

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10722 of 2015 (O&M)

DATE OF DECISION: JANUARY 5, 2016

NARENDER KUMAR

...PETITIONER

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ROHIT SETH, ADVOCATE FOR THE PETITIONER.

MR. SANJAY VASHISTH, ADVOCATE
FOR RESPONDENT NO.1-UNION OF INDIA.

MR. SANJEEV SHARMA, SR. ADVOCATE
SR. STANDING COUNSEL
WITH MR. VIKRAM VIR SHARDA, ADVOCATE
ADDL.STANDING COUNSEL
FOR RESPONDENTS No.2 to 5-U.T., CHANDIGARH.

M. JEYAPPAUL, J.

CM-16626-CWP-2015

1. Application is allowed as prayed for. Annexure R-5/1 is taken on record.

Main Case

2. Petitioner Narender Kumar applied for the post of Constable in Union Territory, Chandigarh in the recruitment process initiated during 2009-10. Non-cognizable report (NCR) was lodged against him, his real brother and two cousin brothers on 17.3.2011 long after he applied for the above post. The above NCR registered against the writ petitioner and his

close relatives did not culminate in registration of an FIR. Instead a report under Sections 107 and 116 Cr.P.C. was filed before the Pargana Magistrate, Modinagar. On 1.5.2011 he was appointed as Constable and was sent for training. On 19.8.2011, the entire proceedings culminated from registration of NCR were closed as per the the order passed by the Pargana Magistrate, Modinagar, Ghaziabad. The respondents initiated action as against the writ petitioner on 7.10.2011. The Sr. Superintendent of Police, Union Territory, Chandigarh exercising his powers under Rule 12.21 of Punjab Police Rules, 1934 discharged him from service vide order passed by him on 29.5.2012, having formed an opinion that he was not likely to prove an efficient police officer.

3. The Tribunal having referred to the decision of this Court in **Sher Singh vs. State of Haryana and others, 1994(2) SLR 100** chose to dismiss the plea for reinstatement sought for by the writ petitioner.

4. Rule 12.21 of the Punjab Police Rules, 1934 under which the writ petitioner was discharged from service reads as under:-

“Discharge of Inefficients:- A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule.”

5. As per the above Police Rule which is applicable to U.T., Chandigarh, the Superintendent of Police has the authority to discharge a police official within 3 yeas of enrollment finding that he was not likely to

prove an efficient officer. The authority conferred on the Superintendent of Police to discharge a police officer on the above ground has been reiterated by the Full Bench of this Court in Sher Singh (supra).

6. Learned counsel appearing for the writ petitioner vehemently submitted that no FIR was registered as against the writ petitioner. Even the proceedings initiated under Sections 107 and 116 Cr.P.C. had been closed, much before the proceedings were initiated by the respondents. Otherwise also, not even an NCR was registered at the time when the writ petitioner applied for the post of Constable in U.T., Chandigarh. There was no occasion for the writ petitioner to submit any form of declaration. Therefore, it is his submission that the respondents have misused the power under Rule 12.21 of the Punjab Police Rules, 1934.

7. *Per contra*, learned senior counsel appearing for the respondents-U.T., Chandigarh, referring to the decision of Hon'ble Supreme Court in Jainender Singh vs. State of Uttar Pradesh Through Principal Secretary, Home and others, 2012 (8) SCC 748 submitted that the writ petitioner wantonly suppressed material information and therefore, he lost his right to continue in service. During the period of training, the writ petitioner was asked to explain as regards the criminal antecedents collected by the Superintendent of Police, but he had not promptly disclosed his involvement in a criminal case. Therefore, it is his submission that the Superintendent of Police has been vested with the authority to discharge the writ petitioner from service on the ground of inefficiency as per the Punjab Police Rules, 1934.

8. We have seriously adverted to the entire facts and circumstances. We find that no criminal case was registered at the time when the writ petitioner applied for the post of Constable in the selection initiated by the U.T., Chandigarh in 2009-10. Infact, only a Non-Cognizable Report was lodged as against the writ petitioner on 17.3.2011. The above non-cognizable report also did not culminate in registration of an FIR. A report under Sections 107 and 116 Cr.P.C. was filed before the Pargana Magistrate, Modinagar, Ghaziabad, Uttar Pradesh. Of course, during the pendency of the proceedings under Section 107 and 116 Cr.P.C. he was appointed as a Constable on 1.5.2011. It is to be noted that the writ petitioner was not required to submit any form of declaration on the date of appointment. Therefore, there was no occasion for the writ petitioner to bring to the notice of the respondents through such declaration as to the pendency of proceedings under Sections 107 and 116 of Cr.P.C. Further, in our considered view, pendency of proceedings under Sections 107 and 116 Cr.P.C. cannot be construed as pendency of any criminal case under the scheme of IPC. The respondents initiated action only on 7.10.2011 after verification of the antecedents of the writ petitioner. On 19.8.2011 itself, the entire proceedings initiated as against the writ petitioner had been completely closed. Of course, there is a delay of about 5 months in submitting a reply to the proceedings initiated by the respondents. But it is to be noted that even at the time when the proceedings were initiated by the respondents, there was no criminal proceedings pending as against the writ petitioner.

9. In Jainender Singh (supra), it has been observed referring to majority of decisions rendered by Two Judges' Benches of the Hon'ble Supreme Court before referring the matter to a Larger Bench for ultimate decision as follows:-

“A candidate who has suppressed material information or furnished false information cannot continue in service. He can be discharged from service on the above grounds, even if the criminal case ultimately ended in acquittal.”

10. In the above case, it appears that the employee was asked to submit a declaration form. He had declared that he had not been convicted by that Court. No criminal case was registered against him, nor was any case pending against him in any Court of law. Such an information furnished in the declaration form was found to be totally false. Even the factual matrix of the case taken up by the Hon'ble Supreme Court in Jainender Singh (supra) is completely distinguishable.

11. In Daya Shander Yadav vs. Union of India and others, (2010) 14 SCC 103, it has been held as follows:-

“15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of

doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where

the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for an criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

12. Applying the above ratio, we are of the considered view that

that writ petitioner cannot be found fault with for not furnishing the relevant information when he had not been called upon to submit the declaration form. The writ petitioner had not at all furnished any false information to the respondents misleading them in issuing the order of appointment. Further, pendency of proceedings under Sections 107 and 116 Cr.P.C. cannot be construed as pendency of a criminal case under the scheme of Indian Penal Code. Admittedly, not even NCR was registered at the time when he applied for the post of Constable. The reply submitted by him to the proceedings initiated on the basis of the antecedents collected by the respondents also did not mislead the respondents. Therefore, in our considered view, the impugned orders passed by the respondents are perverse and illegal and therefore, we have no hesitation to set aside the same.

13. Accordingly, the impugned orders are set aside and the respondents are directed to reinstate the writ petitioner in service within 15 days from the date of this order with all consequential benefits from the date of dispensing him from service till his reinstatement.

14. The writ petition is accordingly allowed.

(M. JEYAPPAUL)
JUDGE

January 5, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE