

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

**CWP No.15832 of 2015
Date of decision: 09.06.2020**

Kuldeep

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sonu Gill, Advocate,
for Mr. D.P.S. Bajwa, Advocate,
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 05.12.2014 (Annexure P-3), whereby he has been dismissed from service and order dated 27.05.2015 (Annexure P-6), vide which appeal against the said order has been dismissed.

Petitioner joined the respondent-department as Jail Warder on 22.04.2013. Earlier, FIR No.02 dated 04.01.2007, under Sections 148/149/323/325/506 IPC was registered against the petitioner and his family members at Police Station, Bawani Khera, District Bhiwani. Vide judgment dated 25/26.11.2011 (Annexure P-1), the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of Rs.1600/- for commission of offences under Sections 323, 325, 506 read with Section 34 IPC. Against the said judgment, petitioner filed an appeal, which was dismissed vide judgment dated 21.11.2014 (Annexure P-2) passed by the Additional Sessions Judge,

Bhiwani. Thereafter, petitioner filed CRR No.3899 of 2014 before this Court, which was admitted vide order dated 20.04.2015 (Annexure P-4) and sentence awarded to the petitioner was suspended. Meanwhile, vide order dated 05.12.2014 (Annexure P-3) passed by respondent No.3-Superintendent, Head Quarter, Jail, Panchkula, the petitioner was dismissed from service. Appeal against the said order was dismissed vide order dated 27.05.2015 (Annexure P-6). Hence, this petition.

Learned counsel for the petitioner, at the outset, referred to the notifications dated 02.02.1973 & 05.08.1966 (Annexures P-7 & P-8) to contend that offences under Sections 323/325/148/149 IPC do not fall under the moral turpitude. Hence, even if, the petitioner has been convicted, no case for terminating his services was made out. He has referred to the judgment passed by Hon'ble the Supreme Court in **Avtar Singh vs. Union of India and others**, 2016 (3) SCT 672, where guidelines to examine a case, where services of an employee have been terminated on account of involvement in a criminal case, have been laid down.

Learned State counsel, on the basis of stand taken in the written statement, has argued that pursuant to the advertisement dated 31.07.2012, applications for 1091 posts of Jail Warders were invited. Petitioner's case for appointment was recommended by the Recruitment Committee vide letter dated 18.04.2013. Thereafter, petitioner joined the Prison Department, Haryana as a Warder on 29.04.2013. One of the conditions of appointment letter (Annexure R-1) was that his appointment was subject to his character and antecedents verification and the appointment was liable to be cancelled without any notice. After verification, the Superintendent of Police, Bhiwani sent a report to the District Magistrate, Bhiwani vide letter

dated 14.08.2013 (Annexure R-2/T). The District Magistrate, Bhiwani, further sent his report to the Superintendent, Borstal Jail, Hisar vide letter dated 29.08.2013 (Annexure R-3/T). As per the above report (dated 14.08.2013), character of the petitioner was found to be good and there was no criminal case registered against him. Keeping in view this report/letter, the petitioner was allowed to perform his duty in Haryana Prison Department. Thereafter, the Superintendent, Central Jail-2, Hisar, vide letter dated 28.11.2014 (Annexure R-4/T), informed that the petitioner had been arrested and got confined in District Jail, Bhiwani on 21.11.2014 in case FIR No.02 dated 04.01.2007, under Sections 148/149/323/325/506 IPC, Police Station Bawani Khera, District Bhiwani, after dismissal of his Criminal Appeal No.65 of 2011/2014 by the Additional Sessions Judge, Bhiwani vide judgment dated 21.11.2014 (Annexure P-2). The petitioner had submitted his application form for recruitment on 14.08.2012 (Annexure R-5). Therefore, in his application form, he had concealed that he already stood convicted vide judgment dated 26.11.2011 (Annexure P-1). Column Nos.15, 16 of the application form and declaration of the petitioner is reproduced as under:-

“15. Criminal Proceedings detail, if any:

- (a) Whether any criminal case(s) has ever been registered against you? - Yes
- (b) Have you ever been arrested in any criminal case(s)? - Yes
- (c) Have you ever been convicted by a Court of Law in any Criminal case(s)? - **No**
- (d) Have you ever been acquitted by a Court of Law in any Criminal case(s)? - **No**
- (e) Whether any criminal case(s) is pending against you in any Court of law or with police, at present? - Yes

16 Case Reference, if the answer to any of the above mentioned

question is 'Yes' then give full particulars of the case FIR number, dated, under Sections, Police Station, District and present status of the case at the time of filling up this application form.

FIR No.02 dated 04.01.2007, 323 IPC, Police Station, Bawani Khera, District BHIWANI.

Note:- (If, it ever comes to the notice that the candidate has furnished any false information or has suppressed any factual information in the application form, his candidature is liable to be cancelled.)

Declaration: I hereby declare that all statements made in this application are true and complete to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligible being detected before or after the test and interview, my candidature will stand cancelled and all my claims for the recruitment will stand forfeited.”

Copy of the verification report has been annexed as Annexure R-

6. It is highlighted that in column No.15, against column 'c', the answer given by the petitioner is 'no', whereas on the date of filing of the application form, he had already stood convicted vide judgment dated 26.11.2011 (Annexure P-1). Learned State counsel has finally, argued that the petitioner had deliberately concealed the fact about his conviction and has been rightly dismissed from service keeping in view the judgments passed by Hon'ble the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras, vs. Nageor Meera, AIR 1995 SC 1364 and State of West Bengal and others vs. Nazrul Islam, Civil Appeal No.8638 of 2011 (decided on 13.10.2011), wherein it has been held that while appointing constables, it is the duty of the State to verify the antecedents of a candidate to find out whether he is suitable for the said post and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/448/427/506 IPC, he cannot possibly be held to be suitable for appointment to the post of Constable.

Heard, counsel for the parties.

Hon'ble the Supreme Court in Avtar Singh vs. Union of India and others, 2016 (3) SCT 672 has examined an issue of involvement of a Government employee in some petty kind of case and held that it will not render a person unsuitable for the job. It is further held that the employer can condone non-disclosure such fact. The reason given is that even if, this material had been disclosed, it would not have adversely affected his fitness for the job. In para 30 of the judgment, guidelines laid down by the Hon'ble Supreme Court are as under:-

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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) Whether 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 suppression or suggestion of false information, knowledge of the fact must be attributable to him.”

In the facts of the present case, a perusal of the judgment dated 25/26.11.2011 (Annexure P-1) shows that FIR against the petitioner's family was registered on the statement made by Ram Krishan son of Sh. Beer Singh, resident of village Barsi Jatan to the effect that on 04.01.2007, complainant and his wife had gone to their cattle shed for providing fodder and milking the buffaloes. When they were coming back, Prithvi, Azadpati, Kuldeep, Babli, Dharmo and Pawan gave them injuries. Motive behind

causing the injuries was that on 01.01.2007, Prithvi had cut his *Neem* tree, which fell on the house of complainant. Complainant was nursing a grudge on this account. Petitioner's role was that he had accompanied his father and caused some injuries to the complainant. It was a minor dispute between two families of a village. As per notifications dated 02.02.1973 & 05.08.1966 (Annexures P-7 & P-8), offences under Sections 323/325/148/149 IPC do not fall under the definition of moral turpitude. This was the backbone of conviction vide judgment dated 25/26.11.2011 (Annexure P-1). Appeal against the judgment of conviction was dismissed vide judgment dated 21.11.2014 (Annexure P-2) passed by the Additional Sessions Judge, Bhiwani. Petitioner filed CRR No.3899 of 2014 before this Court, which was admitted vide order dated 20.04.2015 (Annexure P-4) and sentence awarded to the petitioner was suspended.

As per written statement filed by the respondents, name of the petitioner was recommended for appointment vide letter dated 18.04.2013 and he joined as Warder on 29.04.2013. One of the conditions of appointment letter (Annexure R-1) was that his appointment was subject to character and antecedents verification. The Superintendent of Police, Bhiwani sent a report to the District Magistrate, Bhiwani, vide letter dated 14.08.2013 (Annexure R-2/T). The District Magistrate, Bhiwani further sent his report to the Superintendent, Borstal Jail, Hisar vide letter dated 29.08.2013 (Annexure R-3/T). As per report dated 14.08.2013, character of the petitioner was good and there was no criminal case registered against him. Petitioner joined as jail warder on 29.04.2013. After his joining, the Superintendent, Central Jail-2, Hisar, vide letter dated 28.11.2014 (Annexure R-4/T) informed that the petitioner had been arrested and got

confined in District Jail, Bhiwani on 21.11.2014 in case FIR No.02 dated 04.01.2007, under Sections 148/149/323/325/506 IPC, registered at Police Station, Bawani Khera, District Bhiwani, after dismissal of his Criminal Appeal No.65 of 2011/2014 by the Additional Sessions Judge, Bhiwani vide judgment dated 21.11.2014 (Annexure P-2). Keeping in view the information given by him in column No.15-16 of the application form where the petitioner had stated that he had not been convicted, his services were terminated vide impugned order dated 05.12.2014 (Annexure P-3). As per guidelines laid down by Hon'ble the Supreme Court in **Avtar Singh's** case (supra), the Government was bound to take into consideration the instructions dated 02.02.1973 & 05.08.1966 (Annexures P-7 & P-8) and the fact that in column Nos.15 and 16 of the application form, petitioner had stated that criminal case had been registered against him and he had been arrested. However, in the column of conviction, he had stated 'no'. Once he had stated that a criminal case had been registered and he had been arrested, verification report dated 14.08.2013 (Annexure R-2/T) sent by the Superintendent of Police and the report dated 29.08.2013 (Annexure R-3/T) sent by the District Magistrate, Bhiwani would be relevant. These reports had been made after the petitioner joined as Jail Warder. Report dated 14.08.2013 (Annexure R-2/T) shows that character verification of the petitioner was found to be good. In the report dated 29.08.2013 (Annexure R-3/T), it was mentioned that no criminal case of any type was found registered against the petitioner. As per guidelines issued by Hon'ble the Supreme Court in **Avtar Singh's** case (supra), after joining on the post of Jail Warder, the employer was required to look into the allegations made against the petitioner before terminating his services because the offences

for which, he had been charged, did not fall under the moral turpitude as per instructions dated 02.02.1973 and 05.08.1966 (Annexures P-7 and P-8). The petitioner has not given any false information as he had informed that a criminal case had been registered and he had been arrested. Moreover, the post of Jail Warder is not a high post and even after he had been convicted, it will not render the petitioner unsuitable for the post of Jail Warder. In **Avtar Singh's** case (supra), it has been further observed as under:-

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

In the above said case, Hon'ble the Supreme Court has observed

that if, the case is trivial in nature and even if conviction is recorded, it would not render an incumbent unfit for the post in question and the employer in its discretion, can ignore such suppression of facts by condoning the lapse.

In the facts of the present case, as per detailed reasoning stated above, at the stage of filling column Nos.15 and 16 of the application form, petitioner had stated with respect to the registration of FIR against him and the fact that he had been arrested. However, the fact of conviction had not been stated therein. Following the ratio of the judgment passed by Hon'ble the Supreme Court in Avtar Singh's case (supra), even if, the petitioner was convicted vide judgment dated 25/26.11.2011 (Annexure P-1), the appointing authority was required to examine the role attributed to the petitioner in that criminal case. It is not in dispute that the offences, for which the petitioner had been convicted, do not fall under the moral turpitude. Hence, the offence can be taken to be trivial in nature. Moreover, the post of Jail Warder is not such a high post. Accordingly, after going through the judgments of conviction dated 25/26.11.2011 (Annexure P-1) and 21.11.2014 (Annexure -2), it transpires that the dispute was between two families in the village and the complainant was nursing a grudge against the father of petitioner. The obvious conclusion is that while filling the application form, the petitioner did not suppress any material fact intentionally. He had mentioned about registration of the FIR in the application form. In these circumstances, the impugned order is liable to be set aside as the offences, allegedly committed by the petitioner, do not fall under the moral turpitude.

In view of the above discussion, this petition is allowed and the

impugned orders dated 05.12.2014 and 27.05.2015 (Annexures P-3 and P-6) are set aside. Respondents are directed to reinstate the petitioner within a period of one month from the date of receipt of certified copy of this judgment.

09.06.2020
ajp

(RITU BAHRI)
JUDGE

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