

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3435 of 2021**

Mukesh Kumar S/o Hevas Ram, Aged About 26 Years, R/o Village Sonadula, Post Sankar, Police Station Akaltara, District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Home Department, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Director General Of Police, Police Head Quarter, Sector,19, New Raipur, Atal Nagar, District Raipur, Chhattisgarh
3. The Assistant Director General Of Police, Police Head Quarter, Sector, 19, New Raipur, Atal Nagar, District Raipur, Chhattisgarh
4. The Superintendent Of Police, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Rakesh Pandey, Advocate
For State	:	Mr. Amrito Das, Addl. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.07.2021**

1. Aggrieved by the action on the part of the respondents in not issuing appointment order in favour of the petitioner in spite of undergoing the entire recruitment process and having found fully competent and suitable, the present writ petition has been filed.
2. During the course of hearing it has been submitted by the learned counsel for the petitioner that the only reason why the order of

appointment in favour of the petitioner has not been issued is an FIR which was lodged against the petitioner on 10.03.2020 for the offence punishable under Sections 294, 323 & 34 of IPC. Counsel for the petitioner submits that the nature of allegation is too trivial for which the petitioner's order of appointment should not be issued. Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Avtar Singh Vs. Union of India and others** reported in **(2016) 8 SCC 471**.

3. Undoubtedly, the petitioner had participated in the selection process pursuant to an advertisement issued on 29.12.2017. The petitioner got selected in the physical test and general aptitude test and also cleared the medical examination and he was found meritorious. However, when the order of appointment was to be issued, the petitioner was not considered only perhaps for the reason of the petitioner getting involved in a criminal case.
4. At this juncture, it would be relevant to refer to the judgment of the Supreme Court in the case of Avtar Singh (supra) wherein the Hon'ble Supreme Court after dealing with the issue of the police verification that is conducted at the time of appointment/recruitment and the criminal antecedents of the candidates, has found eligible as in paragraph-38 has summarized and concluded and made certain observations to be considered by the employer which for ready reference is being quoted hereinunder:

“38. 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:

38.1. 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.

38.2. 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.

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

38.4. 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:

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. 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.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

5. In view of the aforesaid observations made by the Hon'ble Supreme Court in the case of Avtar Singh (supra) this Court is of the opinion that the respondent no.4 may consider the claim of the petitioner for issuance of an order of appointment keeping in view the views of the Hon'ble Supreme Court in the aforementioned judgment. The respondent no.4 is therefore directed to take an appropriate decision on the claim of the petitioner for grant of appointment at the earliest preferably within a period of 60 days from the date of receipt of a copy of this order.
6. With the aforesaid direction the writ petition stands disposed of.

Sd/-
P. Sam Koshy
Judge