

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 3106 of 2019 (O&M)

Date of Decision: 19.01.2021

Ex. Constable Raical

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

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

Mr. Samarth Sagar, Additional Advocate
General, Haryana for the respondents.

Anil Kshetarpal, J.

The petitioner has assailed correctness of the order dated 02.08.2017 discharging the petitioner from service under Rule 12.21 of the Punjab Police Rule, 1934 (as applicable to State of Haryana) which enables the competent authority to discharge a police official within a period of three years of appointment. The petitioner filed an appeal, however, the same was found not maintainable.

It would be noted here that the petitioner applied for direct recruitment to the post of Constable pursuant to recruitment notice No. 08 of 2015 published on 19.07.2015. As per sub-clause (iii) of clause with the heading “General”, it was provided as under:

“General:

- i) *The candidate, who are having colour blindness or flat foot or knocking knees need not apply.*

- ii) *Persons less in height & chest measurements and with any physical deficiency need not apply.*
- iii) *A candidate against whom a criminal case stands registered and is under Investigation or pending Trial or who has been convicted by a Court of Law need not apply*.

On the day the petitioner submitted application seeking appointment, he stood convicted in a criminal case No. 187-1 dated 24.04.2011 vide judgment dated 24.02.2015. The petitioner was sentenced to rigorous imprisonment for a period of one year. The petitioner did not disclose this fact while submitting the application. On 24.06.2017, the petitioner, as requested, submitted attestation form asking him to disclose the following information under Clause (13):

“13(1)

- | | | |
|-----|--|------------|
| (a) | <i>Have you ever been arrested?</i> | <i>No</i> |
| (b) | <i>Have you ever been prosecuted?</i> | <i>No</i> |
| (c) | <i>Have you ever been kept under detention?</i> | <i>No</i> |
| (d) | <i>Have you ever been bound down?</i> | <i>No</i> |
| (e) | <i>Have you ever been fined by a court of Law?</i> | <i>No</i> |
| (f) | <i>Have you ever been convicted by court of Law?</i> | <i>No</i> |
| (g) | <i>Have you ever been debarred from any examination or rusticated by any University of any other educational Authority/institution?</i> | <i>No</i> |
| (h) | <i>Have you ever been debarred/dis-qualified by any Public Service Commission/Staff Selection Commission for any of its examination/selection?</i> | <i>No</i> |
| (i) | <i>Is any case pending against you in court of Law are with Police at this time of filing of this attestation form?</i> | <i>Yes</i> |
| (j) | <i>Is any case pending against you in any</i> | <i>No</i> |

University of any other educational authority/institution at the time of filling up this attestation form?

- (k) *Have you ever been discharged or removal from any job?* No
- (l) *Have you ever been court martialled under Army Act (For Ex-servicemen only)* No

It is apparent that under Clause (13)(i)(b) and (f), the petitioner gave false information.

The petitioner was recruited as Constable and was allotted constabulary number on 26.06.2017. The competent authority, in order to verify the character and antecedents of the candidate, forwarded the information to the concerned police station, from where, it was informed that the petitioner has not provided the correct information. The petitioner was, thus, discharged on 02.08.2017.

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper-book

Learned counsel for the petitioner contended that the petitioner was acquitted by the Appellate Court in appeal vide judgment dated 28.11.2017. He, hence, submitted that the order of discharge is liable to be set aside.

On the other hand, learned State counsel has submitted that the petitioner was not eligible to apply for the post of Constable in view of a specific clause in the advertisement. He further submitted that not only the petitioner is guilty of suppressing material information, but also, he intentionally provided false information. He, hence, submitted that the petitioner does not deserve any sympathy.

It would be noticed here that on this aspect, there was difference in views of the Courts. Recently, the matter was referred to the Larger Bench of the Supreme Court in *Avtar Singh v. Union of India and Others (2016) 8 SCC 471*. The Larger Bench of the Supreme Court, after discussing the entire case law, held as under:

“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:

- (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”.

Now, keeping in view the aforesaid law, let us examine the case of the petitioner. It would be noted here that no doubt, the petitioner has been acquitted, however, he has been given the benefit of doubt in the said case. There is no honourable acquittal. Still further, the petitioner stood convicted on 20.02.2015. Therefore, the petitioner was not entitled to even apply for the post of Constable. Further, the petitioner, while submitting attestation form on 24.06.2017, gave incorrect and false information. On 26.04.2017, the petitioner was a convict as the judgment of acquittal came afterwards on 28.11.2017. Still further, the petitioner has not been honourably acquitted. In these circumstances, this court does not find it appropriate to issue the writ, as prayed for.

In view of the aforesaid discussion, the writ fails and the same is dismissed as such.

The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 19, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No