

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

CWP No. 2951 of 2014
Date of decision: 22.09.2016

SukhveerPetitioner

Versus

Union of India and othersRespondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Surajmal Kundu, Advocate, for the petitioner.

Mr. Ravi Verma, Advocate, for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, the petitioner has questioned the order of termination dated 04.11.2013 vide Annexure P-4.

The petitioner was one of the candidate for recruitment to the post of Constable in SSB. He was selected and appointed to the post and was sent for training at RTC SSB Alwar (Rajasthan). The candidates were asked to fill the form called Form of Enrolment vide Annexure R-10. The petitioner has submitted form on 18.03.2013. Para 12 of the form relates to certain information relating to criminal proceedings. For the purpose of present case item No. 12 B is relevant, which relates to whether the candidate has ever been prosecuted or not, against which the petitioner has given the information "No" whereas the petitioner was involved in a criminal case. FIR was filed on 28.2.2012 and the petitioner was acquitted on 01.07.2013 i.e. after filling up the form of Enrolment vide Annexure R-10. Therefore, the respondents issued a show-cause notice to the petitioner that as to why his services shall not be terminated for having suppressed the fact that he was facing criminal proceedings.

Thereafter, the respondents have taken note of dates and events like date of filling up the form and date of acquittal and terminated the services of the petitioner. Thus the petitioner is aggrieved by the order of termination dated 04.11.2013. Hence the present petition.

Learned counsel for the petitioner submits that no doubt the petitioner was involved in a criminal case, which is relating to offence under Section 323 IPC and in such circumstances the Hon'ble Supreme Court in the case of ***Commissioner of Police and others Vs. Sandeep Kumar, 2001 (4) SCC 644*** held that appointing authority has to take a lenient view regarding suppression of criminal case where candidate is acquitted. He also relies on decision of this Court passed in CWP No. 25639 of 2012 titled as Alok Singh Yadav Vs. Union of India and others, disposed of on 02.04.2014, wherein this Court after referring to number of decision of the Supreme Court has held that suppression pending criminal case and subsequent acquittal should not be a hurdle for appointment. Whereas the Supreme Court in ***Avtar Singh Vs. Union of India and others, 2016 (7) JT 300***, decided on 21.07.2016 it was referred case before the three Judges due to conflicting decisions. Para 30 (4) (a) (b) (c) of the judgment reads as follows:-

“(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:-

(a) 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.

(b) Where conviction has been recorded in case which is not

trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.”

The Supreme Court while summarizing the conclusion had held that in a case of trivial in nature in which conviction had been recorded, the employer may in its discretion, ignore such suppression of fact or false information by condoning the lapse. It was also held that if the conviction has been recorded in case which is not trivial in nature the employer may cancel candidature or terminate services of the employee. In so far as acquittal of a candidate and and if it is of benefit on technical ground and it is not case of clean acquittal or benefit of reasonable doubt employer may consider all relevant facts available as to the antecedents and may take appropriate decision as to the continuance of the employee. In the present case, the petitioner's case fall under Para 30 (4) (c).

Annexure P-4 order of termination dated 04.11.2013 is set-aside in view of principle laid down by the Supreme Court in ***Avtar Singh's*** case (supra). The respondents are directed to reconsider the petitioner's claim and pass a speaking order after due consideration of the principle laid down in ***Avtar Singh's*** case (supra) and pass a speaking order within a period of 3 months from today.

22.09.2016

PA

(P.B. BAJANTHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No