, Ext. P7 notice of termination of services was



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issued to the petitioner by the Commanding Officer, intimating to the petitioner that his services would stand terminated with effect from the expiry of one month from the date on which the notice would be served on him. The petitioner was issued a relieving letter in Ext.P8 dated 04.10.2022 stating that the petitioner's service would stand terminated with effect from 04.10.2022.

4.The petitioner's wife submitted an application on 16.01.2023, requesting the 2nd respondent to cancel the order of termination of the service of the petitioner. The 2nd respondent issued a reply stating that her husband had already been served a notice of termination on 04.11.2022 and the petitioner did not make any correspondence with them on the said notice of termination. It was also stated that the petitioner had submitted an application to resign from the service with effect from 02.08.2022, giving the reason that due to certain compelling domestic situations and unavoidable circumstances, he was not willing to continue in service. The termination notice and the resignation were forwarded to the petitioner's wife. The



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petitioner has taken the stand that the petitioner has not written any letter resigning from the post and handwriting could not suggest that it was written by the petitioner. Now the petitioner has approached this court to quash the termination notice and order of relieving in Exts. P7 and P8.

5.The learned counsel for the petitioner submits that the petitioner's involvement was in very minor cases, one of which was quashed by the High Court and another was compounded by payment of fine. In view thereof, the petitioner has not earned a disqualification from appointment to the post of Driver Mechanical Transport in the respondent establishment.

6.It is further submitted that non-disclosure of the two cases which were quashed would not be fatal to the employment. The petitioner was appointed vide the order dated 17.02.2022. Soon after his appointment, the criminal case registered at Sakthikulangara, Kollam Police Station as Crime No.210/2015 under Section, for offences punishable under Sections, 143,147,148,447,294(b),323,324 read with Section 149 of IPC were quashed by the High Court vide the order dated 07.07.2022



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in Crl.M.C No. 4208 of 2022 and another case registered against him as Crime No. 92/2011 under the same police station under Sections 143,147,188,283 of IPC was compounded by paying the fine by the petitioner.

7. He further submitted the nature of the offence and the facts that those cases were registered when the petitioner was a student and involved in the Union activities of the College would not in any manner impair the suitability of the petitioner for appointment on the post of Driver Mechanical Transport.

8.Mr. Daya Sindhu Shreehari, the learned Central Government Counsel representing the respondent, submits that the petitioner ought to have disclosed the cases pending against him. Two cases registered against him were subsequently quashed, one by the High Court and another by paying the fine, after the petitioner was appointed. The allegation against the petitioner is of the concealment of the material fact about non disclosure of the pendency of the two cases against him. He, therefore, submits that the petitioner is not entitled to the relief claimed in this writ petition.



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9.I have considered the submissions advanced by the learned counsel for the petitioner and the learned Central Government Counsel.

10.No one can doubt that the offences punishable under Sections 143,147,148,447,294(b),323, 324 of IPC do not involve the moral turpitude of the petitioner. The offences were allegedly committed by the petitioner while he was involved in student union activity at the College. Later on, this court quashed the final report submitted by the police in respect of Crime No. 210/2015, and another offence was compounded by payment of fine.

11.Mr. Daya Sindhu Shreehari, the learned Central Government Counsel does not dispute the fact that the offences registered against the petitioner were trivial and not involving the moral turpitude of the petitioner.

12.The Supreme Court in *Avtar Singh vs Union Of India (2016 (8) SCC 471)* has held in paragraph 24 that, by considering the young age of the petitioner in that case as also that he was involved in a minor offence, held that the young people often



commit indiscretions and such indiscretions can often be condoned.

13.Paragraph 24 of the judgment in **Avtar Singh (supra)** should read as under:-

24.In Commissioner of Police & Ors. v. Sandeep Kumar (2011) 4 SCC 644, this Court considered a case where Sandeep Kumar's candidature for the post of Constable was cancelled on the ground that he had concealed his involvement in the criminal case under section 325/34 IPC when he was about 20 years. In para 9, this Court took note of the character "Jean Valjean" in Victor Hugo's novel 'Les Miserables' in which for committing a minor offence of stealing a loaf of bread for his hungry family, Jean Valjean was branded as a thief for whole life. This Court also referred to the decision in *Morris v. Crown Office* (1970) 2 QB 114. Relevant portion is extracted hereunder :

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel *Les Miserables*, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the



Court of Appeals. Allowing the appeal, Lord Denning observed:

"I come now to Mr Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show—and to show to all students everywhere—that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land—and I speak both for England and Wales—they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards—of the poets and the singers—more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong—very wrong—in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." (Vide *Morris v. Crown Office* (1970) 2 QB 114 at p. 125C-H. In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence



like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.” This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In *Morris v. Crown Office* (supra), the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but must we show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course.”

14. In case of *Ramkumar V. State of Uttarpradesh (2011 (14) SCC 709)* where the candidate for the post of constable in U.P police was involved in an offence registered under Sections 324, 323 and 504 of IPC and thereafter in the said case, the candidate was acquitted, however, his appointment was cancelled on the grounds that he withheld information about the criminal case against him after it was reported in his character verification, the Supreme Court held that the appointment authorities must consider and take a view of whether the candidate would be suitable for the appointment for the post of police constable or not.

15. In the case *Ravindra Kumar vs State Of U.P (2024 (5) SCC 264)* it was held that brushing every non-disclosure as a



disqualification would be unjust, and the same would tantamount to being completely oblivious to the ground realities prevailing in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon. The court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide.

16.Paragraph 34 of the said judgment which is relevant is extracted hereunder:-

34. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.

17.In the present case, the Commissioner of Police, Kollam, vide the letter dated 30.05.2022, on verification of character and antecedents of the petitioner, stated that the petitioner was not suitable for the appointment. Non-disclosure of two minor cases, which were later on quashed and closed, one by the High Court



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and another by paying the fine, would not itself make the petitioner unsuitable for the post of Driver. It must be noted that the authority did not consider the fact that the alleged offences were committed by the petitioner when he was a student, and the nature of the offences were not serious but trivial in nature. Nowhere has the authority recorded a finding that nondisclosure of the offences which were subsequently quashed and compounded involve the moral turpitude of the petitioner. The fact remains that the petitioner was involved in those offences when he was young and involved in the activities of the student union. Every non-disclosure cannot be treated to be fatal to the appointment to the post of Driver in the respondent.

18. Considering the view taken by the Supreme Court in the cases cited above, I am of the view that the non-disclosure of two criminal cases against the petitioner, which were quashed and compounded, would not be fatal to the petitioner's suitability to the post inasmuch as the cases are not serious in character and do not involve the petitioner's moral turpitude. The competent authority has not considered these aspects while issuing the



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impugned notices of termination and relieving order in Exts.P7 and P8.

19.In view of the aforesaid discussion, the impugned orders in Exts.P7 and P8 are set aside, and the matter is remitted back to the 2nd respondent to consider afresh that whether the petitioner would be non-suitable to hold the post of Driver Mechanical Transport because of the non-disclosure of two criminal cases which were quashed and compounded as mentioned above. The said decision of the 2nd respondent must be on the basis of the law as discussed above. On remand, the 2nd respondent should take the decision afresh within a period of one month after affording an opportunity of hearing to the petitioner.

In view thereof, the present writ petition stands allowed, however without cost.

Sd/-**D K SINGH
JUDGE**

SJ



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APPENDIX OF WP(C) 17573/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE PHOTO COPY OF THE JUDGMENT DATED
07/07/2022 IN CRL M C NO.4208/2022 OF THE
HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- Exhibit P2 A TRUE PHOTO COPY OF THE ORDER OF THE LEARNED
MAGISTRATE IN CC NO. 1083/2015 DATED
25/07/2022
- Exhibit P3 A TRUE COPY OF THE SAID REPORT OF 4TH
RESPONDENT DATED 30/05/2022
- Exhibit P4 A TRUE COPY OF THE LETTER DATED 01/08/2022
- Exhibit P5 A TRUE COPY OF THE LETTER OF 2ND RESPONDENT
DATED 16/08/2022
- Exhibit P6 A TRUE COPY OF THE TERMINATION NOTICE DATED
07/09/2022
- Exhibit P7 A TRUE COPY OF THE TERMINATION NOTICE DATED
20/9/2022
- Exhibit P8 A TRUE COPY OF THE RELIEVING ORDER DATED
03/11/2022
- Exhibit P9 A TRUE COPY OF THE SAID REPRESENTATION DATED
16/01/2023
- Exhibit P10 A TRUE COPY OF THE REPLY DATED 02/02/2023
- Exhibit P11 A TRUE COPY OF THE RESIGNATION LETTER DATED
16/09/2022
- Exhibit P12 THE COPY OF THE RESIGNATION LETTER COPIED FROM
EXHIBIT P11 BY THE PETITIONER IN HIS OWN
HANDWRITING

RESPONDENT EXHIBITS

- Exhibit R2(a) True copy of the posting Order No.0540/GP-
II/DVRMT/FRC/FA5 dated 02.04.2022



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| Exhibit R2(b) | True copy of the affirmation dated 24.01.2022 attested by the petitioner |
| Exhibit R2(d) | True copy of the letter No.114/SB/VR/CQ/2022-QC dated 30.05.2022 issued by the Office of Commissioner of police, Kollam City |
| Exhibit R2(e) | True copy of the application dated 02.08.2022 submitted by the petitioner |
| Exhibit R2(f) | True copy of the notice of termination issued to the petitioner vide letter No.1604/TS/112 RCC/Harilal S/04/EIC dated 30.09.2022 |
| Exhibit R2(g) | True copy of the acknowledgement evidencing the receipt of notice of termination |
| Exhibit R2(c) | True copy of the letter No.1664/RFT/1486/ITW dated 05.04.2022 addressed to the Commissioner of Police, Kollam City along with typed copy |