

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

**Letters Patent Appeal No. 1129 of 2019 (O&M)**

Date of Decision: 30.05.2019

Sandeep

.....Appellant

versus

State of Haryana and others

.....Respondents

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

Present : Mr. R.S.Mamli, Advocate, for the appellant.

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**KRISHNA MURARI, CHIEF JUSTICE (oral)**

**CM No. 2504-LPA of 2019**

Heard. For the reasons mentioned in the application, delay of 559 days in filing the appeal is condoned. Application stands disposed of.

**Letters Patent Appeal No. 1129 of 2019 (O&M)**

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 09.10.2017 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein and subsequent order dated 06.05.2019 dismissing the application filed for review of the order dated 09.10.2017.

2. Undisputed facts required to be noticed for proper adjudication of the controversy are limited. In pursuance to an advertisement issued by the Haryana Government in the year 2015, applications for appointment on the post of Constables were invited. The appellant-petitioner was an applicant along with others for the post of Constable General Duty in reserve category being schedule caste. He was selected and accordingly was allotted

Belt No. 1/346 Ist BN Ambala City. Subsequently, vide order dated 28.07.2017 he was denied appointment as he failed to disclose the information in his verification and attestation form regarding pendency of a criminal case at the said point of time. Accordingly on account of non-disclosure of such information, he was held to be disqualified out-rightly under Rule 12.18(2) of the Punjab Police (Haryana Amendment) Rules, 2015.

3. The appellant-petitioner made representations to various authorities including Director General of Police but when no action was taken he approached this Court by filing writ petition out of which the present appeal arises challenging the action of cancellation of his appointment. Learned Single Judge vide judgment and order dated 09.10.2017 dismissed the writ petition on the ground that he falsely declared in his application form that there was no criminal case pending against him when admittedly there was an FIR registered against him and a criminal trial was pending. Learned Single Judge further held that merely because he was subsequently acquitted at the time of selection and appointment was of no consequence as the cancellation of appointment was a result of false information disclosed in the verification and attestation form. Subsequently, a review application was filed placing reliance on the judgment of the Hon'ble Apex Court in the case of ***Commissioner of Police and others v. Sandeep Kumar 2011(4) SCC 644***, and various other judgments of the learned Single Judge of this Court based on the ratio of the decision of the Hon'ble Apex Court in the case of *Sandeep Kumar's* (supra). It is also submitted that since the appellant-petitioner was acquitted subsequently from the charges and there was no proceedings pending against him on the

date of appointment and the alleged offences in which he is said to be involved were minor offences under sections 323, 325 read with section 34 of the Indian Penal Code without involving of any question of moral turpitude, non disclosure was not intentional and non-disclosure of the information would not be fatal because of subsequent acquittal. It is also submitted that the appellant could not have been discharged from service without even affording an opportunity of hearing.

4. We have considered the arguments advanced by learned counsel for the appellant and perused the record.

5. The arguments advanced on behalf of the appellant are 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.

6. 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.”

7. 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.

8. In so far as the issue of discharge from service without notice or opportunity is concerned, the Apex Court in the case of ***Avtar Singh v. Union of India*** (supra) has already held that it is only where the employee is confirmed in service, holding a departmental enquiry would be necessary before passing the order of termination, dismissal or removal from service on the ground of suppression of material facts in the application form. There is no averment in the pleadings that the appellant was confirmed in service and thus the argument does not hold any water.

9. In view of the facts and circumstances enumerated hereinabove and the law expounded by the Hon'ble Apex Court in the case of ***Avtar Singh v. Union of India*** (supra), we do not find any infirmity in the order of the learned Single Judge in dismissing the writ petition as well as the review application. The impugned orders passed by the learned Single Judge thus do not require any interference. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)  
CHIEF JUSTICE

(ARUN PALLI)  
JUDGE

30.05.2019  
ravinder

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|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable        | √Yes/No |