

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

**CWP-19111-2015 (O&M)
Date of decision : 09.01.2019**

Ravideep

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.G. Chaudhry, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of order dated 12.01.2015 (Annexure P-5), passed by respondent No.4 and order dated 24.07.2015 (Annexure P-7), passed by respondent No.3, whereby, the services of the petitioner had been terminated on account of furnishing false information at the time of submission of application form for enlistment as Constable.

It is the case of the petitioner that he was appointed as Constable in the Punjab Police. As per the procedural requirement, the petitioner filed an affidavit at the time of joining to the effect, *inter alia*, that there was no criminal case pending against him. However, on verification, it was found that a criminal case bearing FIR No.44 dated 13.07.2008 under Sections 452, 506, 323 and 148 read with Section 149 IPC had been registered at P.S. Behram and the petitioner was an accused in its cross-version registered under Sections 323 and 324 read with Section 34 IPC.

Thereafter, departmental proceedings were initiated against the petitioner. After departmental inquiry, he was found guilty of concealment. The petitioner was served a show-cause notice dated 08.08.2013 (Annexure P-1), regarding his discharge/dismissal from the police department. The petitioner submitted his reply to the said show-cause notice mentioning therein that he was involved in a false case and the matter had already been orally compromised between the parties before his selection as Constable. The compromise was subsequently reduced into writing and on the basis thereof, a petition for quashing of the FIR was filed which was allowed and the proceedings were quashed vide judgment dated 05.08.2013 (Annexure P-4). However, the reply filed by the petitioner was not considered and vide impugned order dated 12.01.2015 (Annexure P-5), he was discharged from service.

It is contended that the petitioner was selected and appointed as Constable vide order dated 23.12.2011 and before his dismissal from service, he had served the department for more than three years. Therefore, he had already become a regular employee and could not be dismissed from service without holding a regular departmental inquiry. It is further submitted that two similarly situated employees, Constable Balwinder Singh and Constable Ajaypal Singh, who had also been facing criminal proceedings, have been allowed to continue in service, however, the petitioner has been discriminated against. Even otherwise, the offence alleged to have been committed by the petitioner do not fall under the category of serious offence.

On the other hand, learned State counsel submits that

admittedly, the petitioner furnished false information with regard to his involvement in criminal case at the time of joining his duties. Proper procedure was adopted during inquiry and the petitioner was associated with the same. He also appeared before the inquiry officer and proper opportunity of hearing was granted to him. Ultimately, the petitioner having been found guilty of furnishing false affidavit, was dismissed from service.

Heard.

It is to be noticed that at the time of appointment as constable, the petitioner submitted his duly sworn affidavit (Annexure R-1/T) to the effect that there was no criminal case pending against him. However, on verification, the information provided by the petitioner was found to be against the record. Thereafter, a departmental inquiry was initiated against him and in the said departmental enquiry, the petitioner was found guilty of concealment of the fact that he was accused in the cross-version of FIR No.44 (ibid), under Sections 323 and 324 read with Section 34 IPC. It has also come on record that the petitioner was associated in the inquiry and proper opportunity of hearing was granted to him before passing the impugned order. The appeal preferred against the order of dismissal from service dated 12.01.2015 was also dismissed by the Deputy Inspector General of Police, Rupnagar Range, Rupnagar.

The petitioner has also claimed parity with Constable Ajay Pal Singh and Constable Balwinder Singh on the ground that they have been allowed to continue in service despite their involvement in the criminal cases. Even for the sake of argument, if the contention of the petitioner is

taken to be gospel truth, still the petitioner cannot derive any mileage from the same as both the cited officials are not party before this Court, whereas, the guilt of the petitioner in concealing the relevant information has been duly proved. Thus, the parity claimed is misplaced and therefore, cannot be granted. In ***Avtar Singh v. Union of India, (SC), 2016 AIR (SC) 3598***, 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."

In view of the above discussion, this Court does not find any ground to interfere in the well reasoned impugned orders passed by the competent authorities and the same are, accordingly, affirmed.

At this stage, learned counsel for the petitioner states that admittedly, the petitioner had served the respondent-Department for more than three years before his termination from service, however, no salary has been paid to him.

Considering the above, it is directed that the petitioner shall be paid the arrears of salary for the period he remained in service within three

months from the date of receipt of certified copy of this judgment.

With the above directions, the instant petition is dismissed.

In view of the fact that the writ petition has been dismissed, pending application(s), if any, shall stand disposed of accordingly.

09.01.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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