

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

1. CWP No. 20007 of 2017 (O&M)

Jitender **....Petitioner**
versus

State of Haryana and others **..Respondents**

2. CWP No. 20081 of 2017 (O&M)

Vikash **....Petitioner**
versus

State of Haryana and others **..Respondents**

3. CWP No. 20197 of 2017 (O&M)

Anil Kumar **....Petitioner**
versus

State of Haryana and others **..Respondents**

4. CWP No. 25793 of 2017 (O&M)

Rahul **....Petitioner**
versus

State of Haryana and others **..Respondents**

Date of Decision:09.01.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.S. Gopera, Advocate
for the applicants-petitioner (s) in
CWP No. 20007, 20081 and 20197 of 2017

Mr. Rajesh Goyal, Advocate
for the petitioner in CWP No. 25793-2017

Ms. Palika Monga, DAG Haryana

RITU BAHRI, J.

C.M. No. 16590-2018

The application is allowed.

Accordingly, replication along with Annexures P-9 to P-11 are

taken on record.

CWP No. 20007 of 2017 and connected matters

The above said four petitions, as noted above, are being disposed of by this common judgment, having arisen out of the impugned order dated 28.07.2017, as common questions of law and facts are involved therein. However, for the facility of reference, the facts are being taken from CWP No. 20007-2017.

The facts in brief are that on 19.07.2015, Haryana Staff Selection Commission advertised 5000 posts of Male Constable (General Duty) along with several other posts. As per advertisement, the selection process consists of Physical Screening Test, Knowledge Test, Physical Measurement Test. Thereafter, the interview and the personality test was to be held of the candidates on the basis of their combined scores in Physical Screening Test + Knowledge Test + Physical Measurement Test upto 03 times the number of vacancies.

Being fully eligible, the petitioner applied for the above said post under Category No. 1 for the post of Male Constable (General Duty). On the basis of interview cum personality test, Physical Screening Test, Knowledge Test & Physical Measurement Test, the petitioner was selected for the above post and the roll number of the petitioner was shown in the category of EBPGC (Annexure P-3). On 24.06.2017 itself, the result was declared and the message was flashed through the concerned police stations to inform the selected candidates to reach at Madhuban immediately. All the selected candidates gathered at Madhuban and were handed over an attestation form to be filled in there and then.

At the time of filling up of the attestation form, the petitioner

had not filled information regarding his involvement in F.I.R NO. 30 dated 14.03.20110 under Sections 323/324/34 IPC at Police Station Baund Kalan on the assumption that he had already been acquitted vide judgment dated 27.11.2013.

Thereafter, the petitioner received a letter dated 28.07.2017 denying him appointment to the post of Constable (General Duty) in Haryana Police on the ground that he did not disclose the important information in his verification and attestation form, regarding registration of F.I.R against him. The non-disclosure of such information leads to disqualification of candidature out rightly under Rule 12.18 (2) of the Punjab Police (Haryana Amendment) Rules, 2015 (Annexure P-6).

Learned counsel for the petitioner at the very outset contends that at the time of filling the column on 24.06.2017, there was no stigma of pendency of any criminal case against the petitioner and in such view of situation, Rule 12.18 (2) should not have its strict applicability. The plea taken by the respondent in denying the appointment to the petitioner is hyper technical.

Reference has been made to a judgment of this Court in a case of ***Shri Bhagwan vs. The Director General of Police, Haryana and another, passed in CWP No. 14462-2013, decided on 05.08.2015 (Annexure P-11)*** wherein also the petitioner was not considered for appointment to the post of General Duty Constable despite having been selected, on the ground that the petitioner was implicated in F.I.R No. 330 under Sections 323/324/34 and was not honorably acquitted. The writ petition was allowed and the operative part of the judgment reads as under:-

“No doubt that on perusal of judgments dated 24.4.1995 and

15.9.2004 (Annexures P-3 and P-4) charges against the petitioner, have not been proved, as in one case the victim had compromised and in another case the witness turned hostile but the fact remains that the petitioner has not been convicted. The Haryana Government instructions dated 2.7.2007 (Annexure P-5) and clarification dated 13.11.2007 (Annexure P-6) wherein the Director General of Police in a similarly situated case, although not relating to the same selection, in response to the query to the Chairman Selection Board constituted for selecting the candidates, clarified that the candidates who were involved in criminal cases stand acquitted at the time of declaration of selection list can be considered for appointment, even if they had not disclosed the factum of facing trial or acquittal in the particular column of application form.

The aforementioned instructions are still in vogue and have not been withdrawn as is evident from the averments in the written statement.

*The Hon'ble Supreme Court in Civil Appeal No. 1403 of 2007 titled as **Commissioner of Police and others Vs. Sandeep Kumar** wherein in similar circumstances the candidate was denied appointment because of non-disclosure of the information held that since the candidate had been acquitted and the instance was of 20 years back, therefore, non-disclosure would not be detriment in seeking appointment.*

*There is another aspect of the matter a Division Bench of this Court in CWP No. 4452 of 2008 titled in **Amit Kumar Vs. State of Haryana and others** decided on 15.5.2008 on going through the order of acquittal passed by the trial Court, proceeded to direct the*

respondents to grant the appointment to the post of Constable when the petitioner was found to be honourably acquitted . Though, the present case is not of honourable acquittal, but the fact remains, that since the accused victim and the witnesses have compromised/ turned hostile the prosecution would not have been able to prove alleged charges and in such situation the petitioner would have been honourably acquitted, had the matter been tried on merits. ”

On the other hand, learned State counsel has argued that the impugned order has rightly been passed, as in the present case, the petitioner was involved in criminal case and he did not disclose the said information in the above said attestation form where it was specifically asked and replied 'No' to all the above questions asked from him. The very purpose of disclosure of information in attestation form is to know and gather the complete information regarding the candidate in order to ascertain whether the said candidate is fit for police service or not. Non-disclosure of desired information amounts to misconduct which tarnish the image/character of a candidate and makes him unfit for a disciplined force like police.

Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***U.T. Chandigarh and others v. Pardeep Kumar and others, 2018 (1) SCT 394*** wherein respondents were declared successful in the recruitment for the post of Constable (Executive) in Chandigarh Police after clearing the Physical Efficiency Test, Physical Measurement Test, written test and interview. They were denied employment on the ground that respondents have been prosecuted in a criminal trial for the offences under Section 323/506/34 IPC and were acquitted by the trial Court on 29.01.2010 giving them the benefit of doubt. The appeal was allowed and the

it has been observed as under:-

“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character.

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasonings for their acquittal and took decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per guideline 2(A)(b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

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.

Heard learned counsel for the parties.

The question for consideration before this Court would be whether the petitioner can be denied appointment to the post of Male Constable (General Duty) on the ground that he had not disclosed the information in his attestation form regarding his acquittal in the criminal trial registered against him.

The case of the petitioner is squarely covered with the judgment passed in ***Shri Bhagwan's case (supra)***, as in that case reference has been made to the instructions issued by the Haryana Government dated 2.7.2007 and clarification dated 13.11.2007 wherein the Director General of Police in a similarly situated case, although not relating to the same selection, in response to the query to the Chairman Selection Board constituted for selecting the candidates, clarified that the candidates who were involved in criminal cases stand acquitted at the time of declaration of selection list can be considered for appointment, even if they had not disclosed the factum of facing trial or acquittal in the particular column of application form.

Learned State counsel has not disputed the above said instruction and clarification issued by State of Haryana. Thus, the judgment cited by learned State counsel will not be applicable to the facts of the present case.

Reference at this stage can further be made to a judgment passed by this Court in a case of ***Krishan Kumar vs. State of Haryana and others, passed in CWP No. 13138-2018, decided on 23.05.2018*** wherein the petitioner applied for the post of Constable and was cleared for appointment but his candidature was rejected during the process of verification of character on the ground that he had been involved in a murder case, even though he had been acquitted therein. The Court dismissed the writ petition by dealing with Rule 12.18 of the Punjab Police Rules, 1934.

In the facts of the present case, the petitioner case does not fall under Rule 12.18 (3) (e). Rule 12.18 of Rules 1934 reads as under:-

“12.18: Verification of character and antecedents:-

(1) The appointing authority shall send the verification forms of candidates recommended for appointment by the Haryana Staff Selection Commission to the district police and Criminal Investigation Department with a copy to the District Magistrate for the verification of character and antecedents, as per Form No. 12.18 and Government instructions issued from time to time on the subject.

2) The candidate shall disclose the fact regarding registration of FIR or criminal complaint against him for any offence under any law along-with the current status of such case in application form and verification cum attestation form irrespective of the final outcome of the case. Non-disclosure of such information shall lead to disqualification of the candidature outrightly, solely on this ground:

Provided that where a candidate, who as a juvenile had earlier

come in conflict with law and was dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, shall not suffer any disqualification on account of non-disclosure of this fact either in application form or verification cum attestation form.

(3) Where the appointing authority upon verification of character and antecedents of the candidate recommended for appointment comes to know that criminal proceedings against a candidate is in progress and the status of the case is reported to be either under investigation or challaned or cancelled or sent untraced or withdrawn or under trial or has either been convicted or acquitted or the candidate has preferred appeal against the order of the court; the appointing authority upon verification shall deal with the cases of candidates reported to have criminal cases registered against them and to the matters connected therewith as stated hereinafter;

(a) Where, a candidate is found to have been convicted for an offence involving moral turpitude or punishable with imprisonment for three years or more, shall not be considered for appointment.

(b) Where charges have been framed against a candidate for offence(s) involving moral turpitude or which is punishable with imprisonment of three years or more, shall also not be considered for appointment.

(c) Where, the candidate has disclosed the fact regarding registration of criminal case as described under sub-rule (2)

above, and where the status of any case at the time of verification of antecedents of the candidate by local Police is found to be either as 'withdrawn by the State Government' or 'cancelled' or 'sent untraced' or 'acquitted' for any offence, under any law, such candidate shall be considered for appointment in Haryana Police:

(d) Where the 'cancellation report' or 'an untraced report' in a case against a candidate has been submitted by the investigating agency in the competent court of law, the appointment shall be offered only if approval / acceptance of such cancellation or untraced report has been accorded by the trial Court.

(e) Where the candidate has been acquitted in offences related to sovereignty of the State or national integrity i.e. spying against national interest / waging war against the State/act of terrorism/communal disturbance/smuggling of arms, ammunition or Narcotic Drugs & Psychotropic Substances or counterfeit currency etc. besides heinous crimes e.g. murder, rape, dacoity, robbery, kidnapping for ransom, acid attacks, human trafficking, Protection of Child from Sexual Offences Act, 2012 or Prevention of Corruption Act, 1988 etc., 'on technical grounds' i.e. where, in the opinion of the Court the star/material prosecution witnesses have either been killed or have died or remained untraced or turned hostile or won over and the candidate has been acquitted on account of aforementioned circumstances; such candidates shall not be considered for

appointment.

(4) If it is ever revealed that a candidate has got appointment either by concealment of facts or by furnishing false or wrong information or by submitting fake or forged document / certificate, he shall be discharged from the service by the appointing authority from the date of appointment, summarily i.e. without holding a regular disciplinary proceedings, treating him ineligible for service and salary paid to him may also ordered to be recovered.”

In the fact of the present case, at the time of filling of attestation form, the petitioner already stood acquitted in F.I.R NO. 30 dated 14.03.2010 under Sections 323/324/34 IPC, vide judgment dated 27.11.2013. The offence under under Sections 323/324/34 IPC do not involve moral turpitude as per Rule 12.18 of Rules 1934. Hence, the petitioners had a right to be considered for appointment to the post of Male Constable (General Duty).

Applying the ratio of ***Bhagwan Dass case (supra)*** and keeping in view instructions issued by the Haryana Government dated 2.7.2007 and clarification dated 13.11.2007, the present writ petitions are allowed. Order dated 28.07.2017 (Annexure P-16) is set aside. The respondents are directed to issue appointment letter to the petitioners, within a period of two months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

09.01.2019

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No