

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.2331 of 2013
Reserved on: 29.03.2016
Decided on : 12.04.2016**

Satnam Singh

... Petitioner

Versus

State of Punjab and others

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. S.K. Daaria, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia, J.

The petitioner challenges the order dated 19.10.2009 (Annexure P-5) passed by the Commandant 3rd India Reserve Battalion, Ludhiana-respondent No.3, whereby his services were terminated from the Police Department, on account of the fact that he had not disclosed the factum of registration of a case at the time of his recruitment. Challenge has also been made to the subsequent order dated 14.01.2010 (Annexure P-7) passed by the Deputy Inspector General of Police, whereby his appeal was dismissed on account of not giving the correct information in the recruitment form. The same has been further upheld by the Inspector General of Police-respondent No.5 on 06.07.2010 (Annexure P-9) and after hearing the petitioner, on the ground that the inquiry proceedings have been conducted as per law and there is no illegality.

CWP No.2331 of 2013

The appeal filed before the DGP was filed on account of non-maintainability on 28.10.2010 (Annexure P-11) and similarly the petitioner was not successful before the respondent No.2-The Chief Secretary, on 22.10.2012 (Annexure P-13).

Counsel for the petitioner has relied upon the judgment of the Apex Court in '**Commissioner of Police and others Vs. Sandeep Kumar'** 2011 (4) SCC 644 to submit that even if there was non-disclosure, a lenient view should be taken. Counsel for the petitioner has further stressed that even perusal of the FIR No.228 dated 13.10.2000, under Sections 325, 324, 323, 148, 149, registered at Police Station Kot Isse Khan (Annexure P-15) would go on show that the petitioner was attributed no specific role, nor he had inflicted any injury on any person and had arrived at the spot subsequently where a dispute had taken place which was being agitated by the complainant side. It is further submitted that there was an acquittal by the Court on 16.03.2011 (Annexure P-1) by giving benefit of doubt for the offence under Sections 148, 324, 323 IPC by the Judicial Magistrate 1st Class, Moga.

It is a matter of record that which has been substantiated in the departmental proceedings that abovesaid FIR was registered before the recruitment process, which took place in the year 2006 and the challan had also been filed in Court on 10.02.2001. The petitioner filled up the form on 25.08.2006

(Annexure R-1), the original of which also examined by this Court. In the Column No.17, wherein he had to give the details whether any criminal case was lodged against him and if so, the details had to be given as to the FIR and its date and the name of the Court and sections under which the case had been registered and whether there was any conviction or acquittal. He had categorically filled in 'No'. On the strength of the said wrong information, the petitioner was recruited on 09.08.2007. The petitioner had been arrested on 25.10.2000 in the said case and the challan had been prepared on 10.11.2000 and presented in the Court on 10.02.2001. He was, thus, well aware of the proceedings of the Court, but chose to hold the same back from the recruitment agency.

The defence of the petitioner was only that he was not a criminal. The FIR was on the basis of some *inter se* disputes between relatives which was petty and compoundable, being a simple village dispute.

Reliance has also been placed on the judgment of the Apex Court in '**Commissioner of Police, Delhi Vs. Dhaval Singh' 1999 (1) SCC 246** to argue that even if there was concealment, the same would not be of such relevance, so that an extreme order of dismissal would be passed, specially keeping in view of the fact that the dispute was petty in nature and the petitioner had been

acquitted.

Reliance has also been placed upon the judgment passed in '**Ram Kumar Vs. State of U.P. and others' 2011 (14) SCC 709**, wherein also the order of Senior Superintendent of Police cancelling the selection of the police constable on the ground that he had concealed the facts and submitted wrong affidavit was set aside on the ground that the punishing authority had not gone into the fact that whether the police constable is not suitable for service.

Thus, the question that arises before this Court is whether there was suppression on behalf of the petitioner regarding the lodging of the FIR and whether on account of this concealment he is entitled to continue into service or not?

It is not disputed that under the Punjab Police Rules, 1934, the records have to be of good character and great care has to be taken for the selection for police service. The standard of performance and the reputation of the whole police force depends upon the quality of its constables. The relevant rules which govern the issue of recruitment and verification character read as under:-

"12.12. Supervision of recruitments

The standard of performance and the reputation of the whole police force depend above all upon the quality of its constables. Standards for recruits are laid down in the rules which follow, but, over and above these, constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and

encouraging men of a thoroughly good stamp to enrol themselves.

Xxxxxxxxxx

12.14 Recruits- Status of--

(1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment.

Xxxxxxxxxx

12.18 Recruits verification of character of.

(1) The character and suitability for enrolment of every recruit shall be ascertained by a reference to the lambardar of the village or ward member of the town of which the recruit is a resident. A search slip shall also be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that effect which shall be verified and attested by the sub-inspector in charge of the local police station. The Sub-Inspector shall also complete the information required by form 12.18 (1)."

The Apex Court while considering the issue of recruitment of the police constables and the desirability of having a person of impeccable standards and men of character examined the issue in '**Delhi Administration Vs. Sushil Kumar**' (1996) 11 SCC 605. It was, accordingly, held that a view taken by the appointing authority on account of involvement of a person in a criminal case, even though he was discharged or acquitted was not liable to be interfered with.

In '**R. Radhakrishnan Vs. Director General of Police and others**' (2008) 1 SCC 660 the employee had applied for the post of a fireman and had denied the fact that he was arrayed as an accused. On account of false statement made, he was not

selected and the Tribunal allowed his application and directed that he be appointed. The High Court, thereafter set aside the said direction which was taken to the Apex court. It was, accordingly, held that the person intended to obtain appointment in a uniformed service and he, therefore, knew and understood the implication of statement or omission to disclose a vital information. Resultantly his appeal was dismissed by the Apex court by noticing that the persons could have had made such a disclosure and the appointing authority could thus have verified his character and the suitability of his appointment.

The plea that a sympathetic view should be taken on the ground that the offences were as such of cognizable offences under Section 294 (b) of the Indian Penal Code was accordingly rejected by holding that material fact had been suppressed and, therefore, on account of acquittal the equitable jurisdiction would not be exercised in his favour. The relevant paragraph reads as under:-

“10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi and also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosure and were, thus, similarly situated had not been appointed.”

The Division Bench of this Court in '**Krishan Kumar Vs. State of Haryana' 2005 (2) PLR 820** also held that furnishing of false information would not absolve the petitioner of the concealment merely on the ground of subsequent acquittal. It was further held that an appointment in the police department would demand discipline and a candidate with the clean antecedents. The relevant observations read as under:-

“The appointment in the Police department demands a high degree of discipline. In fact in the impugned order, it is mentioned that discipline is of paramount importance. It is also mentioned that only those candidates can be appointed, who have clean antecedents. Taking into consideration all the facts and circumstances of this case, we are of the considered opinion that no injustice has been done to the petitioner.”

The reliance of the State on the judgment in '**Devendra Kumar Vs. State of Uttaranchal and others' 2013 (9) SCC 363** is covers the issue on all squares. In the said case the employee was appointed as a constable and completed his training. On account of wrong furnishing of wrong affidavit, the services were terminated. The said order was upheld by the Single Judge and by the Division Bench which was taken to the Apex Court. It was, accordingly, held that even the case might not be of moral turpitude but suppressing the information would amount to moral turpitude. The issue of fraud was thus highlighted and that no person can get an office by mis-representation or by playing fraud. The dishonest should not be permitted to bear fruit was

highlighted and reliance was placed upon the view earlier taken by the Apex Court in various cases. The relevant portion read as under:-

“10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it 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.

*11. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eyes of law. “Fraud avoids all judicial acts, ecclesiastical or temporal.” (Vide: **S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. & Ors.**, AIR 1994 SC 853. In **Lazarus Estate Ltd. v. Besalay**, 1956 All E.R. 349, the Court observed without equivocation that “no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.”*

*12. In **Andhra Pradesh State Financial Corporation v. M/s. GAR Re- Rolling Mills & Anr.**, AIR 1994 SC 2151; and **State of Maharashtra & Ors. v. Prabhu**, (1994) 2 SCC 481, this Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as Courts are obliged to do justice by promotion of good faith. “Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law.”*

*13. In **Smt. Shrisht Dhawan v. M/s. Shaw Bros.**, 1992 (1) R.C.R (Rent) 442 AIR 1992 SC 1555, it has been held as under:– “Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of*

human conduct.”

14. In **United India Insurance Company Ltd. v. Rajendra Singh & Ors.**, 2000 (2) R.C.R (Civil) 483: AIR 2000 SC 1165, this Court observed that “Fraud and justice never dwell together” (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this Court in **M.P. Mittal v. State of Haryana & Ors.**, AIR 1984 SC 1888.

15. In **Ram Chandra Singh v. Savitri Devi & Ors.**, 2005 (2) R.C.R (Civil) 696: AIR 2004 SC 4096, this Court held that “misrepresentation itself amounts to fraud”, and further held “fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.” The said judgment was re-considered and approved by this Court in **Vice-Chairman, Kendriya Vidyalaya Sangathan & Anr. v. Girdharilal Yadav**, (2004) 6 SCC 325).

16. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the Court should not perpetuate the fraud by entertaining petitions on their behalf. In **Union of India & Ors. v. M. Bhaskaran**, 1991 (1) S.C.T 469: AIR 1996 SC 686, this Court, after placing reliance upon and approving its earlier judgment in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi**, (1990) 3 SCC 655, observed as under:— “If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer.”

Resultantly, keeping in view the above principles, this Court is of the view that the petitioner himself having concealed the factum of pendency of the criminal case is not entitled to take

advantage of his own wrong. He cannot turn around and contend that the non-disclosure was of no material fact and the offences were petty in nature and acquittal had also been recorded. If, the said information had been furnished to the authorities, it would be open to them to apply their mind to the suitability of the petitioner and whether he was liable to be considered for appointment, specially keeping in view the fact that he was to become a uniformed personnel and, therefore, the standard reputation being higher as per the rules itself. No fault can be found in the action of the respondents by following the abovesaid procedure and dispensing with his services.

The judgment which has been relied upon by the petitioner in the case of ***Dhaval Singh (supra)*** would go on to show that the candidate had realized his mistake and, thereafter, filed an application and disclosed the factum of the criminal case and that he be pardoned. It was in such circumstances, the cancellation of the candidature was not approved of by noting that at that point of time, the respondents were duly aware of the pendency of the case and the same had been done before the formal order of appointment had been issued.

In ***Ram Kumar's case (supra)***, the Apex Court came to the conclusion that the appointing authority had to satisfy itself whether the character of the candidate for direct appointment was

to be examined and whether he would render himself suitable in respect of all employments as per instructions and accordingly the said exercise had not been followed and thus granted the benefit of employment.

The Full Bench of this Court in ***AIR 1981 P&H 213, Indo Swiss Time Ltd. v. Umrao***, has held that where there is direct conflict between two decisions of co-equal Benches, which cannot be reconciled, this Court can follow the judgments which appear to have stated the law accurately.

Resultantly, this Court prefers to follow the view laid down by the Apex Court in the case of ***Devendra Kumar (supra)*** in preference to the view laid in ***Sandeep Kumar (supra)*** and thus does not exercise its extra-ordinary jurisdiction in favour of the petitioner. Accordingly, the present writ petition is dismissed.

APRIL 12, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE