

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CWP No. 17084 of 2019 (O&M)

Suresh Kumar

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
2.

CWP No. 17085 of 2019 (O&M)

Pawan Kumar

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
3.

CWP No. 21757 of 2019 (O&M)

Const. Arun

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
4.

CWP No. 33317 of 2019 (O&M)

Const. Rinku

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
5.

CWP No. 33360 of 2019 (O&M)

Const. Sunil Kumar

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
6.

CWP No. 33361 of 2019 (O&M)

Const. Sunil Kumar

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
7.

CWP No. 33407 of 2019 (O&M)

Const. Ajay Kumar

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents
8.

CWP No. 33445 of 2019 (O&M)

Const. Sukhvinder Singh

V/s.

State of Haryana and Others

..... Petitioner

.....Respondents

9. CWP No. 22187 of 2019 (O&M)

Const. Devi Charan

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

10. CWP No. 22870 of 2019 (O&M)

Const. Kapil Kumar

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

11. CWP No. 25963 of 2019 (O&M)

Const. Satnam

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

12. CWP No. 36152 of 2019 (O&M)

Jitender

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

13. CWP No. 31098 of 2019 (O&M)

Const. Mithilesh

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

14. CWP No. 26171 of 2019 (O&M)

Const. Sanjay

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

15. CWP No. 23300 of 2019 (O&M)

Const. Manphool Singh

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

16. CWP No. 23086 of 2019 (O&M)

Const. Deepak

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

17. CWP No. 22505 of 2019 (O&M)

Const. Parvesh Kumar

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

18. CWP No. 22221 of 2019 (O&M)

Const. Krishan Kumar

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

19. CWP No. 22019 of 2019 (O&M)

Const. Mohit Dahiya

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

20. CWP No. 25815 of 2019 (O&M)

Const. Pardeep

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

21. CWP No. 33449 of 2019 (O&M)

Const. Surjeet

..... Petitioner

V/s.

State of Haryana and Others

.....Respondents

DECIDED ON: 04.03.2020**CORAM: HON'BLE MR. JUSTICE GIRISH AGNIHOTRI**Present: Mr.G.S. Gopera, Advocate,
for the petitioner(s).Mr. Deepak Sonak, Advocate
for the petitioner(s) in CWP No. 36152 of 2019.

Ms. Palika Monga, DAG, Haryana.

GIRISH AGNIHOTRI, J. (ORAL)

The facts are taken from the writ petition CWP 17084 of 2019. The petitioner has filed the present writ petition *inter alia* with a prayer to quash the discharge order dated 11.06.2019. Vide order dated 11.06.2019, the competent authority has passed the order by observing that the petitioner has suppressed/ concealed the fact regarding registration of criminal case in verification-cum- attestation form/ application form, filled up by him for verification of the character

and antecedents and has ordered that he be hereby weeded out/ discharged from services with immediate effect.

The grievance of the petitioner is that he was falsely implicated in FIR No. 130 dated 23.03.2014. It is then contended that at the time of alleged incident, the petitioner was just 20 years of age and the matrimonial dispute relating to his sister was the bone of contention. It is then contended that vide judgment dated 05.09.2017, he was acquitted by the trial Court. Thereafter, on 16.04.2018, an advertisement was issued for inviting applications for various categories of posts including 5000 posts of Male Constables under category No. 1, in the Haryana Police. The petitioner applied for selection and thereafter was appointed as Constable on 06.03.2019. He was sent for basic training and after the completion of three months of training, vide the impugned order he was discharged from the service, by respondent No. 3 vide discharge order dated 11.06.2019. It has been submitted that the said order has been passed without issuing any show cause notice to the petitioner for the reason that the petitioner has concealed the factum of registration of F.I.R. No. 130 dated 23.03.2014.

Sh. Vinod Kumar, IPS has filed reply on behalf of respondents No. 1 to 3 dated 01.08.2019. In the reply, it has been *inter alia* submitted that from the scrutiny of the record by the Committee, it has been found that selected candidate Suresh Kumar (petitioner herein) has suppressed and concealed the facts regarding registration of case/ F.I.R. No. 130 dated 23.03.2014. It has been further submitted that he was acquitted from the Court of Sh. Mukesh Kumar on 05.09.2017 due to benefit of doubt. The counsel for the respondent relied on various documents, Rule 12.18 and thus concluded that discharge order dated 11.06.2019 (impugned in the present writ petition) deserves to be upheld.

Learned counsel for the petitioner relied on the judgment of this Court dated 09.01.2019 in CWP No. 20007 of 2017. In the said judgment, this Court had taken a view that the writ petitions deserve to be allowed and had directed that by applying the ratio of ***Bhagwan Dass case*** and instructions of Haryana dated 02.07.2007 and clarification dated 13.11.2007, the impugned order therein discharging the petitioners was set aside and it was directed that the respondent shall issue appointment letter to the petitioners within a period of two months of the said judgment.

Learned counsel for the respondent submits that against the said judgment, LPA No. 1309 of 2019 was filed. On 03.09.2019, the LPA Bench has stayed the impugned judgment dated 09.01.2019.

The said LPA is now fixed for hearing on 22.07.2020.

This Court, in view of the fact that, the operation of the judgment dated 09.01.2019 has since been stayed, is therefore of the view that the petitioner cannot take any benefit of the said judgment.

The second issue that has been raised by the learned counsel for the respondent is that in fact the judgment which actually covers the issue involved in the present case, is the judgment dated 15.02.2019 in CWP No. 2042 of 2018 titled as 'Parveen Vs. State of Haryana & Others'. The relevant extracts are reproduced as under:

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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 nondisclosure 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.

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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.

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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 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."

This Court has with able assistance of counsel for the parties has gone through the judgment dated 15.02.2019 in CWP No. 2042 of 2018. This Court is in complete agreement with the reasonings adopted in the judgment. This Court, therefore, orders that that all these writ petitions are disposed of in the same terms as judgment dated 15.02.2019.

The respondents in the reply have also appended the clause 13 of verification form wherein Clause 13(7)(b) provided information in the following manner:

“Have your ever been prosecuted? Yes/ No.”

In view of the above, it was incumbent upon the applicant to fill up the said form by mentioning the correct information. Learned counsel for the respondent also relied on Rule 12.18(4). The complete Rule is reproduced hereunder:

“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."

The third contention of learned counsel for the petitioner is by way of reliance on the judgment dated 12.08.2008 in CWP No. 13895 of 2007.

The learned counsel for the petitioner has submitted that the alleged concealment by the petitioner, was immaterial and inconsequential because he already stood acquitted. The relevant portion of the judgment dated 12.08.2008 is reproduced hereunder:

"Having heard the learned counsel for the parties and perusing the record with their able assistance, we are of the considered opinion that this petition merits acceptance. It has come on record that on 2.5.2006 when the advertisement was issued, the record of the petitioner was clean as he was acquitted of the criminal charge under Section 392/39 of the Indian Penal Code on 8.3.2004. The concealment by the petitioner was immaterial and inconsequential because he already stood acquitted. There could be no motive attached to the petitioner because he would not gain in any respect by such concealment. The result of disclosure of information with regard to his arrest would be inconsequential because on that basis appointment to the petitioner could not be withheld not it could have effected his eligibility. The State of Haryana has issued the policy

dated 2.7.2007 (Annexure R4) extending the benefit even in case of concealment where on the date of filing the benefit even in case of concealment where on the date of filing the application for appointment as Constable, the trial is pending or against conviction the appeal is pending. The aforementioned policy would not stricto sensu apply to this case because these instructions were issued on 2.7.2007 whereas the last of application in pursuance to advertisement in the present case was in 2006. In any case, we are not impressed with the aforesaid instructions.”

On this contention, the learned counsel for the respondent however, submits that the petitioner cannot take the benefit of the said judgment because firstly, the said judgment is of 12.08.2008 whereas Rule 12.18 was amended in the year 2015. The amended Rule 12.18 has been reproduced in para 8 of written statement. Learned counsel for the respondent while making reference to para 8 of the written statement submits that the Rule 12.18 has been amended vide Punjab Police (Haryana Amendment) Rules, 2015. The contention of learned counsel for the respondent is that the judgment is prior to the amendment of the Rule. The petitioners cannot place reliance on the judgment which is prior to the amendment of the Rule in the year 2015. He submits that the judgment of this Court dated 15.02.2019 which deals with the amended Rule 12.18 deserves to be followed. This Court finds merit in the submission of the counsel for the respondent. The judgment dated 15.02.2019 further records that while paying due regard to the amended Rule 12.18 coming into force in the year 2015 prior to the advertisement dated 19.07.2015 which initiated the recruitment process of selection of the posts of Constable (Male) in Haryana State Police, the petitioner(s) clearly are not able to cross this threshold and therefore this deserves rejection on this score alone.

Learned counsel for the petitioner then submits that the impugned order is also liable to be set aside on the ground that no opportunity of hearing was

granted to the petitioner prior to the said order. This Court does not find any merit in the said submission because Rule 12.18(4) clearly provides that in case it is found that the candidate has got appointment by concealment, he shall be discharged from the service by the appointing authority without holding regular disciplinary proceedings, summarily, by treating him ineligible for service and even salary paid to him may also be ordered to be recovered.

Learned counsel for the petitioner then relied upon the guidelines/circulars /clarifications issued by the Haryana Government dated 22.07.2007 and clarification dated 13.11.2007. Learned counsel for the respondent however, submits that the petitioners cannot take the benefit of the said instructions/clarifications as the Rule 12.18 has been amended in the year 2015 and that reliance on the instructions / clarification of the year 2007 is misconceived. This Court finds merit in the submission of learned counsel for the respondent. This Court in view of the reasons recorded above and on careful perusal of the judgment dated 15.02.2019 passed by the Co-ordinate Bench finds that the present set of cases deserve to be decided in view of the judgment dated 15.02.2019. Therefore, the present set of writ petitions are dismissed in terms of the judgment dated 15.02.2019.

The writ petition CWP 36152 of 2019 is also decided on the same terms as judgment dated 13.02.2019. Learned counsel for the petitioner at this stage submits that LPA against both the judgments, as mentioned above, are pending for 22.07.2020. He further submits that vide order dated 28.08.2019, this Court has granted interim protection and stayed the operation of the impugned order of discharge.

This Court deems it appropriate to grant the petitioner(s) three weeks' time to avail their legal remedy. The writ petitions are decided in same terms as

judgment dated 13.02.2019 in CWP No. 2042 of 2018, however, with a direction that the respondent shall maintain *status quo* till the expiry of three weeks from today i.e. upto 26.03.2020 to enable the petitioner to avail their legal remedy.

March 04, 2020

Sonia Puri

**(GIRISH AGNIHOTRI)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO