

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

224

**CWP-23611-2014 (O&M)
Date of decision:30.11.2017**

Sandeep Singh

....Petitioner

Versus

Union of India and others

.... Respondents

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

Present: Mr. Naveen Batra, Advocate for the petitioner.

Mr. Vipul Aggarwal, Sr. Panel Counsel for
Union of India-respondents No.1 to 3.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the order dated 03.06.2014 (Annexure P4) by which his services have been removed w.e.f 03.06.2014.

Petitioner was candidate for selection and appointment to the post of Constable in ITBP. He was selected and appointed on 26.07.2013 by imposing various conditions including verification of antecedents of the petitioner. It was also made clear to the petitioner that his appointment is temporary and the relevant conditions reads as under:-

*(i) You have to bring your character and
antecedents certificate issued by local administrative*

authority like first class magistrate/SDM/Tehsildar or any other Gazetted officer of Centre/State not issued before more than 06 months from the date of appointment.

(j) In case the verification reveals that any of your claims/information is false, your services will be terminated forthwith, without assigning any further reasons or notice.

(k) Immediately after your appointment police verification will be got done from your concerned district administration. If anything adverse is found against you in the verification, your services will be terminated forthwith without assigning any further reasons.”

Pursuant to the order of appointment read with conditions, respondents proceeded to verify the antecedents of the petitioner and they have found that petitioner was involved in criminal case. His name has been reflected in FIR No. 74 dated 23.08.2012 filed under Sections 307, 323, 324, 148, and 149 of IPC, Police Station Chabbewal, District Hoshiarpur (Punjab). Respondents in their reply stated as under:-

“2. That character and antecedents verification roll of petitioner was filed up and sent to District Magistrate, Hoshiarpur (Punjab) vide 10th Bn ITBP Police letter dt 06.12.2013 (Annexure R-3) for verification of his character and antecedents as per government instruction. Dy. Commissioner, Hoshiarpur (Punjab) vide their letter dt.12.02.2014 (Annexure R-4) had informed that as per enquiry report, a case FIR under Section 307, 323, 324, 148, 149 of IPC has been registered in Police Station

Chabbewal, District Hoshiarpur (Punjab) against petitioner and case is under consideration in Court. Before filing up his enrolment form and Character & Antecedents verification roll, petitioner was warned that furnishing of false information or suppression of any factual information in the enrolment & Character & Antecedents verification roll would be a cause of disqualification and likely to render candidate unfit for employment but petitioner had knowingly given false answer/information roll that no case is pending against him in the any court of law. Although later-on, the application moved by the petitioners mother to the SSP a detailed enquiry was held (Annexure P-7 Colly) and the name of the petitioner was subsequently relegated/kept in column no. 2 but later on the petitioner was summoned as an accused in pursuance of the application U/s 319 CrPC filed on behalf of the prosecution. Thus, the petitioner was found to be guilty of misrepresentation and concealment of true facts from the department.”

In view of the antecedents of the petitioner, respondents have proceeded to remove the petitioner from service. Hence the present petition.

Learned counsel for the petitioner submitted that he has been acquitted on 09.10.2014. Therefore, he is entitled for reinstatement. It was also submitted that even though his name was reflected in the FIR but he was not challaned. Therefore impugned action of the respondents is highly arbitrary and illegal. In support of his contention, learned counsel for the petitioner relied on decision rendered in CWP No. 19877 of 2011 decided

on 18.11.2014 titled as ***Labh Singh versus Union of India and others.***

Per contra, learned counsel for the respondents submitted that order of appointment issued to the petitioner was subject to verification of antecedents of the petitioner. The respondents when verified the antecedents of the petitioner they found that petitioner was found involved in criminal case for the offences punishable under Sections 307, 323, 324, 148 and 149 of IPC. Therefore, rightly respondents have taken action pursuant to the conditions imposed in the order of appointment. Therefore, there is no infirmity in the order of removal from service. Acquittal of the petitioner on 09.10.2014 would not vitiate the order of removal dated 03.06.2014.

Heard learned counsel for the parties.

Undisputed facts are that petitioner's name was reflected in the FIR for the offences punishable under Sections 307, 323, 324, 148, and 149 of IPC, Police Station Chabbewal, District Hoshiarpur (Punjab). Petitioner has not disclosed the aforesaid information at the time of appointment on 26.07.2013. That apart having regard to the conditions imposed in the order of appointment that appointment is subject to verification of antecedents of the petitioner and once the respondents verified the antecedents of the petitioner and they found that he was involved in criminal case. Therefore, rightly the action has been taken by the respondents in removing the petitioner from service. Acquittal on 09.10.2014 would not get any right to the petitioner for his reinstatement while cancelling the removal. ***Labh Singh's*** case (supra) is not assisting the petitioners case for the reasons that

in the year 2015 Supreme Court in the case of ***Avtar Singh versus Union of India and others reported in (2016) 8 SCC 471*** held under what circumstances the antecedents could be appreciated by the competent authority for the purpose of taking further action. Relevant extract of the judgment reads as under:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 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:

38.4.1. 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.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. 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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In a case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature,

employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting*

false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

In view of the principle laid down by the Supreme Court, petitioner has not made out case.

Civil Writ Petition stands dismissed.

30.11.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No