



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23409 of 2024

An application under Articles 226 and 227 of the Constitution of India.

Sri P. Rajesh Reddy . ***Petitioner***
Mr. Satyanarayan Mohapatra, Advocate

-versus-

State of Odisha and others . ***Opp. Parties***
Mr. U.C. Jena, A.S.C.

CORAM:

**HE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA**

Date of hearing : 11.04.2025 | Date of Judgment : 26.05.2025

A.K. Mohapatra, J. :

1. The present writ application has been filed by the abovenamed petitioner with a prayer to quash order of discharge of the petitioner dated 02.02.2024 under Annexure-9 to the writ application by the Opposite Party No.4 as well as the order of rejection of his representation vide letter dated 18.07.2024 under Annexure-12 to the writ application. Further, a prayer has also been made for a direction to the Opposite Party Nos. 4 and 5 to reinstate the petitioner in his former post of Warder, fixation of salary of the



petitioner and to pay arrear differential salary of the petitioner as is due and admissible.

2. The factual background of the present writ application in short is that on 13.12.2022 the Opposite Party No.2 floated an advertisement for filling up 403 numbers of vacant posts of Jail Warder. The petitioner, being interested in getting appointment to such post, obtained a character certificate from the Deputy Superintendent of Police, Ganjam dated 17.05.2023, under Annexure-3. Accordingly, the petitioner submitted his application. Hence, the petitioner along with other eligible applicants was made to appear in the selection process as provided in the police manual. Finally, vide letter dated 29.05.2023 of the Superintendent of Sub-Jail, Daspalla, the petitioner was appointed against the post of Jail Warder in Daspalla, Sub-Jail pursuant to the appointment letter under Annexure-5 to the writ application.
3. While this was the position, and the petitioner was discharging his duties as an warder in the Daspalla Sub-Jail, the petitioner received a letter dated 02.02.2024 of the Senior Superintendent of Circle Jail, Berhampur. Later, vide letter dated 02.02.2024 under annexure-9 to the writ application, the petitioner has been discharged from service on the allegation that he had suppressed material information in his attestation form which was submitted at the time of making an application for appointment to the post of Jail Warder. The substance of the allegation made in the office order dated 02.02.2024 is that the petitioner had categorically suppressed information about two criminal cases i.e. Chamakhandi P.S. 48 of 2022 and Chamakhandi P.S. Case No.130 of 2013. When the aforesaid facts came to the notice of Opposite Party No.4, he has



passed the impugned office order dated 02.02.2024, under annexure-9 to the present writ application. In exercise of the power conferred under Rule 59(2) and Rule 94(2) of Odisha Model Jail Manual such impugned order was passed and accordingly, the petitioner was discharged from his service as Jail Warder.

4. Being aggrieved by the aforesaid office order dated 02.02.2024, the petitioner immediately approached the Opposite Party No.2 by filing a representation dated 11.03.2024 under Annexure-10 to the writ application. In his representation under Annexure-10, the petitioner has explained his position and his innocence and, in the said representation, the petitioner has categorically stated that he was not involved in either of the cases as has been referred to by the Opposite Party No.4 in its office order dated 02.02.2024 under Annexure-9 and that the petitioner is merely a victim of the circumstances. Moreover, the impugned order under Annexure-9 has been passed under the wrong impression that the petitioner was involved in the abovenoted two cases. He has also categorically stated in his representation that he has no personal knowledge about the aforesaid two cases, therefore, the question of suppression of any materials facts does not arise in the first place. Finally, the petitioner has prayed before the Opposite Party No.2 to revoke the discharge order which has been passed under a wrong impression and is based on erroneous facts. Since no decision was taken on his representation under Annexure-10, the petitioner again submitted a reminder on 24.06.2024, under Annexure-11.
5. Finally, vide letter dated 18.07.2024, under Annexure-12, the Opposite Party No.4 has intimated that the Petitioner's representations dated 11.03.2024 and 24.06.2024, under Annexures-



10 and 11 respectively, were duly considered and eventually the same has been rejected by the D.G. of Prisons and Correctional Service, Odisha-Opposite Party No.2. Being aggrieved by the order passed on 02.02.2024 under Annexure-9 by the Opposite Party No.4 as well as the order under Annexure-12, communicating the decision of the opposite Party No.2 to the petitioner, the petitioner has approached this Court by filing the present writ application with the prayer as has been indicated hereinabove.

6. Learned counsel appearing for the petitioner at the outset contended that the petitioner is an innocent person and he is being victimized due to a misconception of the actual facts by the Opposite Party No.4. He further contended that pursuant to the advertisement the petitioner obtained the requisite character certificate from the D.S.P. (D.I.G.), Ganjam. In course of his argument, learned counsel for the petitioner also referred to the character certificate issued by the D.S.P.(D.I.G.) which reveals that the character and antecedents of the petitioner was duly verified for the period starting from 1998 to 12.05.2023 from the records maintained as Chamakhandi Police station, under which jurisdiction the petitioner was residing at the relevant point of time. As per the report of IIC, Chamakhandi P.S., nothing adverse was found against the petitioner and, as such, the Petitioner was issued with the character certificate by the D.S.P.(DIG) Ganjam under Annexure-3 to the writ application. On the basis of aforesaid character certificate, the petitioner submitted his application and on being duly selected he was appointed vide order No.3993 dated 23.05.2023 of the Senior Superintendent Circle Jail, Berhampur, under Annexure-4 to the writ application, along



with other selected candidates. Accordingly, the petitioner joined at Sub-Jail, Daspalla.

7. He further contended that while the petitioner was discharging his duties at Sub-Jail Daspalla, he received the letter/ office order dated 02.02.2024, under Annexure-9 to the writ application. He further contended that prior to passing office order dated 02.02.2024, the Opposite Party No.4 never issued any show-cause notice to the petitioner. In fact, no opportunity of hearing whatsoever was provided to the petitioner before discharging him from his service. At this stage, learned counsel for the petitioner further argued that the order dated 02.02.2024 has been passed in violation of principles of natural justice and without providing any opportunity whatsoever to the petitioner to explain his case or counter the allegations made against him with regard to the police cases allegedly pending in the Chamakhandi P.S. involving the present petitioner. In such view of the matter, learned counsel for the petitioner submitted that the impugned order is liable to be set aside on the ground that the same has been passed in violation of principle of natural justice.
8. Mr. Mishra, learned counsel appearing for the petitioner further argued that as per the allegation in office order dated 02.02.2024, the petitioner has been alleged to be involved in two criminal cases of Chamakhandi P.S. i.e. P.S. Case No.130 of 2022 registered for commission of offence under Sections 143, 147, 452, 188, 292, 506, 149 of I.P.C. Similarly, P.S. Case No.84 dated 15.02.2023 has been registered for alleged commission of offence punishable under Sections 147, 148, 186, 188, 307,323, 353, 307, 447, 506, 120B, 149 of I.P.C. Later on, a corrigendum was issued correcting the second P.S. case number as 48 instead of 84. He further contended



that it has also been alleged that the petitioner made a false declaration in the attestation form and he has deliberately concealed information with regard to the abovenoted two P.S. Cases.

9. While further elaborating his argument on the abovenoted pending two P.S. cases of Chamakhandi Police Station, Mr. Mishra, learned counsel for the petitioner contended that so far Chamakhandi P.S. case No.130 of 2022 is concerned, the same corresponds to G.R. Case No.613 of 2022 which was pending in the file of S.D.J.M., Chhatrapur and in view of the order dated 07.10.2024, the complainant has already withdrawn the case. Accordingly, a final form has been submitted and the same was accepted by the learned Magistrate. The Final report was submitted on 21.08.2022, after which the said case was closed. Similarly, with regard to P.S. Case No.130 of 2023, laying emphasis on final form dated 21.08.2022, learned counsel for the petitioner submitted that the Investigating Officer has given the following Opinion:-

“Hence, I submit F.F. in Chamakhandi P.S. effect No.143 dated 21.08.2022 and return the case of the final report in sufficient evidence under Sections 143, 147, 148, 94, 506, 149 I.P.C. against them after received the Hon’ble Court may kindly be accepted the F.F.”.

Additionally, learned counsel for the petitioner further contended that the petitioner was never implicated in the said case and he was never detained or arrested in connection with the said case. He further specifically argued that the petitioner had no knowledge with regard to the aforesaid Chamakhandi P.S. case which was registered on the alleged occurrence of protest by the villagers with regard acquisition of the land for establishment of private company.



10. Similarly, with regard to Chamakhandi P.S. case No.48 of 2023 which corresponds to G.R. Case No.216 of 2023, pending in the file of learned S.D.J.M, Chhatrapur, learned counsel for the petitioner further emphatically argued that since it was found in course of the investigation that the petitioner was not involved on the day of occurrence i.e. 15.02.2023, the I.O. has deleted the name of the petitioner from the charge sheet itself. He further contended that in connection with the said case the petitioner was also never detained or taken into custody for questioning by the police and that the entire occurrence was not within the knowledge of the petitioner. He further laid emphasis on the observation of the I.O. in the charge sheet which is quoted herein below-

“ On 15.02.2023 F.I.R. name accused Rajesh Reddy(27) son of P.Jayaja Reddy had gone to Visakhapatna, Simanchal temple and returned to village. On the way village committee member called Rajesh Reddy to remain present and participate and strike against before the Tata Company otherwise his family will be debarred from village. As per calling he returned to village and knew that police arrested some men and women from the strike place, so he did not go to the spot and seeing the occurrence from 10 meters away from the spot i.e. Tata boundary construction wall. Accused Rajesh Reddy was not involved in the date of occurrence i.e. 15.02.2023, hence his name eliminated from the charge against him”.

In view of the aforesaid factual position, learned counsel for the petitioner argued that the innocence of the petitioner itself is borne out from the police record itself. He further submitted that neither the petitioner was detained taken into custody arrested, convicted, fined in any manner either by the police or the learned Court in any criminal case till the date he has submitted an application. Therefore, it was argued that the declaration given in



the attestation form does not amount to suppression of material facts. On the contrary, the Opposite Party No.4 on a misconception of fact and on erroneous application of the rules passed an order in gross violation of the principle of natural justice thereby arbitrarily discharging the petitioner from the service.

- 11.** Learned counsel for the State on the other hand referred to the counter affidavit filed by the Opposite Party Nos.2 to 5. He further contended that there is no dispute that pursuant to the advertisement the Petitioner submitted an application for appointment to the post of Jail Warder and accordingly, on being selected, he was issued with an appointment letter under annexure-4 to the writ application. However, subsequently when the Senior Superintendent of Circle Jail, Berhampur came to learn that the petitioner is involved in two criminal cases of Chamakhandi P.S., as has been indicated in the letter under Annexure-9, in compliance to the rules of Orissa Model Jail Manual, the service of the petitioner has been discharged. In such view of the matter, learned counsel for the State contended that the Opposite Party No.4 has not committed any illegality in passing the order under Annexure-9 to the writ application as well as in rejecting the representation of the Petitioner vide Annexure-12 to the writ application.
- 12.** Further, referring to the counter affidavit, learned counsel for the State contended that in the attestation form which was submitted by the petitioner under Annexure-6 to the writ application, the petitioner has suppressed essential factual information. Further, drawing attention of this Court to the attestation form under Annexure-6, the learned counsel for the State contended that at Serial No.2 of the form it has been categorically mentioned that if



detained, arrested, prosecuted, bound down, fined, convicted, debarred, acquitted etc. subsequent to the completion and submission of this form, the details of such facts are to be immediately reported to the authorities to whom the attestation form has been sent earlier, failing which, it will be deemed to be suppression of factual information. In course of his argument, learned counsel for the State also referred to the questionnaire at Serial No.12 wherein the petitioner, as a candidate, is required to give an answer to the questionnaire with regard to arrest, prosecution, detention, bound down, fine, conviction etc. In reply to the said questionnaire, at Para-12 of the attestation form, the petitioner has given a negative reply to all the queries. Therefore, learned counsel for the State alleged that the attestation form, as has been submitted by the petitioner, contains incorrect information which can very well be construed as suppression of material facts in the context of the present case.

13. It was further argued by learned counsel for the State that the petitioner is clearly guilty of suppression of material facts, inasmuch as the petitioner was involved in Chamakhandi P.S. cases as has been discussed hereinabove. Furthermore, irrespective of the result of such P.S. Cases, the petitioner should have disclosed the information. He further submitted that it does not matter whether the petitioner was discharged subsequently since non-disclosure of such information in the attestation form itself amounts to suppression of material facts. Therefore, Opposite Party No.4 was justified in discharging the petitioner from the service of the Jail Warder in terms of the Odisha Model Jail Manual. On such grounds, learned counsel for the State contended that the writ petition filed by the



petitioner is devoid of merit and, accordingly, the same should be dismissed.

14. Heard Mr. S.N. Mohapatra, learned counsel appearing for the petitioner as well as Mr. Jena, learned counsel for the State. Perused the pleadings of the respective parties as well as the materials on record.
15. On a careful analysis of the pleadings of the respective parties as well as the submissions made by the learned counsels appearing for both sides, this Court observes that the factual position in the present matter is that the advertisement was floated on 13.12.2022 to fill up 403 vacant posts of Jail Warder. The Petitioner, having the requisite eligibility, participated in the recruitment process and on being duly selected he was appointed as a Jail Warder. It is also not disputed that as per the requirement, the Petitioner obtained a character certificate from the DSP (DIB), Ganjam dated 17.05.2023 under Annexure-3 to the writ petition. Pursuant to the final selection of the Petitioner, he was issued with the appointment letter dated 29.05.2023 and, as such, he was posted as a Jail Warder under the Superintendent of Sub-Jail, Daspalla. The real problem arose when the Petitioner was issued with Office Order dated 02.02.2024 by the Opposite Party No.4 thereunder discharging the Petitioner from the service of Jail Warder under Rule 59(2) and Rule 94(2) of Odisha Model Jail Manual.
16. There exists no conflicts with regard to the factual position that prior to issuance of discharge order dated 02.02.2024, the Petitioner was never issued with a show-cause notice nor was he given any opportunity to explain his position. It is not a case that the Petitioner has been convicted in any criminal case, so that the authorities



would be justified in their conduct of discharging the Petitioner from service by taking resolve to the proviso to Article 311(2). It is crystal clear from the admitted factual position that neither the Petitioner has been convicted in any criminal case nor the impugned order of discharge dated 02.02.2024 discloses any reason as to why it was not reasonably practicable to hold an inquiry against the Petitioner. Thus, the impugned letter of discharge issued by the Opposite Party No.4 is not saved under the proviso to Article 311(2) of the Constitution of India.

17. In the aforesaid context, this Court would like to further observe that Article 311 of the Constitution of India provides a reasonable degree of protection to government employees against any order of dismissal, removal or reduction in rank. Under Article 311(2), although the government employees can very well be dismissed or removed or reduced in rank, however, the same can be resorted to by the employer-state only after conducting an inquiry in which the delinquent has to be informed of the charges against him and by giving a reasonable opportunity of being heard in respect of those charges. Although the proviso appended to Article 311(2) provides an exception to the mandatory inquiry, however, the contingencies mentioned in the proviso does not arise in the case of the Petitioner. Thus, this Court has no hesitation in coming to a conclusion that the Opposite Parties should have followed the mandatory procedure of holding an inquiry and providing an opportunity of being heard to the Petitioner in terms of Article 311(2). On a careful analysis of the factual matrix involved in the present writ petition, this Court has no hesitation in coming to a conclusion that the mandatory provision of Article 311(2) has not been complied with by the Opposite Parties.



18. The next question that falls for consideration before this Court is as to whether the Petitioner suppressed any material facts before the Opposite Parties at the time of filling up of his form for the post of Jail Warder? And, whether such non-disclosure of information is intentional and in the given circumstance the same would be construed as fatal to the case of the Petitioner? The answers to the above noted two questions lies in the facts pleaded in the writ petition as well as the documents annexed thereto. The undisputed factual position is that at the time of submitting his application pursuant to the advertisement dated 13.12.2022, the Petitioner obtained a character certificate from none other than the Deputy Superintendent of Police (DIB), Ganjam on 17.05.2023 under Annexure-3 to the writ petition. On a close scrutiny of the certificate under Annexure-3, it is revealed that the DSP (DIB), Ganjam has categorically stated that nothing adverse was found against the Petitioner in the records of the Chamakhandi Police Station under whose jurisdiction the Petitioner was residing permanently. The document under Annexure-3 to the writ petition has not been disputed by the State-Opposite Parties in their counter affidavit. Therefore, this Court has no hesitation in accepting the facts stated in the character certificate under Annexure-3 to be the admitted position.
19. In reply to the first question formulated in the preceding paragraph, this Court, on a careful analysis of the factual position and keeping in view the certificate issued by the DSP (DIB), Ganjam, under Annexure-3, is of the view that when the DSP (DIB), Ganjam could not detect any criminal case in which the Petitioner is involved, obviously the Petitioner cannot be blamed that he was not aware of



the fact that two criminal cases were pending in Chamakhandi P.S. wherein he has been shown as an accused. It is also relevant to mention here that nothing was brought on record in course of hearing to establish the fact that the Petitioner was either arrested/detained in police custody or he was ever summoned to the police station in connection with the investigation of the above noted two criminal cases. Therefore, on the basis of the facts pleaded as well as the materials brought on record, this Court has no hesitation to hold that the Opposite Parties have failed to establish the fact that the pendency of the above noted two criminal cases were within the knowledge of the Petitioner.

- 20.** To establish suppression by the Petitioner before any authority, the burden of proof is on the Opposite Parties who are alleging such suppression. The word “suppression” in common parlance means a material information which was within the knowledge of the person who is making any disclosure/ declaration and such person has deliberately omitted to disclose or declare such fact before the authority. Thus, to hold the Petitioner guilty of suppression of material fact, this Court is required to analyze and come to a conclusion that the piece of information which is alleged to have been suppressed was in fact within the knowledge of the Petitioner and that the Petitioner has willfully and deliberately withheld such information from the authorities, to his benefit. Therefore, to hold a person guilty of suppression of fact, three ingredients are to be demonstrated; (i) the person guilty was mandatorily required to disclose such fact, (ii) such fact was within the knowledge of the person and, (iii) the person deliberately withholds such information, which was within his knowledge, to his/ her benefit. In the instant



case, on a careful analysis of the factual background, this Court found that even the certificate issued by the DSP (DIB), Ganjam does not disclose that any criminal case was pending against the Petitioner at Chamakhandi P.S. Moreover, the State-Opposite Parties have failed to bring on record any material which would indicate that the fact of pendency of the criminal cases were within the knowledge of the Petitioner. On fulfillment of the aforesaid two criterias by the State-Opposite Parties, this Court would have drawn an inference against the Petitioner holding him guilty of suppression of material fact. However, in the preceding paragraph, this Court has already held that the fact of pendency of the above noted two criminal cases were detected for the first time much after the joining of the Petitioner in service. Moreover, the same was not within the knowledge of the DSP (DIB), Ganjam who has issued a character certificate in favour of the Petitioner. Thus, this Court has no hesitation in coming to a conclusion that the State-Opposite Parties have failed to establish the fact that the information was within the knowledge of the Petitioner and he has deliberately suppressed such information while filling up of the form.

21. The subsequent development in the above noted two criminal cases of the Chamakhandi P.S. also proves the innocence of the Petitioner. Moreover, the final form has also been submitted in Chamakhandi P.S. Case No.130 of 2022 which corresponds to G.R. Case No.613 of 2022. Similarly, in the other Chamakhandi P.S. Case No.48 of 2023 corresponding to G.R. Case No.216 of 2023, a charge-sheet has been filed wherein the I.O. has not included the name of the present Petitioner stating in the charge-sheet that accused-Petitioner



was not involved in the occurrence. Accordingly, his name has been deleted from the charge-sheet.

22. Additionally, while analyzing the legal position involved in the present writ petition, this Court deems it profitable to refer to the judgment of the Hon'ble Supreme Court in *Avtar Singh v. Union of India & Others* reported in (2016) 8 SCC 471. In the above noted case, a Three-Judge Bench of the Hon'ble Supreme Court has already settled the law and the same has been summarized in Paragraph-38 of the judgment. The relevant portions which would be applicable to the facts of the Petitioner's case are quoted herein below;

“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.

38.11: before a person is held guilty of suppressio very or suggestio falsi, knowledge of the fact must be attributable to him.”

The principal enunciated in *Avtar Singh's* case (supra) clearly lays down the law that although suppressed material information does not give a person an unfettered right for appointment, at the same time the right of such person not to be dealt with arbitrarily is protected. It means the exercise of power has to be in a reasonable manner with objectivity and having due regard to the facts

23. In more recent judgment of the Hon'ble Supreme Court, i.e. in the case of *Ravindra Kumar v. State of Uttar Pradesh & Others* reported in (2024) 5 SCC 264, while speaking on behalf of the Two-



Judge Bench of the Hon'ble Supreme Court in Para-32 of the judgment have observed as follows;

“32. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio-economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.”

Moreover, the factum of the case in the above noted judgment of the Hon'ble Supreme Court have been summarized in Para-33. Para-33.9 is relevant for the purpose of the present case and is quoted herein below for better appreciation;

“33.9 The Superintendent of Police, in his letter to the Commandant, endorsement the report and reiterated that the character of the candidate was excellent.”

Thus, on a careful analysis of the facts of the present case, this Court is of the view that the case of the Petitioner is somewhat similar to the one involved in the case of **Ravindra Kumar** (supra).

24. On a careful analysis of the facts, further keeping in view the settled legal position, this Court is of the considered view that the impugned order of discharge dated 02.02.2024 is unsustainable in law on several counts; firstly, the order of discharge is not in conformity with Article 311(2) of the Constitution of India, therefore, the same is void ab-initio. Secondly, the Petitioner has not



suppressed any material information which was within his knowledge at the time of filling up of his form. Thirdly, the subsequent development in both the criminal cases reveals that the Petitioner is in no way involved in the said criminal cases. Accordingly, this Court has no hesitation to quash the impugned discharge order dated 02.02.2024 under Annexure-9 as well as the consequential order rejecting the representation of the Petitioner dated 18.07.2024 under Annexure-12. Therefore, the same are hereby quashed and the writ petition is allowed. While allowing the present writ petition, this Court is inclined to issue a writ of mandamus directing the Opposite Party Nos.4 & 5 to reinstate the Petitioner in service with all consequential service and financial benefits. Further, it is directed that the period of discharge be treated as “On Duty” and the financial benefits accruing in favour of the Petitioner for the said period be also calculated and disbursed in favour of the Petitioner. Let the entire exercise be carried out within a period of two months.

25. Accordingly, the writ petition stands allowed. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 26th May, 2025/ Rubi.