

Court No. - 9

Case :- WRIT - A No. - 9256 of 2023

Petitioner :- Jitendra Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Civil Sectt. Lko And 2 Others

Counsel for Petitioner :- Bajrang Bahadur Singh, Hemant Pandey, Niteesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Heard.

The petitioner was selected for appointment as Constable in the Provincial Armed Constabulary in the year 2015, however, he was not sent for training, as, during verification it was found that there is one criminal case bearing Case Crime No. 196 of 2017 under Section 419, 420 IPC and 3/6 U.P. Public Examinations (Prevention of Unfair Means) Act, 1992 registered at Police Station - Kerakat & Gaurabadshah, District - Jaunpur were pending, which had not been disclosed. The petitioner approached this Court by means of a writ petition bearing Writ A No. 18341 of 2019 which was decided on 22.11.2019 in the following terms:-

"Heard learned counsel for the parties.

Petitioner has been selected for appointment to the post of Constable in Civil Police/P.A.C. and he has not been sent for training on account of pendency of a criminal case, being Case Crime No.196 of 2017 under Sections 419, 420 IPC and 3/6 Examination Act, 1982, Police Station Gaura Badshahpur, District Jaunpur.

*Learned counsel for the petitioner submits that in pursuance of advertisement made in the year 2015 the petitioner applied for and has been selected for appointment on the post of Constable in P.A.C. but he has not been sent for training on account of registration of a criminal case subsequent to the selection. In view of the law laid down by the Apex Court in **Avtar Singh Vs. Union of Indian and others**, 2016 (8) SCC 471, his claim for appointment is liable to be considered in accordance with law, which has been followed by the Division Bench of this Court in Special Appeal (Def.) No. 734 of 2016 (**State of U.P. and others Vs. Vijay Kumar and others**). Contention is that the petitioner's claim has not been examined, in accordance with law.*

The Apex Court in paragraph no. 38 of the judgment in Avtar Singh (supra) has held as under:

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

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5 In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6 In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9 In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

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

Learned Standing Counsel submits that the grievance of the petitioner shall be examined by the authority concerned, in accordance with law.

Considering the facts and circumstances, noticed above, this petition stands disposed of, permitting the petitioner to approach the authority concerned, i.e., respondent no.3, in respect of his grievance raised before this Court, within a period of two weeks from the date of presentation of certified copy of this order. The petitioner shall be at liberty to annex all materials in support of his claim. In case such material is placed before the authority concerned, the same shall be examined, in accordance with law, and keeping in view the law laid down by Apex Court in Avtar Singh (supra). The required consideration shall be made by the authority concerned within a period of two months thereafter."

In pursuance thereof, the Commandant, 25th Battalion PAC, Raebareli took a decision on 15.01.2020. The said decision was communicated to the petitioner in 2020 itself, as admitted by his Counsel who is not in a position to give the exact date when he received this order. Nevertheless, a representation was submitted by him as late as on 18.07.2023. This representation was also rejected by the Commandant aforesaid on 17.10.2023 mentioning therein the factum of pendency of three other criminal cases against the petitioner bearing NCR No. 153 of 2015 (under Section 323, 325, 504 IPC); NCR No. 33 of 2012 (under Section 323, 504 IPC); NCR No. 314 of 2011 (under Section 323, 504 IPC) in addition to Case Crime No. 196 of 2017 mentioned in the earlier order.

The contention of the petitioner's Counsel is that not only the decision of Hon'ble the Supreme Court referred in the order of this Court quoted earlier has not been considered appropriately, the fact is that in all these criminal cases, the petitioner has been acquitted honourably vide judgment dated 05.07.2018 and 12.07.2023 passed by the Court of competent jurisdiction. On being asked as to whether this fact was brought to the notice of the Commandant, the learned Counsel submitted that it could not be brought to his notice earlier.

Be that as it may, considering the aforesaid factum of acquittal of the petitioner, as is being claimed, let the Commandant, 25th Battalion PAC, Raebareli revisit the aforesaid orders and take a fresh decision in the matter in accordance with law, specifically referring to the law laid down by Hon'ble the Supreme Court, as referred in the judgment of this Court passed in the writ petition filed by the petitioner earlier and applying his due and proper mind to the facts of the case in the light of the said law. The impugned order shall abide by the fresh decision which shall be taken by the Commandant within six weeks. The petitioner shall move appropriate representation placing before the Commandant all relevant facts including the judgments by which he claims to have been acquitted in the aforesaid criminal cases and judgment of the Supreme Court on which he relies. If there is any other criminal case in which the petitioner may have been involved, the same shall also be disclosed along with requisite orders passed therein.

The writ petition is accordingly **disposed of** in the aforesaid terms.

Order Date :- 4.12.2023
Lokesh Kumar