

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

**CWP No.28381 of 2017
Date of decision: 17.10.2019**

Arvind

....Petitioner

Versus

State of Haryana and ors.

....Respondent

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. G.S. Gopera, Advocate for Mr. Keshav Gupta, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J. (Oral).

1. Prayer in the writ petition is for the issuance of a writ of certiorari for quashing order Annexure P/5 dated 08.12.2017.
2. Brief facts of the case admitted by counsel for the parties are that the petitioner was selected and appointed as Constable on 13.07.2017 after verification of his antecedents by the department during which it was duly verified that the petitioner was acquitted in case FIR No. 36 dated 17.02.2014 u/s 279/337 IPC, P.S. Nangal Choudhary, District Mohindergarh vide judgment dated 07.02.2015 passed by the Judicial Magistrate 1st Class Narnaul. However, on 08.12.2017 order Annexure P/5 was passed under Rule 12.21 of the Punjab Police Rules, 1934 as applicable to the State of Haryana discharging the petitioner from service on the ground that he had not

disclosed registration of the FIR against him or of his acquittal in the said case in the verification-cum-attestation form.

3. Learned counsel contends that the impugned order is vitiated on account of the same being stigmatic and having been passed without compliance with the principles of natural justice or for that matter the provisions of Rule 12.18 (4) of the Punjab Police Rules, 1934 by conducting summary proceedings before terminating the services of the petitioner. Learned counsel further contends that the petitioner had already been acquitted before his appointment, besides the offences alleged were of trivial nature, therefore mere non disclosure of petitioners involvement in an FIR in which he stood acquitted could not be made the basis for discharging him from service.

4. Learned Counsel relies upon the decision of the Division Bench of Hon'ble the Uttarakhand High Court in case titled as Pawan Kumar versus State of Uttarakhand and others 2018 LIC 103 to contend that as the involvement of the petitioner was in an FIR involving a trivial offences it did not tarnish his credentials rendering him not likely to be a good officer therefore mere non disclosure was not fatal and the petitioner deserved reinstatement especially since he had been acquitted also. Relevant extract of the decision in **Pawan Kumar's** case (supra) is reproduced as under :

14. In the Special Appeal, thus filed, the learned counsel for the appellant reiterated the ground which was pressed in the writ petition. Besides the ground that since there is an order of acquittal dated 29.10.2007, it ought to have been taken into consideration before passing the order of removal dated 01.01.2008, as prior to the order, there already exists an order of acquittal. The appellant in the grounds has also taken a plea that as per the view expressed by the Hon'ble Apex Court, no doubt concealment of facts by a candidate, seeking a public appointment is a serious issue, but simultaneously it has been held that the youths, who extended the candidature and as are the aspirants before the employment, while filling their application do not disclosed about the facts, related to the criminal antecedent which was registered at the stage when they are either the students or in the youth hood. The Hon'ble Apex Court observed that

such pendency of a criminal proceeding against a candidate should not be taken as to be such a serious issue which would oust a candidate from the area of consideration for the public employment.

*15. During the course of the arguments, the learned counsel for the appellant placed reliance on a judgment of Hon'ble Apex Court as reported in **2016 (8) SCC 471 in Avtar Singh v. Union of India**. The Hon'ble Apex Court in the aforesaid judgment has held that placing of the information pertaining to the criminal cases, no doubt it mandates to furnishing of the correct facts, but the Court looking to the intention as to why the aforesaid verification clause is required has held that the purpose of the said clause that a suitable candidate is appointed. It is a clause which has been incorporated to verify the antecedents which is necessary to find out the fitness of a candidate and the information thus given to the employer by the candidate of conviction, acquittal or pendency, it should be fair and there should not be any suppression or false mentions of the information.*

16. Hence the Hon'ble Apex Court held that the concealment of facts and information in a criminal cases where the conviction and acquittal had already been recorded before filling of the application and such facts later comes to the knowledge of the employer, it would be for the employer to come to the conclusion that the suppression of material facts for the purposes of appointment was material or not and the employer will have to rationally apply his mind as to how far the concealment would affect the fitness of the incumbent and for the said purpose, it has to record the reasons and when has the power to condone the lapses, which would be depending on each cases independently.

17. The Hon'ble Apex Court had also held that where the cases of a criminal natures which are trifled in nature, which relates to an incident which has happened at the spur of the moment or as consequence of heated moments during the youth hood and such an offence which is not disclosed, should not render the incumbent to be unfit, because such non furnishing of information may be due to ignorance or because of a fear that the employer may at his discretion ignoring the facts to be true or false information by condoning it, if it is not vital and may take it as to be the basis for terminating the service, or rending the candidature as non suited.

18. The Hon'ble Apex Court in its para Nos. 35 and 36 of Avtar Singh (Supra) as observed above is quoted hereunder:-

"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of powers has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering, post/nature of duties/services and power has to be exercised on due consideration of various aspects."

19. The Hon'ble Apex Court in its para 38 of the said judgment has laid down the modalities as to under what circumstances such a concealment of facts could be fatal to itself for appointment. The liability of the candidate

on his or her appointment, this Court feels that the nature of the concealment or non-disclosure of material fact was not so fatal because the offence being trifle in nature which has happened will not tarnish the credentials and which not a case of moral turpitude of the appellant, who has otherwise appointed in accordance with the Rules.”

5. Learned Senior DAG, Haryana, has not been able to controvert the aforementioned decision rather has fairly conceded that the impugned order is unsustainable and could not have been passed under Rule 12.21 of the Punjab Police Rules, 1934 for want of conduct of departmental proceedings or for that matter giving any notice or conducting summary proceedings under Rule 12.18 (4) of the Punjab Police Rules, 1934.

6. Since the involvement of the petitioner was in an FIR involving a trivial offences besides the petitioner was acquitted of the offences registered against him in said FIR, concealment / non-disclosure of said facts is not fatal and the same will not tarnish his credentials. Moreover, it is not a case involving moral turpitude besides the petitioner was otherwise appointed in accordance with the Rules after verification of his antecedents by the department during which it was duly verified that the petitioner was acquitted in case FIR No. 36 dated 17.02.2014 u/s 279/337 IPC, P.S. Nangal Choudhary, District Mohindergarh vide judgment dated 07.02.2015 passed by the Judicial Magistrate 1st Class Narnaul.

7. In the light of the position as noted above the writ petition is allowed. Impugned order Annexure P/5 dated 8.12.2017 is quashed. The petitioner is held entitled to reinstatement in service with continuity of service and all other consequential benefits except salary for the intervening period.

October 17, 2019

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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

(B.S. Walia)
Judge