

CWP-7659-2018 (O&M)

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

**CWP-7659-2018 (O&M)
Date of decision : 11.07.2019**

Praveen Kumar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

CM-9820-2019

Replication on behalf of the petitioner filed along with the application is taken on record, subject to all just exceptions.

CM stands disposed of.

MAIN CASE

Challenge in the present writ petition is for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 16.03.2017 (Annexure P-7), passed by respondent No.3, whereby the appointment of the petitioner as Constable has been rejected.

Learned counsel for the petitioner submitted that in pursuance to the advertisement dated 19.07.2015 for filling up the post of Constable, the petitioner applied under the category of dependent of Ex Serviceman (Scheduled Caste) and remained successful in the physical test, written examination as well as in the interview. After selection to the post of

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Constable, respondent No.3 sent a letter (Annexure P-5) to the District Magistrate, Mahendergarh, for verification of the character and antecedents and in response to the letter, Station House Officer, Police Station, Kanina, submitted a report that an FIR No.184 dated 08.07.2013 under Section 394 of Indian Penal Code, was registered against the petitioner. He has, however, vide judgment dated 09.03.2016, been acquitted. Owing to non-disclosure of registration of the FIR or criminal case in the application form, vide impugned order dated 16.03.2017 (Annexure P-7), appointment of the petitioner for constable has been rejected.

It was next contended that the acquittal was honourable and the reasoning assigned in the impugned order declining the appointment is neither here and there. In support of contentions, reliance has been laid down to the ratio decidendi culled out by Hon'ble the Supreme Court in **“Joginder Singh V/s Union Territory of Chandigarh and others” 2015 (1) SCT 87**, wherein, if a person, who fails to give information with regard to the pendency of the criminal case, has been acquitted at the time of physical test, it would not amount to suppression of the fact and denying the appointment. On similar lines, of this Court in **“Ramnik Kumar and another V/s State of Haryana and others” 2008 (4) SCT 657**; **“Bhag Singh V/s Punjab & Sind Bank” 2006 (1) SCT 175**; **LPA No.1059 of 2015** titled as **“The State of Haryana and others V/s Pawan Kumar”** decided on 26.05.2016 ; **CWP No.9533 of 2014** titled as **“Rajesh V/s Union of India and others”** decided on 06.09.2016.

Per contra, Mr. Harish Nain, AAG, Haryana, submitted that acquittal as per judgment, was not honourable, but on the basis of benefit of doubt as it was a case of snatching. In support of his contentions, relies

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upon the ratio decidendi culled out by Hon'ble the Supreme Court in **“Avtar Singh V/s Union of India and others” 2016 (3) SCT 672**, wherein guidelines have been laid down. The case of the petitioner, thus, covered under guideline No.4(c), regarding suppression or false information, thus, submits that the impugned order is in consonance with the aforementioned judgment and do not call for interference. He also relied upon the judgment rendered in **“Devendra Kumar V/s State of Uttranachal and others” 2013 (4) SCT 482** to contend that suppression of the information in the application form, itself, is a case of moral turpitude and services of the delinquent can always be terminated, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for parties, appraised the paper book as well the judgments cited supra and of the view that there is force and merit in the submissions of Mr. Jain.

It would be apt to reproduce para No.10 of the order dated 09.03.2016 of the Criminal Court, which reads as under:-

"10. It is apposite to mention that alleged offence was stated to be committed on Bhagot-Sehlang road wherein, admittedly, ample public person was present, but none of them was joined by PW6 SI Mahabir Singh, Investigating Officer, who has categorically admitted the same. Hence, the testimony of formal witnesses without corroboration from any independent public witness is not sufficient to hold the accused guilty for offence alleged. It would not be indispensable to mention that PW6 SI Mahabir Singh, Investigating Officer, has admitted that recovered ₹700/- could not be produced in the Court. Since, it is alleged by the prosecution that accused had committed robbery of ₹2,000/- from complainant PW2 but no alleged recovered case property produced in the court in order

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to connect them which left the recovery itself highly doubtful and did not inspire the confidence of court to hold the accused guilty. The prosecution is, in fact, relying upon very weak piece of evidence. Sequel, the prosecution has failed to prove the guilt of accused by leading cogent and reliable evidence. Accordingly, the accused Pardeep, Tony @ Pankaj and Parveen are acquitted of the charges framed against them by giving benefit of doubts. Accused be released in this case only. Case property, if any, be dealt with in accordance with law. Bail bonds and surety bonds furnished stand extended for a further period of six months, and in case, no appeal is preferred after lapse of six months, same stand discharged. File be consigned to record room after due compliance."

On simple and plain reading of the aforesaid observations, it is honourable acquittal and the petitioner was not released on probation or under any misconception. Once the prosecution failed to produce the case property, allegation of commission of alleged offence under Section 394 IPC was not made out. It is also a matter of record that acquittal is dated 09.03.2016, whereas the physical test was to be undertaken between 08th March to 14th March, 2016. No doubt, the petitioner had been careless in not filling up the information in the application form, regarding pendency of the criminal case, it cannot be said that it was an intentional suppression. There are many cases, where such candidates are sanguine of acquittal, but apprehensive of rejection of application form. It is, in this context, probably information was not supplied and therefore, it cannot be said to be an intentional suppression of fact, resulting into, moral turpitude, as referred to in the judgment rendered in **Devendra Kumar's case** (supra).

I would be failing in my duty in not extracting the guidelines as framed in judgment rendered in Avtar Singh's case (supra), which reads as

under:-

"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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

Emphasis relied in guideline No.4(c) would not apply in the present case.

It would be in the fitness of things to reproduce paragraph Nos.20 to 22 of **Devendra Kumar's case** (supra), which reads as under:-

"20. In Secretary, Department of Home, A.P. & Ors., v. B. Chinnam Naidu, (2005) 2 SCC 746, this Court held that facts are to be examined in each individual case and the candidate is not supposed to furnish information which is not specifically required in a case where information sought dealt with prior convictions by a criminal Court. The candidate answered it in the negative, the court held that it would not amount to misrepresentation merely because on that date a criminal case was pending against him. The question specifically required information only about prior convictions.

21. In R. Radhakrishnan v. Director General of Police & Ors., 2008 (1) S.C.T. 20; 2007 (6) Recent Apex Judgments (R.A.J.) 402; AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the

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incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

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."

Considering the fact that during physical test, written examination as well as interview, the petitioner was not involved in any case and he was also acquitted in the FIR, the impugned order, in my view, is not sustainable being arbitrary, fallacious, erroneous and the same is hereby set aside. Accordingly, the present writ petition is allowed.

The petitioner shall also be entitled to all the consequential benefits, if any, in accordance with law.

11.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No