

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 22.10.2019****CWP No.20087 of 2019**

Loven Singla

...Petitioner

Vs.

Punjab & Haryana High Court, Chandigarh & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate, for the petitioner.

Mr. Rajeev Anand, Advocate,
for respondents No.1 & 2.

Ms. Anu Pal, DAG, Punjab.

RAJIV NARAIN RAINA, J.

1. The case of the petitioner is crystallized in the order putting respondents i.e. High Court and the District & Sessions Judge, Bathinda to notice. The order dated 23.07.2019 is as follows:

“Contentends that in the form prescribed by the Society for Centralized Recruitment of Staff in Subordinate Courts a question was asked of the petitioner; “have you ever been convicted for any criminal offence involving moral turpitude”. His answer was in the negative. After his selection and joining on the post of Clerk in the Sessions Division, Bathinda, the petitioner was asked to furnish an affidavit that he had never been convicted. The affidavit is on record.

In the course of background check, it was discovered that the petitioner was an accused in FIR No. 34 dated 06.02.2008 under Sections 307, 341, 323, 148 and 149 IPC, Police Station City-I, Mansa.

The petitioner has been relieved during the probationary period by order dated 22.05.2019 for the reason that he concealed the fact regarding his involvement in the criminal case. The learned District and Sessions Judge, Bathinda has observed that the petitioner has not mentioned anywhere in the application as well in the affidavit dated 06.12.2018 submitted by him at the time of joining that he was named in the FIR.

The contention of the petitioner is that he was never asked to divulge that anything more than what the form required and, therefore, he has not concealed any fact which was required of him to be disclosed in the form and on affidavit.

Another argument is that the order is stigmatic in nature.

Issue notice of motion to the respondents, returnable by 05.08.2019.

Notice re: stay.”

2. The question which falls for consideration is, whether the petitioner serving as a probationer Clerk in the Subordinate Court in Bathinda is guilty of concealing the facts regarding involvement in a criminal case. The authority competent to terminate the services of a probationer Clerk in Sessions Division, Bathinda is the District & Sessions Judge, Bathinda – respondent No.2, who passed an order on 22.05.2019 dispensing with the services of the petitioner and directing him to handover the charge of his post and his identity card in the office and to be relieved. This order is impugned in this petition.

3. The District & Sessions Judge, Bathinda has held that the petitioner concealed the fact regarding involvement in a criminal case and he has not mentioned anywhere in his application form as well as in the affidavit dated 06.12.2018 submitted by him at the time of joining or later on

that he had been named as an accused in the FIR mentioned in the motion order. He took the case as one of suppression of material facts and went on to hold that the incumbent should not have antecedents of such a nature that may adjudge him unsuitable for the post.

4. The brief facts may be adverted to. The petitioner's name was recommended by the High Court on 30.11.2018 for appointment as Clerk in the Sessions Division. An offer of appointment dated 05.12.2018 was issued to him on usual terms and conditions. The petitioner submitted his arrival report on 06.12.2018 (Afternoon) along with necessary documents called in his appointment letter. He was posted as Additional Ahlmad in the Court of Civil Judge (Junior Division), Bathinda.

5. Thereafter, office requested the Senior Superintendent of Police, Mansa through its letter dated 23.01.2019 to get the character and antecedents of the petitioner verified from the police authorities. The Senior Superintendent of Police, Mansa by his letter dated 01.03.2019 informed the Sessions Division that an FIR dated 06.02.2008 had been registered in which cancellation report was filed on 29.05.2009, but the same has not yet been accepted by the Court. It comes as a matter of surprise that a cancellation report has remained pending for a decade in the trial Court, which does not redound to the credit of the institution.

6. At this stage, it would be necessary to dwell on a few facts regarding the cancellation report presented by the police in 2009 in case 'State Vs. Krishan Kumar etc.' On record is an order of the Chief Judicial Magistrate, Mansa dated 12.01.2018 with HC Jarmal Singh/1048 Mansa, PS City-II Mansa in attendance along with Addl. PP for the State. The order reads as under:

“Cancellation report presented today. It be registered. Statement of HC Jarmal Singh/1048 Mansa, PS City-II, Mansa recorded. File be put up before Lok Adalat on 10.02.2018. Notice to complainant be also issued for the date fixed”

7. To start with, it appears stranger that a cancellation report in a criminal case is ordered to be put up before the Lok Adalat. What transpired when the first cancellation report was filed in 2009 and the order dated 10.02.2018 was passed lies in the shadows, which though are verifiable facts from the record of the criminal case. But there is no indication on the present file.

8. The matter was again taken by the Lok Adalat on 10.02.2018, when the following order was passed:

“Complainant not appeared in the present case. It appears that he/she does not agree with the present cancellation/untraced report. Moreover, no fresh zimni is attached to show that the genuine efforts were made by the police to investigate the matter. So the request made by the police/IO is declined and matter is referred back to SHO concerned police station for re-investigation. Therefore, present untraced/cancellation report is not accepted and is sent back to investigating agency for re-investigation. Judicial papers be separated and be consigned to the Judicial Record Room, Mansa, after due compliance and original untraced report be sent to quarter concerned for re-investigation.”

9. Meaning thereby, that reinvestigation has been ordered after 10 years. Sometimes facts are stranger than fiction.

10. The matter regarding the antecedents of the petitioner was brought to the notice of the High Court by the District & Sessions Judge, Bathinda vide letter dated 19.04.2019. In response, the High Court had directed the District & Sessions Judge to decide the matter at his own level

on the basis of rules and instructions being the appointing authority. This has led to the passing of the impugned order removing the petitioner from service during probation. The District & Sessions Judge in his letter has cited Condition No.5 of the appointment letter dated 05.12.2018, which prescribes to the following effect:

“5. That your appointment is subject to the fulfillment of eligibility i.e. educational qualification, age, character verification, caste certificate and verification of certificates/testimonials and medical fitness etc. if anything is found against you, your appointment shall stand cancelled.”

11. Condition No.1 in the appointment letter describes the appointment being on purely temporary basis and services liable to be terminated at any time, without any notice. As per Condition No.2, he was under probation for a period of two years expiring 06.12.2020.

12. The District & Sessions Judge has reproduced Rule 3-General of Appendix 23 of the Government Employees (Conduct) Rules, 1966, which cautions the Government employee at all times to (i) maintain absolute integrity; (ii) maintain devotion to duty; (iii) do nothing which is unbecoming of a Government employee.

13. To pause here for a comment, there is no adverse record against the petitioner for failing to maintain absolute integrity or to maintain devotion to duty expected of a Government servant. He has done nothing, which is unbecoming of a Government employee during the course of service. The only thing used against him is presence of FIR No.34 dated 06.02.2008 registered under Sections 307/341/323/148/149 IPC, Police Station City-I, Mansa in which a cancellation report was filed on 29.05.2009. Obviously, this means that the police on verification found no

cognizable offence committed by the petitioner and others, who were allegedly involved in the occurrence.

14. The District & Sessions Judge also refers to Rule 8(2) of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997, which reads as under:

“8(2) If, in the opinion of the appointing authority the work or conduct of a member of service during the period of probation is not satisfactory, it may:

If such person is recruited by direct appointment, dispense with his service or revert him to a post, on which he held lien prior to his appointment.”

15 There is no material on record which bare out even by a whisper or suggestion that the work and conduct of the petitioner during the period of probation was not satisfactory.

16 From these provisions, the District & Sessions Judge has drawn a conclusion that the facts demand dispensing with the services of the petitioner, pegged on concealment and suppression of material facts by non-disclosure of the criminal case.

17. It is in this background, the Court has to answer whether “there has been concealment and suppression of material facts” in the text and context of the columns in the application form and in the affidavit and what was required to be divulged by the candidate.

18. Everything in this regard revolves around what the petitioner was asked to answer and then alone can he be held guilty of non-disclosure if he has falsely answered and concealed facts in his responses.

19. Mr. Patwalia submits for the petitioner that at the time when FIR was registered against him, he was a minor and was not involved in any criminal act. Be that as it may, and not going that far back, the question

asked for answer has to be decided on the basis of declarations required in the application form and in the affidavit. In the application form (Annex P-2) submitted to the Society for Centralized Recruitment of Staff in Subordinate Courts (SSSC), the question asked from the candidate regarding criminal background was framed as follows:

“Have you ever been convicted for any criminal offence involving moral turpitude?”

20. The petitioner answered ‘No’. The petitioner certainly had not been convicted for any criminal offence either involving or not involving moral turpitude. He has answered nothing more than what was asked of him. He has not suppressed any fact or concealed anything or answered falsely what was asked from him in the application form. Had the application form asked him, if any FIR was registered or pending against him, then he could be faulted and thrown out. The inadequacies in the application form cannot be attributed to the petitioner. He is required to open his mouth as wide as what he was asked to speak.

21. This puts the case of the petitioner on firm footing in his quest for justice and to this end and I am impressed with the arguments of learned senior counsel Mr. D.S. Patwalia to hold that the petitioner is not guilty of suppression of material facts, concealment or of speaking the untruth.

22. This is not the end of the matter. There is other evidence to support the petitioner’s innocence. Mr. Patwalia refers to the High Court notice dated 11.10.2017 pertaining to the same selection issued by the SSSC. The notice deals with scrutiny of online application forms received from the applicants for the posts of Clerk in the subordinate courts. It puts candidates to notice that various discrepancies have been identified in some application

forms, which have been categorized in VII different heads, which are as follows:

List I	Candidates who have answered in affirmative against query regarding conviction for criminal offence.
List II	Candidates who have answered in affirmative against query regarding removal/dismissal from Government service.
List III	Candidates whose application fee could not be reconciled with the Bank.
List IV	Candidates whose photographs are not clear.
List V	Candidates whose signatures are not clear.
List VI	Candidates whose photographs and signatures do not tally with their names or having other discrepancies in their personal details.
List VII	Candidates whose photograph and signature both are not clear.

23. List I is the material list. It identifies five candidates, who have answered in the affirmative regarding conviction for criminal offences. The name of the petitioner does not fall in the list circulated by the High Court. Those on the List have been called to submit complete particulars of cases registered against them and to explain personally by appearing in the office of the SSSC latest by 16.10.2017 failing which their candidatures will be rejected.

24. Mr. Patwalia submits that the District & Sessions Judge has read more into the column and its answer than there exists. The petitioner was not required anywhere in the application form to disclose that he had been named as an accused in an FIR.

25. In the opinion of the Court as to how the application form is to be worded is not the headache of a candidate. He is called upon to answer what he has been asked and not what he imagines he should. This is a matter for the SSSC in the High Court to ponder over and consider redrafting the column on criminal background in future selections in line with a wide range

of disclosures that may be required from candidates and are thought fit to be made and explained by them to adjudge their character, antecedents and suitability by divulging honestly anything about themselves having to do with criminal background/character to help the appointing authority in forming an opinion on suitability of persons selected to be offered appointment to serve in the offices of the subordinate judiciary in all category of posts that admit direct recruitment. This issue deserves to be remitted to the SSSC for its consideration for plugging the silences and extending the net of queries to cover the entire range of what the Society should look for on this important aspect of character and antecedents in criminal background of future candidates.

26. The issue on examination from all possible angles, I dare say this Court cannot re-word the material column or add to it retrospectively on the judicial side and throw out the case of the petitioner from the courts' window.

27. The second document on which the petitioner has been pinned down for removal during probation period was his affidavit which was to be tendered in standard form. That affidavit dated 16.12.2018 is material to the determination of the case and deserves to be reproduced in extensor. Here it is:

- “1. That my date of birth is 19.03.1991.
2. That I was never convicted for any criminal offence involving moral turpitude and that I was never dismissed or removed from a service of any State Government of India or any Public Sector Undertaking.
3. That in case I will being married, then I will hve not more than one living spouse.”

28. The contents of the affidavit have to be read together with Condition No.12 of the appointment letter. Condition No.12 at pp.59 of the paper-book reads as follows:

“12. That you shall have to produce self declaration to the effect that:

- You were never convicted for any criminal offence involving moral turpitude and that you were never dismissed or removed from a service of any State Government or of Government of India or any Public Sector Undertaking; and
- In case of you being married, you are not having more than one living spouse.”

29. The affidavit is in conformity with Condition No.12. Mr. Patwalia further submits that even at the stage of appointment, the question asked was still short of what the appointing authority desired asking by sworn deposition whether the petitioner has been convicted for an offence involving moral turpitude and not that any criminal case involving moral turpitude was registered and is/was pending against him and what was the status of the case. If that additional question had been asked, then the petitioner would hardly have any triable case in his favour. That would have amounted to concealment and suppression of material facts. The High Court should have been wiser in drafting the application form and the terms and conditions of the appointment offer/letter but it is not for this Court to read imaginary things in the written word of the appointing and terminating authority as that would be altering the record. The impugned order is based on a personal opinion subjectively made by the judicial officer on his administrative side. The reasons assigned to end the services of the probationer and arrive at a conclusion adverse to the petitioner are irrelevant considerations which are not germane to the facts. No law is involved in this

case for interpretation and only the facts are to be seen and the wording of the relevant column. That what ought to be is not the same thing as what is there in fact. Irrelevant considerations have played their notorious part in the impugned order, while what was relevant to the decision making has been left out.

30. On the other hand, Mr. Rajeev Anand representing the High Court faced with insuperable difficulties has put up a valiant fight in defence of the impugned order. He cites the decision of the Supreme Court in Commissioner of Police, New Delhi & another Vs. Mehar Singh, (2013) 7 SCC 685 ruling on verification of antecedents/character and undesirability of such persons in government service or in the disciplined forces. The Supreme Court dealt with the Delhi Police Rules under which past involvement of a person in a criminal case is not a disqualification for appointment. However, under Clause (6) of Standing Order No.398/2010 of Delhi Police, Screening Committee has discretion to take appropriate decision in such cases where a candidate who has disclosed his involvement in a criminal case, is acquitted or discharged of serious offences not honourably but by extending benefit of doubt or because the witnesses have turned hostile will be relevant factors on suitability. As a matter of rule, such candidates have to be avoided. Hence, Screening Committee is entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that acquittal or discharge is on technical grounds and is not an honourable one. The decision rests with the appointing authority.

31. When asked whether in Mehar Singh's case concealment in application form or affidavit was dealt with or what was the nature of the

questionnaire, Mr. Anand admits that such an issue was not before the Supreme Court in that case. I have been through the judgment carefully, but find no common features with this case. I do not find any help therein for a solution to the facts of this case limited to the shape in which the question has to be put in the application form and in the affidavit to elicit an answer from a candidate or an appointee.

32. The High Court also relies on judgment in State of Madhya Pradesh & others Vs. Parvez Khan, (2015) 2 SCC 591. This was a case of compassionate appointment in recruitment to Police force of a person carrying criminal antecedents from the past. The appointing authority had refused to grant compassionate appointment in Police service on the ground of criminal antecedents of the candidate who was acquitted for want of evidence or was discharged on account of compounding of offence. This case is also distinguishable on facts and has no bearing in this case.

33. The third judgment relied upon by Mr. Anand is reported as case State of Madhya Pradesh & others Vs. Abhijit Singh Pawar, (2018) 18 SCC 733, which is a case of acquittal in criminal proceedings pursuant to a compromise. This case also has no bearing on the present one where there is neither conviction nor trial and only reinvestigation had been ordered and that too by the Lok Adalat and not in the mainstream judicial work of Magistrates. There is no other arrow left in the quiver of Mr. Anand from where he can shoot down the petition.

34. At the pre-final hearing stage, I had asked Mr. Anand to assist this Court for and against the proposition of which three I have noticed above and try to distinguish them and I must say that he has stood above the case and cited law which could go against the impugned order and the stand

in the written statement by the authority that passed the order. He has placed the consideration for this Court in a much larger view of the issue based on extensive research in the elaborate judgments of this Court in CWP No.11363 of 2018 titled 'Balwant Ram Vs. State of Punjab & others' decided on 11.12.2018. This was a case of promotion with parties contesting for the post of Naib Tehsildar. The petitioner's case had been withheld and kept under sealed cover on account of registration of an FIR against him while his juniors were promoted to the higher post. The issue which fell for consideration was: whether the mere registration of an FIR and still at the stage of preliminary investigation, is determinative ground for denial and withholding of promotion of a Government employee who is otherwise qualified, eligible and found fit and suitable for promotion. Brother Jaswant Singh, J. entered the debate and by his lucid judgment while relying on several decisions including the decision of the Division of the High Court of Delhi in judgment delivered on 25.08.2010 in WP(C) No.2068/2010 reported as 2010 SCC OnLine Del 22891 titled 'Government of NCT of Delhi & another Vs. Robin Singh'; the decision of the Supreme Court in Commissioner of Police & others Vs. Sandeep Kumar, (2011) 4 SCC 644; Mehar Singh's case (supra); Delhi Administration Vs. Sushil Kumar, (1996) 11 SCC 605; Union of India Vs. K.V.Jankiraman, 1991 (3) SCT 317; Union of India Vs. Sudha Salhan (Dr.), (1998) 3 SCC 394, an off-shoot from K.V.Jankiraman's case in Bank of India Vs. Degala Suryanarayana, (1999) 5 SCC 762 etc. reached the conclusion that denial of consideration of the case of the petitioner for promotion on the ground of pendency of the proceedings upon the registration of FIR though declared innocent in the inquiry, was unjustified and illegal.

35. There is a pertinent observation in *Robin Singh's case*, where the question which fell for consideration was; whether pendency of a criminal proceeding or for that matter a conviction by a competent Court of law may justify eyebrows being raised but do they justify the shutting of one's eyes? The choice between the two is the judicial hallmark. They also serve who stand and wait. Learned single Judge has culled out for reproduction in extenso from Robin Singh's case from paragraphs 19 to 38 skipping a view in between which articulates and enriches judicial literature on how to deal with criminal history to assess candidate's trustworthiness and suitability for appointment to public service. If these are the views which need to be reaffirmed once again, then it would be worthwhile to burden this judgment with those passages. They are reproduced below:

“19. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. “The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.

20. It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be

governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.

21. We have prefaced our decision with the statement whether pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows to be raised, but would it justify the shutting of one's eye?
22. Now, a man can be booked for the offence of over speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative.
23. Not to induct persons with a criminal background in public service, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality. If the answer is in the negative, the further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.

25. A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would show that felonies are treated as more grave vis-à-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as bailable and non bailable, the degree of criminality can be further discerned.
26. The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.
27. We do not intend to make a catalog of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified.
28. Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.
29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the matter of public employment if trivial offences committed by the

citizen would justify the State shutting its eyes and denying employment.

X X X X

36. Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.
37. In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.
38. Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated.”

36. In *Balwant Ram's* case, Brother Jaswant Singh, J. has already issued directions to the States of Punjab, Haryana and the Chandigarh Administration to formulate detailed policies for delineating the conduct and allegations which would render a candidate/employee unfit for entry and retention in service. These directions are worthy of extending to the Punjab & Haryana High Court and its subordinate courts so that such matters are resolved easily by the appointing authorities.

37. For the reasons recorded in this order, the petition is allowed. The impugned order dated 22.05.2019 is set aside. The petitioner is ordered

to be reinstated to service with all consequential benefits including pay, allowances and seniority.

38. The appointing authority is at liberty to deal with the petitioner according to the final orders that may be passed on reinvestigation ordered by the Lok Adalat vide order dated 10.02.2018 or till such time the order stands.

39. The observations made in paragraph 25 above are remitted to the Society for Centralized Recruitment of Staff in Subordinate Courts (SSSC) for its consideration.

40. The underlined portion in paragraph 36 supra is remitted to the High Court for its consideration on the administrative/recruitment side in case deficiencies are found in the existing applications forms and affidavits and in columns requiring disclosure of criminal background to cover a wide range of queries.

22.10.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>