

respondents to appoint him as a Constable (General Duty), with all consequential benefits.

The essential facts, which need to be noticed for adjudicating upon the issue raised in the present petition, are that on 08.11.2003, an advertisement was issued by the State of Haryana inviting applications for appointment to 740 posts of Constables (General Duty) in the Haryana Police. The petitioner, considering himself to be eligible, applied for consideration of his candidature, but though he found his name in the select list dated 09.10.2004, no appointment letter was issued to him. Against the non-issuance of appointment letter for nearly nine years, the petitioner did not even raise a little finger as it was only on 16.05.2013 that the petitioner sought certain information from the respondents under the Right to Information Act, 2005 and when the same was made available, he made a representation to the respondents seeking appointment as a Constable (General Duty), in pursuance to his application made in the year 2003. The petitioner's case was considered and rejected through the order impugned in the present petition, not only on the ground of delay, but also on merits, which gave him a cause to approach this Court through the present petition for the reliefs mentioned above.

After hearing counsel for the parties and perusing the record with their able assistance, I am of the opinion that the petitioner deserves no relief.

The advertisement in question seeking application for appointment as a Constable in the Haryana Police was issued on

08.11.2003, in pursuance to which, the petitioner had applied for consideration of his candidature. After undergoing the process of selection, he found his name in the select list dated 09.10.2004, but no appointment order was issued to him. Such action was certainly prejudicial to the petitioner's rights, but in spite of the same, the petitioner slept over the same for nearly nine years as he woke up only in May 2013, when he sought information from the respondents under the Right to Information Act, 2005 as to why he had not been issued the appointment letter. On the receipt of such information, he made a representation, which has been rejected both on the grounds of delay, as also on merits. No explanation for the delay on the part of the petitioner for the afore-referred period of nearly nine years is either found on the record of the case or is forthcoming from the arguments addressed by learned counsel for the petitioner at the bar. The claim of the petitioner fully fits into the definition of a stale claim, and therefore, the same need not be adjudicated upon in a writ petition filed under Article 226 of the Constitution of India, which being a discretionary and efficacious remedy, is not available for persons, who have slept over their rights without any justification.

Even otherwise, the petitioner has no case. The application dated 12.12.2003, filed by the petitioner, seeking consideration of his candidature for appointment as a Constable shows that under Column 14, a specific question was posed to him whether he has ever been arrested in a case or judicial proceedings and if yes, to give full details. The petitioner answered this question in the negative.

Thereafter, in the form filled up by him on 15.10.2004 pertaining to his character verification, Column No. 13 was filled up by him as under :-

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|-----------------|--|-----------|
| “13. (a) | <i>Have you ever been arrested?</i> | <i>No</i> |
| (b) | <i>Have you ever been prosecuted?</i> | <i>No</i> |
| (c) | <i>Have you ever been kept under detention?</i> | <i>No</i> |
| (d) | <i>Have you ever been bound down?</i> | <i>No</i> |
| (e) | <i>Have you ever been fined by a court of law?</i> | <i>No</i> |
| (f) | <i>Have you ever been convicted by a court of law for any offence?</i> | <i>No</i> |
| (g) | <i>Have you ever been debarred from any examination or resticated by any University or any other Educational authority/Institution?</i> | <i>No</i> |
| (h) | <i>Have you ever been debarred/dis-qualified by any public service commissioner/Staff selection commission for any of its examination/selection?</i> | <i>No</i> |
| (i) | <i>Is any case pending against you in court of law or with Police at this time of filling of this attestation form?</i> | <i>No</i> |
| (j) | <i>Is any case pending against you in any university or any other Educational authority/Institution at the time of filling up this attestation form?</i> | <i>No</i> |
| (k) | <i>Have you ever been discharged or removed from any job?</i> | <i>No</i> |
| (l) | <i>Have you ever been court martialled under Army Act (For Ex-Serviceman</i> | <i>No</i> |

only)

*(m) If the answer to any of the above N.A.
Mentioned questions is 'Yes' give full
particulars of the same."*

A perusal of the afore-quoted form for character verification, filled up by the petitioner, shows that he had proclaimed therein that he had never been arrested, prosecuted, kept under detention and that no case was pending against him in a Court of law at the time of filling up of character verification form. He had further verified the contents of the form to be correct and complete to the best of his knowledge and belief and appended his signatures thereupon.

The aforesaid declaration made by the petitioner in his application form as also the character verification form was false as admittedly two FIRs had been registered against him, the details whereof are as under :-

1. FIR No. 384 dated 15.06.2001 under Sections 323, 324, 452, 148, 149, 427, 506 IPC at Police Station Civil Lines, Karnal and
2. FIR No. 54 dated 25.02.2003 under Sections 323, 506 IPC at Police Station Civil Lines, Karnal

In both the afore-referred FIRs, the petitioner had been arrested, and therefore, the declaration made by him in his application form, that he had never been arrested, was totally false. He had further made a false declaration in his character verification form with regard to the fact that he had had never been prosecuted, detained and that there was no case pending against him in any Court of law at the time of filling verification

form. The declaration made in the end by way of verification was also a palpably false declaration. The petitioner, who had knowingly made false declaration to seek undue gains, has no place in any employment, much less the police force.

The afore-referred facts would only show that the petitioner had approached the respondents to seek employment as a Constable with unclean hands. He had also done so with an unclean mind and for this, he deserves no relief.

In this context, the following observations of the Apex Court in **Devendra Kumar vs. State of Uttaranchal and others – (2013) 9 SCC 363** may usefully be referred to :-

“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.

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22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the

character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

23. *More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. “Subla Fundamento cedit opus”- a foundation being removed, the superstructure falls. 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. Maj. Gen. Madan Lal Yadav](#), AIR 1996 SC 1340; and [Lily Thomas v. Union of India & Ors.](#), AIR 2000 SC 1650).

Nor can a person claim any right arising out of his own wrong doing. (Juri Ex Injuria Non Oritur).

24. *The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case.*

In view of the above, the appeal is devoid of any merit and is accordingly dismissed. [Emphasis supplied]”

Learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Shri Bhagwan vs. The DGP and another – C. W. P. No. 14462 of 2013**, decided on **05.08.2015**, a perusal of which shows that no decision has been rendered by the Court on the issue of concealment, as in the case of the petitioner.

The petitioner has further relied upon two instructions of the Government of Haryana dated 02.07.2007 and the clarification to the same dated 13.11.2007. According to me, the reliance on behalf of the petitioner on the afore-referred instructions is misplaced as the same do not and would have no retrospective application as the case of the petitioner pertains to the

selection in the year 2003-04, whereas the afore-referred instructions are of the year 2007. Even otherwise, these instructions do not deal with the cases of concealment in the application forms and character verification forms, as in the case in hand.

In view of the aforesaid, finding no merit in the present petition, the same is ordered to be dismissed, with no order as to costs.

(DEEPAK SIBAL)
JUDGE

April 28, 2016
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