

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

Date of decision: 15.02.2019

1. CWP No.2042 of 2018 (O&M)

Parveen ...Petitioner

Vs.

State of Haryana & others ...Respondents

2. CWP No.24070 of 2017 (O&M)

Navdeep ...Petitioner

Vs.

State of Haryana & others ...Respondents

3. CWP No.22466 of 2017 (O&M)

Shyam Sunder ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.K.Nehra, Advocate, for the petitioners
 in CWP No.2042 of 2018 and CWP No.24070 of 2017.

Mr. G.S.Gopera, Advocate, for the petitioner
 in CWP No.22466 of 2017.

Mr. Harish Rathee, Sr. DAG, Haryana, and
 Ms. Shruti Jain Goyal, DAG, Haryana for the respondents.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the three writ petitions i.e. (i) CWP No.2042 of 2018 filed by Parveen; (ii) CWP No.24070 of 2017 by Navdeep, and (iii) CWP No.22466 of 2017 by Shyam Sunder, all three challenging similar impugned order/s, whereby the their candidature and selection were cancelled on the ground of concealment and suppression

of material facts or for submitting false information in the verification form submitted by them in response to questions asked as to whether they had ever been criminally prosecuted, arrested or was criminal case pending against them. Since these petitions raise common question of law and of fact, they can be disposed of by a common judgment. The learned counsel have consented to this course being adopted.

2. For ease of reference, the facts are taken from CWP No.2042 of 2018. The petitioner, like the two other, applied for recruitment on the post of Constable (Male) under SC or other reserved category in a process initiated by the Haryana Staff Selection Commission by a public advertisement No.08/2015 dated 19.07.2015.

3. Admittedly, in the application-cum-registration form (at the time of applying online), the petitioners were required to provide information as to whether they were ever “...*convicted for an offence OR charges have been framed involving moral turpitude or punishable with imprisonment for 3 years or more?*” to which the petitioners replied- “No”[for short ‘petitioner’]. In the final result declared by the Commission, the petitioner was declared successful and was allocated to the office of respondent No.05, Comdt 4thBn/HAP, Haryana for allotment of regimental/constabulary number after completing all the codal formalities. At this stage, the petitioner filled and signed his character and antecedent form on 24.06.2017. In this verification form, column 13 required filling answers to question asked on character and antecedents. The following information was sought:

(A) *Have you ever been arrested?*

(B) *Have you ever been prosecuted?*

(C) *Have you ever been kept under detention?*

(E) *Have you ever been fined by a court of law?*

(F) *Have you ever been convicted by a court of Law for any offence?*

The petitioner tick marked an emphatic “No” in response to all the above questions.

4. However, as per the verification report sent by SP/Hansi, it was revealed that an FIR No.118 of 16.04.2011 u/s 148,149,324,452 506 IPC at PS-Sadar Hansi, District Hisar was registered against the petitioner. It was further stated in the police report that the petitioner was convicted by the Court of Smt. Monika Jangra, JMIC, Hansi on 03.10.2015 with imprisonment of 02 years and with fine of Rs.500/-, against which the petitioner appealed and was acquitted on 08.11.2016 by the court of the learned Additional Sessions Judge, Hisar since the **material witness had turned hostile**. The learned Court clearly mentioned in the order that:-*“Through separate joint statement appellants-accused Dalbir, Deepu, **Parveen** (petitioner in CWP No.2042 of 2018), Sandeep and Kitabo stated: “We have compromised the subject matter of criminal appeal with the complainant Sh. Anil. Therefore, we may be allowed to compound the subject matter”.*

5. The petitioner was accused of intentionally concealing material fact of previous criminal case in both the application form on 29.09.2015 and then in the character and antecedent form on 24.06.2017. As per recital in the application form, he was required to disclose information whether charges have been framed against him for an offence **punishable with imprisonment for 3 years or more**. The offence under Section 324 of IPC of which the petitioner was charged is

punishable with a maximum sentence of 3 years. Section 324 IPC is enacted as under:

“Voluntarily causing hurt by dangerous weapons or means:

Voluntarily causes hurt by means of any instrument for shooting or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

6. The petitioner wrote “NO” in response to all questions asked of him in the application form and the verification form whereas FIR No.118 dated 16.04.2011 was registered against him before filling up the form.

7. Respondent No.5, Commandant 4thBn/HAP passed the order dated 28.07.2017 deciding that the petitioner cannot be offered appointment upon a full consideration of his case because of concealment while relying on judgments delivered by this Court and the Supreme Court.

8. Feeling aggrieved, the petitioner submitted a representation before respondent No.3 - Director General of Police, Haryana, Punchkula and that was rejected being devoid of merit during the pendency of the present writ petition vide order dated 06.07.2018. The Director General of Police, Haryana held in appeal concurring with the Commandant that the petitioner should not be allotted constabulary number and he be not

allowed to wear police number as his involvement in criminal activities in the past may sully the image of the police department. He also observed in his order that the 'representationist' cannot be trusted with the responsibility of protecting the general public and especially the weaker sections of society including women, children and elderly people. If he again indulges in such activities, the police department will suffer a loss of face and its image will go down drastically in the eyes of the public.

9. A perusal of the impugned order shows that the authority competent to pass orders being Respondent No.5 has rejected the case of the petitioner for consideration for appointment by citing Rule 12.18(2) of Punjab Police Rules and the instructions dated 30.04.2014 issued by Director General of Police, Haryana and the judicial precedents on the issue, that is, judgments in *Commissioner of Police, New Delhi & another Vs. Mehar Singh*, (2013) 7 SCC 685 (Annex R-2) and the Division Bench Judgment of this Court in *CWP No.499 of 2005 titled 'Ramesh Kumar Vs. State of Haryana'* decided on 22.09.2005.

10. I have heard learned counsel for the parties at considerable length and have also gone through the pleadings and judgments referred to by the learned counsel representing the parties. However, before examining the judgments and their applicability, it would be necessary to reproduce the relevant rules of recruitment as contained in Vol. II of Punjab Police Rules, 1934, as applicable to the State of Haryana, which read as under:

“12.12 *Supervision of recruitment.- The standard of performance and the reputation of the whole police force depend*

above all upon the quality of its constables. Standards for recruits are laid down in the rules which follow, but, over and above, the constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enroll themselves.

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12.14. Recruits - Status of --(1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment.

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Rule 12.18 as amended vide notification dated 18.06.2002:

Recruits verification of character:

*Verification rolls of selected candidates for the post of Constable shall be sent to the local police and criminal investigating department with a copy to the concerned District Magistrate and character verification shall be done as per the extant Government instructions on the subject. **Candidate who has been convicted for any offence under any law, under moral turpitude, as specified in the Govt. instructions from time to time, shall not be considered for appointment as Constable under these rules.***

A perusal of the rules extracted above would underscore the expected standard of performance and reputation desired of the entire police force depends upon the quality of its constables. The emphasis is on good character and suitability and of bearing a “thoroughly good stamp”.

11. Rule 12.18 of the Rules 1934 was substantially amended vide Punjab Police (Haryana Amendment) Rules, 2015, notified on 18.06.2015. This aspect is of utmost importance in deciding these cases as it changes the entire aspect. The same is reproduced as below:

“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.”

12. In *Mehar Singh’s* case (supra), the Supreme Court considered the implications of the expression ‘honourable acquittal’ in the context of administrative law:

*“21. The expression ‘honourable acquittal’ was considered by this Court in **S. Samuthiram**. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in **Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal**, where in somewhat similar fact situation, this Court upheld a bank’s action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honorable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions ‘honorable acquittal’, ‘acquitted of blame’ and ‘fully exonerated’ are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression ‘honorably acquitted’. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honorably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep*

persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honorable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

28. The police force is a disciplined force. Its shoulders have the great responsibility of maintaining Law & order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force... (underlined for emphasis)

13. In Avtar Singh Vs. Union of India, (2016) 8 SCC 471 (text at Annexure- R-3) the three Judges' Bench of the Supreme Court decided a reference to larger bench to resolve the cleavage of opinion in various decisions of division benches of the Supreme Court on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case in the context of employment in public service under the State. After considering a gamut

of Judgments on the subject and their analysis, the conclusions were culled out in paragraph 30 of the Judgment which is reproduced below to understand the case further:

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the

employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.”

14. In all the afore-mentioned judgments, the relevant Rules/Instructions/standing orders have been considered as applicable to service and on the language in which the forms for verification of character and antecedents and self Attestation Form are couched which forms the foundation of these binding opinions of the Supreme Court. The ratio of these judgments as succinctly culled out in paragraph 30 of *Avtar Singh case (supra)*, and those are equally applicable to the case in hand inasmuch as the acquittal of the petitioner in appeal was the result of compromise between the parties which would certainly attract the provisions of Sub-Rule 3(e) of Rule 12.18 of PPR, 1934 in its application to Haryana. However, this would form only the second ground of rejection of appointment, the first and foremost ground being the complete statutory bar imposed by Rule 12.18(2) of the Punjab Police Rules as applicable to Haryana without any exception providing that active non-disclosure of the factum regarding registration of criminal case (FIR) irrespective of its outcome in the application form and verification form shall lead to outright disqualification of the candidature solely on this ground. Truthfulness and honesty of disclosure is of paramount importance for enlistment as a police officer and this underscores the virtue engrafted in the amendment as a State policy decision. The essence is thus not really the nature of the criminal case and whether it involved major or minor offences or that the result of the trial was secured by

default but the essence lies in not speaking the truth and because an untruthful man should not wear a police uniform. That was a false start by the petitioners which must end with Sub rule (2) to Rule 12.18. Speaking a lie is for what amended Rule 12.18 (2) seeks to prevent as a prophylactic to the aberration. Therefore, in view of the facts and circumstances of these cases and the legal position on the proposition under consideration as to the effect of the relevant questions and their answers given by the petitioner/s in the character and antecedent form I am of opinion while paying due regard to the amended Rule 12.18 coming into force on 18.06.2015 prior to the advertisement No.08/2015 dated 19.07.2015 which initiated the recruitment process of selection to the post of Constable (Male) in Haryana State Police, the petitioner/s clearly are not able to cross this threshold and therefore, these petitions deserve rejection on this score alone.

15. In the Registration/Application Form uploaded by the Haryana Staff Selection Commission meant for candidates applying online for the post of Constable there was a clause that asked the following question, to repeat: *“Are you convicted for an offence or charges have been framed involving moral turpitude or punishable with imprisonment of three years or more?”* and that query only asked about conviction and nothing else would not, to my mind, advance the case of the petitioner/s in any way, as argued on their behalf, in the face of the statutory bar in Rule 12.18 (2) of the PPR. The stringent provision in the amended rule must receive strict interpretation which subserves the object of the enactment of maintaining purity of responses as that would be a tangible proof of character and rectitude expected of a policeman in his

service life. Any departure for a candidate who has reached the age of discretion would be in derogation of the clear and unambiguous mandate of the amended rule saving only juveniles who are exempted by the proviso to the rule. Such a rule was not considered in any of the judgments relied upon by the petitioners. These are: Pawan Kumar Vs. State of Uttarkhand & others, 2108 LIC 103 (DB) Uttarkhand High Court and from this Court in Rajesh Vs. Union of India & others, 2016 (4) S.C.T. 364 (SB) this last case dealt with a case of a Constable (General Duty) arising from selection to the Central Industrial Security Force where information was suppressed in the form. I see no vagueness in the verification of character form in this Haryana case in contrast to what the learned single judge found vague in the Attestation Form drafted by the Central Government for PMFs as noticed in *Rajesh case*.

16. To bring out the comparison of the relevant clauses of the two sets of Forms in the questions asked from selected candidates at the time of verification of character and antecedents that in case they said 'Yes' to any of the queries, the material text in *Rajesh* case and the instant case are reproduced one after the other:

"CISF [clause 12(a)]: *"The answer to any of the above mentioned question is 'Yes' give full particulars of the case/arrest/detention/fine/conviction/sentence/ punishment and/or the nature of the case pending in the Court/ University/Educational Authority etc. at the time of filling up this Form"*

"Haryana Police [clause 13(1)]: *"If the answer to any of the above-mentioned questions is 'Yes' give full particulars of the same"*

17. In addition, there is Clause 14 in the Haryana Form which reads: *“Have you ever been convicted by court of any offence? If ‘Yes’ the full particulars of the conviction and the sentences should be given.”*

18. A few facts may be noticed from *Rajesh* case which judgment has been heavily relied upon by Mr. Nehra to bring relief to his clients. The selection was for the year 2011-2012 to the post of Constable (GD) in Central Para Military Forces (CPMFs). Rajesh was selected and offered appointment in CISF. He joined service. Later, it transpired that he did not disclose FIR No.302 dated 03.12.2007, PS Sampla, Rohtak registered against him under Sections 323/325/34 IPC in his Attestation Form at the time of verification of character and antecedents. He was acquitted on 07.04.2008. He was issued notice of termination on 25.07.2013 under Sub Rule (2) of Rule 25 of the CISF Rules, 2001 on the ground of suppression of fact in Attestation Form at Sr. No. 12(b). His services were terminated on 27.07.2013. The appeal failed. He came to Court for reinstatement. It was argued for him:

“(5) Learned counsel for the petitioner submitted that it is true that he was involved in a criminal case in the year 2007. On 07.04.2008, he had been acquitted, whereas the process of election and appointment to the post of Constable (GD) was in the year 2011. Petitioner was selected and appointed in the year 2013. Therefore, the question of suppression whether the petitioner was prosecuted or not may not arise since he has been acquitted. It was further submitted that information sought in the Attestation Form by the authorities from the candidate is not very clear and specific. In other words whether a candidate was prosecuted and acquitted column is not forthcoming. Therefore, there is a confusion whether acquitted persons should state that whether candidate has been prosecuted. Thus, there was no intention of the candidate in not stating in the Attestation Form

that he was prosecuted and acquitted. Whereas there are columns like – have you ever been fined by Court of law or have you ever been convicted by a Court of law for any offence. If such information is to be furnished that if a candidate is acquitted but still he has to answer 'yes', acquittal information is to be furnished, is not forthcoming, even in the last column quoted supra i.e. 'the answer to any of the above mentioned question is 'Yes' give full particulars of the case/arrest/detention/fine conviction/sentence/ punishment etc.' In the absence of 'acquittal' in a case whether a candidate is acquitted of the charges, he is required to give information or not to give information, to that extent, there is a confusion. Had the Attestation Form indicated that if a candidate was prosecuted and acquitted, even then he is required to furnish necessary particulars, then view of the respondents that petitioner has suppressed while filling the Attestation Form, would arise. Therefore, the respondents have terminated the services of the petitioner on the sole ground that he has suppressed the fact that he was prosecuted and acquitted, is incorrect. In support of the petitioner's claim, he has relied on the following decisions:

- i) *Commissioner of Police and others vs. Sandeep Kumar* 2011 (4) SCC 644;
- ii) *Dinesh Kumar vs. State of Haryana and others* 2006 (4) SCT 429;
- iii) *Joginder Singh vs. Union Territory of Chandigarh and others* 2015 (2) SCC 377;
- iv) LPA No. 1059 of 2015 titled as State of Haryana and others vs. Pawan Kumar, decided on 26.5.2016; and
- v) LPA No. 228 of 2015, titled as Central Industrial Security Force and another vs. Yogesh Kumar, decided on 21.7.2015.”

19. The moot question was framed by the Single Judge in *Rajesh* and answered in the same paragraph as follows:

“(11) Whether the petitioner has withheld information relating to prosecution and acquittal in criminal proceedings or not, is the core question. Admittedly, petitioner has not disclosed in the Attestation Form. Whereas reading of the Attestation Form, it speaks of arrested, prosecuted, kept under detention, bound down, fine by court of law, and convicted by a Court of Law for any offence and if it is 'yes', candidate is required to give further particulars of the case / arrest / detention/ fine conviction/ sentence/ punishment. There is no requirement of giving full particulars of the case if a candidate is “acquitted” in a criminal case. Therefore, candidate is under confusion that when he had been acquitted, whether he should furnish the information that he was prosecuted and to give full particulars of the case read with acquittal. In the absence of necessary information to be sought by the authorities in respect of a candidate who has been prosecuted and acquitted, the petitioner cannot be blamed. Therefore, the impugned action of the respondents is arbitrary. Had the respondents sought one word information that candidate has been prosecuted and acquitted in such of those cases to furnish full particulars of the case, then the matter would have been different.

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14.	xx	xx	xx

In the present case Attestation Form do not pose a question to appointed candidate whether appointee was prosecuted and acquitted. Hence to that extent Attestation Form would be vague.”

20. I may record on a point of fact that the Attestation Form reproduced in *Rajesh* in paragraph 3 of the judgment is not on record of the writ file as I discovered when I called for the file from the registry to find the full text of the Form/s. I assume it must have been handed over during hearing and is therefore noticed and accepted as true.

21. Undoubtedly what is common to this case and *Rajesh* is at least, if not all, that the first two of the material queries in the two Forms which ask: ‘*Have you ever been arrested?*’; And, ‘*Have you ever been*

prosecuted?' are the same. The prohibitions against falsity also appear the same and with respect I have found difficulty in finding vagueness as deduced by the learned single judge. All I can say is that the case was decided on its own facts and is distinguishable from the facts of this case. Neither was there a provision like Rule 12.18(2) in *Rajesh*.

22. Most definitely, as far as this case is concerned, the present petitioners were prosecuted when criminal charge was framed by court. The petitioners pleaded innocence and claimed trial. The trial had commenced. As far as arrest is concerned, I assume they were arrested, but it is not a fact in the pleadings. But one thing is sure that they replied in the negative to these two specific and material queries in the columns (a) and (b) of paragraph 13 of the form. If the answer was "Yes" then there was legal obligation to divulge the full particulars. Those had to be duly mentioned for the consideration of the authorities. There was thus an active and conscious failure to make a truthful disclosure in the Forms and therefore there was violation of rule 12.18(2) of the Rules. Attributing reasons for this may be many from the physical to the psyche, for lack of understanding of the consequences of momentary or impulsive actions taken or from fear of disclosure of what it may entail; the anxiety of securing or losing a career opportunity. There could be convinced that acquittal long ago was of no consequence. But these assumptions are not open to be discussed as redeeming features or a mitigating circumstance to allow entry to service as the amended Rule 12.18 (2) has taken away executive discretion from the hands of the appointing and appellate authority by closing the door of entry and accordingly precious little is left

for the Court to intervene in a case of false declarations and suppression of information.

23. Therefore, those authorities who have passed orders have acted in accordance with law and are within the jurisdiction prescribed by the re-designed rule in rejecting the claims of the petitioners for appointment and allotment of constabulary numbers and the belt. As often said, court is concerned with only the decision-making process but not the decision itself. The process of law was followed in cancellation of selection of the petitioner at the appropriate stage short of appointment. Compassion and sympathy, much that one may have liked to exercise, is out of bounds and not within the court's jurisdiction for it to rashly step out of the confines of the rules only to find some mitigating circumstance to save a livelihood. Or to temper the decision on grounds such as youth, the less serious nature of the offences charged, the fact of acquittal whether 'honourable' or by compromise of parties with witnesses turning hostile, whether moral turpitude is involved or the lack of it etc. to quash the orders and direct respondents to appoint the petitioners or consider doing as much. None of this can be considered to save the petitioners who have themselves to blame by not speaking the truth.

24. Haryana Government has completely overhauled its policy in a sensitive matter of appointments in the police department aimed at curbing dishonest self declarations in Forms from the lowest rung of service onward, to all of them who are entrusted the onerous duties of maintenance of law and order and the life and property of citizens. The rule would go a long way help in cleaning up the public image of a uniformed force from the entry point to service. The Government of

Haryana have apparently done so in the strictest terms by introducing the amending Rule 12.18 (2) stringently for the first time on 18.06.2015 evidently to remove mischief in society and to purify the police department and invigorate it by appointing persons of unimpeachable character in the disciplined force. I do not wish to retard that process by causing interference in the orders passed by the authorities subscribing to the mandate of Rule 12.18 (2).

25. Earlier also, I had an occasion to deal with a similar aspect' that is, whether a candidate who has a history of criminal case/s against him, which might have resulted in his acquittal before being offered appointment is entitled to wield the authority of a State baton in CWP No.18391 of 2012 titled 'Harish Chander Vs. State of Haryana & others' and other connected cases decided on 11.12.2013. *Harish Chander* was denied appointment after selection on the revelation during process of verification of character antecedents that he was involved in criminal cases in the past. Though in Harish Chander's case, a committee has been constituted by the Director General of Police, Haryana to review the earlier instructions dated 02.07.2007 and 13.11.2007 to clarify the issue regarding allotment of constabulary number of selected candidates, who are involved in criminal cases and where applicable to all recruitments, but I proceeded to decide the petitions by observing:

“The next question which arises is whether determination of the suitability of a candidate in the face of background check showing disability or disqualification for being appointed as a constable in a disciplined force can itself and *per se* be subject matter of judicial review, when the decision making process is not said to be lacking in bona fides or is not based on irrelevant, inadmissible and unreasonable considerations, is the larger public

issue arising. A police constable is a representative of the might of the State. It may be that mere suspicion cannot take the place of proof but that principle does not to my mind apply with full vigour to public appointments because no one has an indefeasible right to appointment even after selection. Filtration of the wheat from the chaff is a legitimate endeavour and a wholesome by-product of discharge of public trust and public duty reposed in the those entrusted with the sacred duty to select only such policemen against whom no finger can be lifted or pointed. The principle of standard of proof or degree of suspicion are cognitive processes used to look through the entire man who is up for selection and appointment and I am inclined to think that higher standards of proof/suspicion and levels of toleration do not hold much water in the present scenario when appointments are viewed to the uniformed force. The burden may be light. Here a distinction may have to be kept in mind of demands and expectations from civil service under the State and service in the police force calling for far greater and stringent standards capable of meeting social approval on the touchstone of which society has a right to insist on being governed by the best possible talent paid out of public funds and monitoring their conduct in the business of life and social intercourse. Policemen affect our daily lives. Why start such service with a question mark, with a question a neighbor might ask another neighbour in the village seeking answers but finding none and eventually reconciling themselves on a systems' failure, or that the ruler or misruler has won the day. If such appointments are made there could be scope left of endless discontent and veiled unrest in the community when that man happens to be your neighbour and can lord over your life for three decades.

Notwithstanding, the State has an absolute right to choose its constabulary on its own terms and according to the rules of recruitment. It is a policy matter not to be casually interfered with through court process in writ proceedings under Article 226 of the Constitution in absence of any visible signs of wide arbitrariness, unreasonableness, discrimination or oppressive restriction on employment even in recognition, as it were, of the

right to employment within the content of “right to life” guaranteed as fundamental under Article 21 of the Constitution.”

26. Moreover, I am of opinion that both by direct and necessary implication and the mandate of the statutory obligations in Rule 12.18 (2) of the PPR is such that the express provision has to be read as an inherent part of the Forms from the beginning to the end of the recruitment process.

27. To explain further the moot issue it might be useful to refer to the Supreme Court judgment in Secy., Department of Home Secy., A.P Vs. B. Chinnam Naidu, (2005) 2 SCC 746 on the question of refusal to appoint successful candidate as Constable (Civil) for furnishing false information in the attestation form regarding arrest and pendency of criminal case while filling it up. The Supreme Court found on the language of the columns and what was pointedly asked, the candidate was only required to indicate whether he had been convicted by a court of law or detained under any State/Central preventive detention laws but was not required to indicate whether he was arrested in any case or if any case was pending against him. Then it could not be said that the respondent had made a false declaration or had suppressed material information. Hence, the action of the authorities in not permitting him to join training due to suppression of truth was not sustainable. However, the Court at the same time observed, cautioning that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. This case is consistent with the impugned orders of cancellation of the candidature of the petitioners and has to be read in favour of the respondent department even if we, for a

moment, forget about Rule 12.18 (2) of the rules. The poser in clause 13 (1) (b) in the attestation and verification forms in the present case asks candidate if he has ever been “prosecuted” which is not a word found or used in the forms in *B. Chinnam Naidu* case.

28. Recounting a binding precedent on the point close home in case Devendra Kumar Vs. State of Uttranchal & others (2013) 9 SCC 363, the Supreme Court examined the validity of the termination of a Constable who had obtained employment by suppressing material facts at the time of his appointment. The Court held that suppressing material information itself amounts to moral turpitude, irrespective of the gravity of the offence observed in paragraphs 10 and 22 as follows:

"10. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged...

xx

xx

xx”

22. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and

is a separate and distinct matter altogether than what is involved in the criminal case."

29. Moreover, no judgment has been produced before me on the issue which might enlighten one on the scope, ambit and power and the restrictions placed by the amended rule on the authorities or cases where Rule 12.18 (2) has been directly considered by Court and decided in a particular way. But surely, past precedents prior to amendment can be of little assistance after the rule has come into existence. In none of these cases has the rule been challenged.

30. I have examined these cases, as I was called upon to do, from the narrow angle of Rule 12.18(2) amended by Haryana in 2015 which by itself takes care of the entire case in its wisdom with its emphatic and stringent terms as a policy statement. The limitations on judicial interference in matters of executive policy placed upon this court under Article 226 of the Constitution are well defined in their restrictions and a writ would not issue unless the policy is absurd, palpably unfair and unreasonable or is entirely irrational and fails to qualify those tried and tested tests of sustainability. I find nothing of this kind in the papers placed before me in the case at hand or in the case law cited, to even consider for a moment quashing the impugned orders based on the amended rule and to direct the respondents by a mandamus to employ the petitioners as Constables in Haryana State Police force. Indisputably, they may be innocent of the crime they faced trials for and with their acquittals by competent courts as far as the world is concerned. There may be nothing against them as far as those cases are concerned; howsoever the acquittals were secured by them. But one is not dealing with crime in

these cases but with service law principles and the effect of making false declarations on right of consideration for public employment. Information required in the forms to be filled honestly is not an empty formality. It is meant to judge character. This has nothing really to do with the criminal record or discharge and acquittal. Equity here has no place in the scheme of things for Court to condone acts of petitioners made contrary to rule and regulation. Misrepresentation amounts to fraud. Fraud vitiates all acts. Once the petitioners have deposed and signed verification clause at the foot of the form they are bound by the declaration which is to the effect that *“I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstance which might impair my fitness for employment under the Government”* Petitioner Parveen Kumar signed the declaration on 24.06.2017. The other two did likewise. They are to be seen as persons estopped by conduct from trying to retract from the undertaking. The information they supplied was neither correct not complete.

31. In matters regarding determination of fitness, desirability and suitability of a candidate for appointment to public service, the function lies within the special domain of the Government. And so long as rule has been followed and reasons assigned by the competent authority are proper no interference is warranted. The competent authority in these three cases in the same officer being the Commandant, 4th Bn. HAP, Madhuban, Karnal and I agree with him when he holds the petitioners cannot be considered for allotment of Constabulary number for withholding important information which clearly disentitles them for appointment, as

CWP No.2042 of 2018;
CWP No.24070 of 2017 &
CWP No.22466 of 2017

it marks them out as persons who cannot be trusted to perform their duties with honesty.

32. For what has been said before; and, for the reasons recorded on the effect of Rule 12.18(2) of the PPR amended by Haryana, the writs fail and are dismissed with no order as to costs.

15.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*