

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 28002 of 2019 (O&M)

Date of Decision: 19.01.2021

Dilshad

... 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.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of certiorari for quashing of the order dated 20.09.2019 (Annexure P4) rejecting the application for appointment as Constable in Haryana Police after he was selected. At the outset, it must be noticed that the petitioner applied on 24.09.2015 pursuant to recruitment notice published on 19.07.2015. The petitioner was recommended to be appointed, however, on verification of his character and antecedents, it was found that the petitioner was involved in FIR No. 329 dated 12.04.2012, registered under Section 419 & 420 IPC at Police Station Chandani Bagh, District Panipat. Thus, the competent authority has passed a detailed order on 20.09.2019 correctness whereof has been challenged in the writ petition.

Learned counsel for the petitioner contends that since the petitioner has been acquitted in the criminal case vide judgment dated

passed by the Division Bench in *The State of Haryana and Others v. Pawan Kumar* (Letters Patent Appeal No. 1059 of 2015, decided on 26.05.2016).

On the other hand, learned counsel for respondent/State has submitted that the petitioner, while filing the application, suppressed the material information. He drew attention of the Court to a copy of application on 24.09.2015 (Annexure R1). He submitted that the petitioner did not make correct disclosure and rather submitted false information. He further submitted that in view of the judgment passed by a Larger Bench of the Supreme Court in *Avtar Singh v. Union of India and Others* (2016) 8 SCC 471, the judgment passed by the Division Bench of this Court cannot be relied upon. He further drew attention of the court to the amendment brought in, by the State of Haryana in Rule 12.18 of Punjab Police Rules, 1934 (as applicable to the State of Haryana), requiring the candidates to make a disclosure failing which non-disclosure would lead to outright disqualification.

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper-book. At the outset, it is important to note that there were various judgments passed by the Supreme Court and the High Courts on the subject. Taking note of the conflict of opinion in the judgments passed by the Benches of equal strength, the matter was referred to a Larger Bench. In *Avtar Singh* (*supra*), the Larger Bench has 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”.*

In FIR No. 329 dated 12.04.2012, the allegations against the

petitioner is that he permitted someone to impersonate him in Senior Secondary Open Examination held by the Haryana Education Board. Flying squad raided the examination center and caught one person namely Ajay who was writing the examination in place of Dilshad - the petitioner. During the criminal trial, Jaipal Singh and Parshotam Ram, Invigilators, were examined as prosecution witnesses. Both of them refused to identify the petitioner and the other accused and they were declared hostile. Keeping in view the aforesaid facts, the Court held that the petitioner and his co-accused were entitled to benefit of doubt as the prosecution has failed to link the accused with the commission of offence beyond shadow of reasonable doubt. Thus, it is apparent that the petitioner has not been honourably acquitted. He was given the benefit of doubt. In a criminal case the standard of proof required is beyond all shadows of reasonable doubts. Thus, the aforesaid judgment cannot be said to be honourable acquittal.

Still further, as rightly pointed out by the learned State counsel, the petitioner while submitting an application on 24.09.2015 provided false information. The false information provided in the application form is as under:-

“XXXXXXXXXXX

Are you convicted for an offence OR charges have been framed involving moral turpitude or punishable with imprisonment for 3 years or more? No.

XXXXXXX”

On the day, when the application was submitted, the petitioner was facing criminal prosecution. Thus, the petitioner is guilty of not only providing

false information but also suppression of material facts.

Now the question is whether the employer is justified in rejecting the candidature of the petitioner or not. In the facts of the present case, this Court does not find that the action of the respondents is arbitrary. The employer is well within its rights to reject the candidature once it is found that the candidate provided false information or suppressed the material information. Reliance in this regard can be placed on the judgments passed by the Supreme Court in *Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav (2003) 3 SCC 437*, *R. Radhakrishnan v. Director General of Police and Others (2008) 1 SCC 600* and *Delhi Administration through its Chief Secretary and Others v. Sushil Kumar (1996) 11 SCC 605*.

Keeping in view the larger Bench judgment of the Supreme Court, reliance placed on by the learned counsel for the petitioner on the Division Bench judgment in *Pawan Kumar (supra)* fails to save the case of the writ petitioner. In any case, in the aforesaid case, the Division Bench held that the candidate had been honourably acquitted, which is not the case here. Thus, the aforesaid judgment is not applicable. Hence, no ground is made out to issue the writ, as prayed for and the writ petition is dismissed.

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