

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

Letters Patent Appeal No. 147 of 2019 (O&M)

Date of Decision: 25.03.2019

Dalbir Singh

.....Appellant

versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. RK Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 320-LPA of 2019

Heard. For the reasons mentioned in the application, delay of 27 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 147 of 2019

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 03.10.2018 dismissing the writ petition challenging the order dated 20.05.2008 whereby the appellant was discharged from police service. A further relief for issuance of a direction to the respondents to reinstate him on the post with all consequential benefits was also claimed.

2. Undisputed facts in brief relevant for the purpose of adjudication of the controversy can be summarized as under:-

The appellant was enrolled as a Constable vide order dated 18.09.2006. Even before he joined the service in police department, a

criminal case bearing FIR No. 58 of 2004 under sections 457 and 380 of the Indian Penal Code was registered against him at Police Station Morinda, District Rupnagar. On this fact coming to the knowledge of the authorities, it was discovered that this fact was not disclosed in the requisite column No. 24 of the recruitment form and thus finding that the appointment order was obtained by concealment and also a false undertaking was submitted on the date of recruitment that he has not been guilty in any case nor has been arrested, he was discharged from service vide order dated 20.05.2008. The appeal filed by the appellant against the order of discharge was dismissed vide order dated 29.05.2009.

3. The record reveals that after filing of the charge sheet by the police department against the appellant and one another co-accused, the trial was held against them before the Court of Chief Judicial Magistrate, Rupnagar and vide order dated 05.08.2008 they were acquitted of the charges by giving them the benefit of doubt.

4. It is also to be taken note of that another FIR No. 171 of 2009 under section 420 of the Indian Penal Code was got registered by the department against the appellant for concealing the fact regarding registration of FIR No. 58 of 2004 under section 380 read with section 457 of the Indian Penal Code against him at the time of his recruitment/appointment. The charge-sheet was filed in this case also and the trial was held in the Court of Judicial Magistrate Ist Class and the appellant was found guilty and sentenced to undergo rigorous imprisonment for one year. However, the appeal filed by him was allowed vide order dated 11.09.2012 and he was acquitted of the charges for the offence under section 420 of the Indian Penal Code.

5. Learned counsel for the appellant vehemently contended that once he was discharged by the trial Court in FIR No. 58 of 2004 he could not have been discharged from service without even affording an opportunity of hearing.

6. The argument is misconceived. The order discharging the appellant from service was not passed on account of the criminal proceedings but on the charge of having concealed the pendency of a criminal case against him and not disclosing the correct information in the requisite column No. 24 of the recruitment form and filing of a false undertaking in Column No.D of the same form.

7. This issue is no longer res-integra. For resolving the conflict of opinion expressed in various decisions of the Hon'ble Apex Court, on the question of suppression of information and submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to the pendency of a criminal case, the matter was referred for decision to a larger Bench in the case of ***Avtar Singh v. Union of India 2016(8) SCC 471***. The reference was answered by the larger Bench by making the following observations:-

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

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.

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.

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

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 recourses appropriate to the case may be adopted:

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.

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

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.

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.

In 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.

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.

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.

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.

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.

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

8. Since the appellant admittedly had suppressed material information with regard to the pendency of a criminal case registered against him before entering into the service and also made a false declaration, he had been discharged from service in exercise of the powers conferred under section 12.21 of the Appointment and Enrolment Rules which empowers the Appointing Authority to discharge a constable if he is found unlikely to prove an efficient police officer.

9. In view of the law expounded by the Hon’ble Apex Court in the case *Avtar Singh v. Union of India (supra)* and the facts of this case, we do not find any infirmity in the view taken by the learned Single Judge in dismissing the writ petition.

10. The impugned order passed by the learned Single Judge thus does not require any interference. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

25.03.2019
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No