

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

**CWP-23765-2014 (O&M)
Date of decision : 26.10.2018**

Harjeet Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arun Singla, Advocate,
for the petitioner.

Ms. Bhawna Gupta, DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 05.11.2014 (Annexure P-7), passed by respondent No.1, whereby, the services of the petitioner with the respondent-Department had been terminated on account of furnishing false information at the time of submission of application form (Annexure P-2).

It is contended that the petitioner was appointed as Horticulture Development Officer vide appointment letter dated 05.12.2013 (Annexure P-1) and joined his services as such on 18.12.2013. However, respondent No.2 issued a show-cause notice dated 21.01.2014 (Annexure P-5) to the petitioner regarding concealment of registration of FIR against him. In reply, the petitioner submitted that there was no column in the application form regarding pendency of criminal case and thus, he has rightly responded as 'No' against column No.15 thereof which reads "Have you ever been

convicted by any Court?” It is further submitted that the criminal case in question bearing FIR No.202 dated 17.10.2008, registered under Section 452, 323, 341 read with Section 34 of the Indian Penal Code, at P.S. Model Town, Hoshiarpur, was got registered by his paternal uncle out of vengeance. Ultimately, the FIR was quashed on the basis of compromise by this Court vide judgment dated 17.08.2016.

On the other hand, learned State counsel refers to clause 4 of the appointment letter to contend that the appointment of the petitioner was strictly subject to the report of concerned District Magistrate about his character and past antecedents. The petitioner intentionally concealed the factum of pendency of a criminal case against him. When this fact came to the notice of the authorities, a show-cause notice was issued to him to which he submitted reply. However, finding the reply so filed unsatisfactory, the services of the petitioner were terminated.

Heard.

A perusal of the application form (Annexure P-2) submitted by the petitioner shows that there is no column for mentioning pendency of criminal case against the candidate. The petitioner admittedly has never been convicted by a criminal court, therefore, response qua Clause No.15 of the form i.e. “Have you ever been convicted by any Court?” has been rightly given as “No”. The controversy in hand is squarely covered by the ratio of law laid down by Hon'ble the Supreme Court in ***Avtar Singh Vs. Union of India, 2016(7) JT 300***, which reads thus:-

“21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is

found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression

of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction

and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

From the perusal of the above case law, it is evident that even suppression of a material fact is immaterial if it would not have affected adversely fitness of an incumbent for the post in question. The dispute was inter se members of the extended family. Moreover, there was no occasion with the petitioner to mention about his involvement in the criminal case in the absence of any such specific question. The operation of the impugned order was stayed by this Court and therefore, the petitioner has been continuing in service of the respondents since long. Even otherwise, the FIR in question stands already quashed by this Court vide order (Annexure P-9)

In view of the above facts and circumstances, this Court feels that the order of termination of the petitioner dated 05.11.2014 (Annexure P-7) is unjust and deserves to be set aside. Ordered accordingly.

Allowed in the above terms.

26.10.2018

atulsethi

(JITENDRA CHAUHAN)

JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No