

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

**CWP-26301-2015 (O&M)
Date of decision : 10.01.2019**

Ranjit Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A.S. Manaise, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of the order dated 23.06.2015 (Annexure P-12), passed by respondent No.3, whereby, the petitioner's case for appointment to the post of Constable was declined on the ground of pendency of a criminal case against him.

It is contended that in pursuance of Advertisement dated Nil (Annexure P-1), the petitioner applied, participated in the selection process and was ultimately selected as Constable in District Jalandhar Rural. Thereafter, respondent No.3 sought character verification report of the petitioner from SSP, Batala. In response thereto, SSP Batala issued police character certificate on 17.11.2012 (Annexure P-5), stating therein that the petitioner was an accused in FIR No.21 dated 31.03.2011, registered under Section 307 read with Section 34 of the Indian Penal Code and Sections 25 & 27 of the Arms Act, 1959, at P.S. Fatehgarh Churian, Batala but the

petitioner was found innocent therein and cancellation report had been prepared by the police in the said FIR. Thereafter, the petitioner was called on 07.07.2012 to appear before respondent No.3 for allotment of constabulary number. Accordingly, the petitioner appeared before respondent No.3 who asked him to furnish the order of the Court accepting the cancellation report. Thereafter, the petitioner submitted order dated 29.01.2014 (Annexure P-6) passed by learned JMIC, Batala, whereby, the cancellation report filed in FIR No.21 (ibid) stood accepted. Despite the same, the petitioner was not issued constabulary number. Thereafter, the petitioner submitted representation dated 26.03.2014 (Annexure P-7) and legal notice dated 21.07.2014 (Annexure P-9) but to no avail. Ultimately, he approached this Court by way of CWP-20097-2014, which was disposed of vide judgment dated 12.03.2015 (Annexure P-11), with a direction to the respondents to decide the claim of the petitioner as set out in legal notice (Annexure P-9). In compliance thereof, impugned order dated 23.06.2015 (Annexure P-12) has been passed.

It is contended that as per column No.14 of the application, the candidates were required to disclose the information regarding pendency of any criminal case against them. The petitioner had applied for the post in question in September, 2011, whereas, the last date for submissions of applications was 17.10.2011. Though, the petitioner had been nominated as an accused in FIR No.21 (ibid), but cancellation report had already been prepared by the police on 21.08.2011, prior to the date of filling up of the application form. Accordingly, at the time of filling up of application form, column No.14 had been left blank, wherein, the information had to be

disclosed regarding pendency of any criminal case. The cancellation was, however, accepted on 29.01.2014 (Annexure P-6). The case of the petitioner has been declined vide order Annexure P-12 only on the ground that as per the policy, only the persons who had been acquitted prior to the date of submission of the application and those who had been acquitted within 6 months of the declaration of result, were to be considered and not those who had been acquitted subsequently. It is, therefore, contended that due to delay in acceptance of the cancellation report, the petitioner has been made to suffer.

On the other hand, learned State counsel submits that the petitioner concealed the factum of his involvement in a criminal case at the time of submission of the application form. As per record, the I.O. inquired into the matter and as both the parties had arrived at a compromise, he submitted a report on 21.08.2011 seeking approval from the senior officers to submit cancellation report in the matter. However, the then SSP (Detective) Batala observed that since the incident actually took place and since a compromise had been effected between the parties, an untraced report instead of cancellation report should be submitted. Accordingly, an untraced report was prepared and submitted in the Court of learned JMJC, Batala on 10.09.2012. However, learned Court refused to accept the untraced report and directed the police to file challan. On further investigation, it was found that the offence under Section 307 IPC was not made out as the shot was fired accidentally/negligently, due to mishandling of the firearm by Amarjit Singh. Therefore, offence under Sections 336/34 IPC and 25 of Arms Act was found to have been committed. On

29.10.2012, Bachittar Singh, complainant in the FIR case, produced a written compromise before the I.O. to show that a compromise had been effected. Ultimately, the I.O. submitted cancellation report dated 31.10.2012 under Section 173 Cr.P.C, which was accepted by the learned Court on 29.01.2014. It is further submitted that as a general policy, it was decided that those candidates who stood acquitted before the completion of the recruitment process (i.e. declaration of result + six months validity of waiting list) may be appointed. However, the case of the petitioner being not covered under the said policy, was rightly rejected.

Heard.

It is to be noticed that the petitioner was not given appointment on the ground that he had not reflected the factum of the FIR pending against him on the date of submission of the application. The last date for submission of the applications was 17.10.2011. There is substance in the argument of learned counsel for the petitioner that after the I.O. Recorded case diary No.13 on 21.08.2011 to the effect that a cancellation report was required to be submitted in the case, the petitioner had a bona fide belief that he was no longer an accused in the FIR and was a person with clean antecedents. On the basis thereof, he filled in the particulars and never had the intention to conceal the facts. The untraced report submitted by the prosecution was returned in the first instance and further inquiry was ordered to be conducted. Upon completion of the second inquiry, again a cancellation report was prepared on 31.10.2012 which was ultimately accepted by the competent Court on 29.01.2014.

The controversy in hand is squarely covered by the ratio of law

laid down by Hon'ble the Supreme Court in ***Avtar Singh Vs. Union of India, 2016(7) JT 300***, which reads thus:-

“21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. *The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to*

conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

From the perusal of the above, it is evident that even suppression of a material fact is immaterial if it does not affect adversely the fitness of an incumbent for the post in question. The FIR in question already stood cancelled on 21.08.2011 by the police on the basis of compromise having been arrived at between the parties. Due to delay in acceptance of cancellation report, the petitioner cannot be prejudiced.

In para No.13 of the reply, the respondents have admitted that one Jatinder Singh s/o Resham Singh was appointed as Constable despite pendency of two FIRs against him as stated in Annexure P-14. The case of the petitioner is at the better footing than the said Jatinder Singh as the FIR against the petitioner had already been cancelled by the police on 21.08.2011.

In view of the above facts and circumstances, this Court feels that the order of rejection of claim of the petitioner dated 23.06.2015 (Annexure P-12) is unjust and deserves to be set aside. Ordered accordingly.

Allowed in the above terms.

10.01.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No