

Sr. No.206

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

CWP No.7919 of 2019 (O&M)

Date of Decision: 07.12.2019

Harmanjot Singh Sidhu

... Petitioner

Versus

State Bank of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.K.Arora, Advocate,
for the petitioner.

Mr. Kapil Kakkar, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

CM No.18774-CWP of 2019

Application is allowed, as prayed for.

Bio-data-cum Attestation Form dated 29.09.2018 as
Annexure P-8 is taken on record.

Main case

1. The only ground of cancellation of the candidature of petitioner for the post of Probationary Officer in State Bank of India is concealment of the fact of registration of an FIR in response to the following question:-

*“Do you have adverse report regarding
character & antecedents, moral turpitude? : No”*

2. Based on the above information, the petitioner's candidature was cancelled in terms of stipulation contained at

Clause 1(C) II stated in the advertisement, which reads as under:-

“Clause 1 (C)-other:

(ii) Candidates against whom there is/are adverse report regarding character & antecedents, moral turpitude are not eligible to apply for the post.”

3. Petitioner has sought issuance of a writ in the nature of certiorari to quash order dated 19.01.2019 (Annexure P-6) on the ground that there was no concealment on his part. The ostensible reason of cancellation of his candidature is registration of an FIR involving alleged moral turpitude, which the petitioner ought to have disclosed.

4. This concealment on his part seems to have weighed heavily in the mind of the competent authority while passing the impugned order dated 19.01.2019 (Annexure P-6).

5. In the return filed by the respondent-Bank, petition has been resisted on the ground that in the advertisement, it is clearly stated that in respect of any legal proceeding/dispute arising out of advertisement can be instituted only in Mumbai and, therefore, this Court does not have territorial jurisdiction.

6. On merits, the petition has been resisted saying that in view of the petitioner not having disclosed the pendency of the FIR in response to a specific question (*supra*) in the online application form, the impugned order has been rightly passed in terms of Clause 1 (C) II read with Clause 18 of the advertisement dated 21.04.2018.

7. Reliance has also been placed on the declaration clause

in the online form, which states that if any information is found to be untrue or incorrect, the same shall tantamount to cancellation of candidature.

8. The question that arises now is whether on the date of filling of the application form, petitioner committed any concealment? For that it would be appropriate to split the online question into 3 parts as below:

- a) Do you have any adverse report in character?
- b) Do you have any adverse report regarding antecedents?
- c) Do you have any adverse report regarding moral turpitude?

In present case, all the aforesaid 3 parts of the question have been compositely and singularly put in the application form as reproduced in para 1 above. The petitioner has answered 'No' to the said composite question. It left scope for confusion for answer in such cases. The same single answer-yes or no- to all these questions- may not necessarily be the correct in every case.

9. It is settled position in law that mere registration of an FIR is neither an adverse report of character nor is the same adverse report on antecedents, nor is same deemed to be as an adverse report qua moral turpitude. The FIR as its language suggests is merely a First Information Report in respect of an offence having been committed. Upon registration of FIR, the case is required to be investigated, which is followed up by filing of final investigation report in the competent Court. After due application of mind, if the Court takes cognizance of the offence

only then it passes a judicial order to commence the trial.

10. It would be too premature at the stage of mere registration of FIR to conclusively hold that the allegation therein amounts to either an adverse report on character or antecedents or same amounts to moral turpitude of the kind, which impinges on the nature of duties to be performed by prospective employee.

11. Reference may be had to judgments rendered on this point of High Courts as well as of the Hon'ble Supreme Court in cases titled as ***Veerta Verma Vs. State of Himachal Pradesh 2009 (4) SCT page 241, Khazan Singh Vs. State of Haryana and others 2004 (1) SCT 334, Adam Bodh Sharma Vs. The State of Haryana 2006 (4) SCT page 760, Harsh Gupta Vs. Rajasthan State Electricity Board, Rajasthan 1995 (1) SCT 485, Major General A.K.Kapur Vs. Union of India and others 2009 (4) SCT 794 and Commissioner of Police Vs. Sandeep Kumar 2011 (4) SCC 644.***

12. Another noteworthy facet is that the Bank itself never asked for any specific question in the online question in the form of application as to whether any FIR or case was pending against the applicant. For the first time, the said information was sought at the time of interview, when the candidate (petitioner) was asked to fill up bio-data-cum attestation form (Annexure P-8), wherein a specific information is contained at Column No.16 read as below:-

“16. Particulars of any prosecution /detention/ fine/ conviction/ sentence against you awarded by any court of law for any offence.”

To the above question, the applicant replied as below:-

“Prosecution pending, under trial in the Court of Chief Judicial Magistrate, SAS Nagar, Mohali.”

13. It is only after the above information was provided that respondent Bank swung into action and held the petitioner guilty of concealment as aforesaid and passed the impugned order.

14. I am unable to persuade myself with the arguments of learned counsel for the respondent-Bank that petitioner indulged in any concealment, Rather, it cannot be ruled out altogether that in all earnestness he filled the correct information in the online application as per his understanding of the singular composite question in the application form.

15. As already noted above, mere registration of FIR does not amount to any adverse report on the character or antecedents or moral turpitude. Petitioner cannot be held guilty of any deliberate concealment by answering the question in “no”.

16. The entire emphasis and the basis of passing the impugned order seems to be the said answer 'No', which as already noted was not incorrect. Therefore, the impugned order dated 19.01.2019 (Annexure P-6) does not sustain the scrutiny of law.

17. The same is, accordingly, set aside. Respondent-Bank is directed to reconsider the candidature of the petitioner, accord him the benefit of due merit and pass appropriate orders in accordance with law.

18. It is, however, made clear that in case petitioner is

ultimately held guilty and/or is convicted pursuant to the criminal proceedings instituted vide FIR No.04 dated 06.04.2016, the respondent Bank shall be at liberty to proceed against him in accordance with law.

19. Disposed of in above terms.

07.12.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No