

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6351 of 2011

- Nitesh Singh S/o Rajbahadur Singh, aged about 29 years, Occupation Constable No.1347 (Terminated), R/o Pandatarai, Near Shiv Mandir, Raipur, Distt.-Raipur (Cg)

---- Petitioner

Versus

1. State Of Chhattisgarh, through The Principal Secretary, Department of Home, DKS Bhawan, Raipur, District Raipur (CG)
2. Director General Of Police, Chhattisgarh Police Headquarter, Raipur, District Raipur (CG)
3. Additional Director General Of Police, Chhattisgarh, Police Heaquarter, Raipur, District Raipur (CG)
4. Inspector General Of Police Raipur Range, Raipur District Raipur (Cg)
5. Senior Superintendent Of Police, Raipur, Distt.-Raipur (Cg)

---- Respondent

For Petitioner	Mr. Sunil Sahu, Advocate
For Respondent /State	Mr. R. Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/2/2016

Heard.

(2) Challenge in this petition is to the legality and validity of the order dated 10.08.2010 passed by the Director General of Police, Raipur, whereby, the appellate authority affirmed the order dated 28.12.2006

Annexure P/2, passed by the Dy Inspector General of Police-cum-Senior Superintendent of Police, Raipur.

(3) Learned counsel for the petitioner would submit that pursuant to the selection process initiated by the respondent authorities, the petitioner participated and was appointed on the post of Constable by order dated 15.07.2005. Thereafter, the petitioner performed his duties with honesty and seniority. However, all of a sudden, by order dated 28.12.2006, the petitioner was terminated from service on the ground that the petitioner was accused in Crime No.462 of 2000 for commission of offence under Section 509 of IPC, Crime No.335 of 2001 for commission of offence under Section 380 of IPC and Crime No.336 of 2001 for commission of offence under Section 379 of IPC. However, he has not disclosed the said information in the prescribed verification/antecedent form. Against the said order, the petitioner preferred a representation before the authorities and when no action has been taken, the petitioner preferred WPS No.452/2010. The said writ petition was dismissed by this Court, as not maintainable, by order dated 01.02.2010. Thereafter, the petitioner preferred an appeal before the appellate authority against his termination and the said appeal was dismissed by order dated 10.08.2010. He would submit that the impugned order is illegal and arbitrary.

(4) On the other hand, learned counsel appearing for the State would support the impugned order of termination.

(5) The Supreme Court in Commissioner of Police and others Vs. Sandeep Kumar, 2011 AIR SCW 3601, observed that "*It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34, IPC. Probably he did not mention this*

out of fear that if he did so he would automatically be disqualified." The Supreme Court further observed that "*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.*"

(6) Although the judgment rendered by the Supreme Court in *Sandeep Kumar (Supra)* has been referred to larger Bench, but since thereafter, the Supreme Court in *Devendra Kumar v. State of Uttaranchal and Others*, (2013) 9 SCC 363, it has been held that issue of obtaining the appointment by misrepresentation is no more *res integra*. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

(7) According to the Supreme Court a person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent Court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation (Vide: *Union of India v. Major General Madan Lal Yadav* and *Lily Thomas v. Union of India*). Nor can a person claim any right arising out of his own wrong doing. (*jus ex injuria non oritur*).

(8) In Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 SCC 685, the Supreme Court held thus :

“34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking

decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with an even hand.”

(9) In view of the above, since admittedly the petitioner has concealed or withheld material information regarding his antecedents and character, he is not entitled to continue in the service and his discharge from service during probation does not suffer from any infirmity or illegality.

(10) As an upshot, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri