

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

**CWP-16649-2016 (O&M)
Date of decision : 05.03.2019**

Jaswinder Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Simranjit Singh, Advocate,
for Mr. P.S. Khurana, Advocate,
for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 23.04.2015 (Annexure P-8), passed by respondent No.2, whereby, the application of the petitioner for grant of compassionate appointment to the post of Sewadar has been rejected.

Contents that the petitioner's father, working as Head Constable in the respondent-Department, died in harness on 20.01.2004. The petitioner applied for grant of compassionate appointment and his name was enlisted along with others vide letter dated 07.02.2005. A priority list was issued vide letter dated 07.02.2005 (Annexure P-1) and the name of the petitioner figured at Sr. No.12. However, the claim of the petitioner was rejected on 31.10.2007 (Annexure P-2) for the post of Constable on the ground that he was declared unfit by the Medical Board, PAP, Jalandhar Cantt. The petitioner again submitted an application for compassionate

appointment. The application was duly considered by the respondent-Department. He also submitted his detailed representation dated 08.06.2014 (Annexure P-4/A) narrating therein about his conviction under Section 323 read with Section 34 of the Indian Penal Code. The claim of the petitioner was finally approved and police verification was sought from the office of the SSP, Faridkot. The necessary report was submitted by the local police (Annexure P-6). The petitioner was then asked to submit his original testimonials/educational qualification certificates vide letter dated 16.01.2015 (Annexure P-7). The authority vide letter dated 30.01.2015 also directed the petitioner to undergo medical examination from Civil Surgeon, Faridkot (Annexure P-7/A). The original testimonials were submitted by the petitioner and he also underwent medical examination on 06.02.2015. However, vide order dated 23.04.2015 (Annexure P-8), the claim of the petitioner for appointment as Sewadar (Class IV) on compassionate basis was rejected on the ground of conviction under Sections 324 and 323 read with Section 34 IPC.

Learned counsel states that the rejection of claim of the petitioner on the ground of conviction is wholly misconceived inasmuch as the petitioner was released on probation under the Probation of Offenders Act (for short, 'the Act'). He refers to Section 12 of the Act which provides that the conviction and consequent release on probation is not a disqualification for employment or for continuation of employment.

On the other hand, learned State counsel submits that the respondent-police department is a disciplinary department and the petitioner being a convict, the appointment was rightly denied to him.

Heard.

In **Avtar Singh v. Union of India, (SC) : Law Finder Doc Id #**

780085, it has been laid down as under:-

*“6. The next decision mentioned by the Division Bench in the order of reference is in **Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar, 1997(1) S.C.T. 474 : (1996) 11 SCC 605** in which appointment was denied to an incumbent who was duly selected for the post of Constable in Police service subject to verification of character and antecedents. On verification of his antecedents it was found that he was involved in a criminal case under sections 304, 324/34 and 324 IPC. The incumbent was appointed in Delhi Police service in the year 1990. On character verification, his name was rejected. The tribunal allowed the application and directed the appointment since employee had been acquitted in the said criminal case. It was held by this Court that mere acquittal in the criminal case was not enough once it was found that it was not desirable to appoint such a person as a Constable in the disciplined force. This Court opined that the view taken by the employer in the background of the case cannot be said to be unwarranted, though he was discharged or acquitted. Antecedents of the incumbents could not be said to be proper. The Court has held thus :*

"3. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on 6-9-1995 in OA No. 1756 of 1991. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No. 65790. Though he was found physically fit through

endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated 18-12-1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 I.P.C., under Section 324 read with Section 34 I.P.C. and under Section 324 I.P.C., he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences,

the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service."

It is apparent that the background of the case was considered by the employer in the case of Sushil Kumar (supra) and this Court has emphasised in the aforesaid background that the decision of the employer was not unwarranted as the incumbent was rightly not found desirable for appointment to the service. It was not a case of suppression in the verification form. The decision does not deal with the effect of suppression but the case has turned on the background of the facts of the case in which the incumbent was involved as is apparent from the discussion made by this Court in para 3 quoted above. Thus, it is apparent that the background facts of the case have to be taken into consideration by the employer or court while dealing with such matters.

7. to 23. XXX XXX XXX XXX XXX XXX.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the

services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due

consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.”

Admittedly, the petitioner is a convict under Section 323 read with Section 34 IPC, though, was released on probation for a period of one year. There is no dispute with regard to the provision of Section 12 of the Act which provides that a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. However, the appointing authority did not find it desirable to appoint the petitioner who is a convict under Section 323 read with Section 34 IPC, as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted.

Hon'ble the Supreme Court in ***Union Territory, Chandigarh Administration and others Vs. Pradeep Kumar and another***, SLP(C)

No.20750 of 2016, decided on 08.01.2018, has laid down as under:-

“17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.”

In the instant case as well, there is nothing on record to suggest that the decision of the competent authority is male fide.

In view of the above discussion, this Court does not find any ground to interfere in the well reasoned impugned order passed by the competent authority and the same is, hereby, affirmed.

Dismissed.

05.03.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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