

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1699-2019 (O&M)

Date of decision: September 06, 2022

Jag Mohan

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Vijay Dahiya, Advocate for the petitioner.

Mr. R.K.S. Brar, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing respondent No.2 to issue joining letter to the petitioner for the post of Peon on compassionate ground being considered as dependent of his father Martyr Rishal Singh of Armed Forces Personnel by respondent No.1

2. Pledged case of the petitioner is that vide letter dated 27.02.2018 (Annexure P-1), State Government decided to provide Government job to the petitioner being dependent of Martyr-Rishal Singh of Armed Forces Personnel. In compliance thereto, on 30.03.2018, Deputy Superintendent of Police, Hisar was asked to do character verification of the petitioner. As per character verification report dated 30.04.2018, name and address of the petitioner was found correct, but one case was shown to be registered at Police Station, Sadar Hansi, i.e. Case No.413 dated 12.10.2013, under Sections 147, 148, 149, 323, 325, 452, 506, 427 of the Indian Penal Code, 1860; trial of which was pending then. But inadvertently in the verification column 12 which relates to case registered or pending before any Court of law, "No" was stated by the petitioner. Petitioner made representation to the respondents to issue him the appointment letter on compassionate ground,

appending instructions dated 17/26.03.1975 in which decision has been taken by the State that the offence which do not involve moral turpitude, should not suffer any disability in respect of obtaining Government service. He relies on the decision dated 21.07.2016 rendered by the Supreme Court in **SLP (C) No.20525-2011** titled **Avtar Singh versus Union of India and others**.

3. I have heard rival contentions of the parties and perused the record. In **Avtar Singh's case (supra)**, it was held *inter alia*, as under:-

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.”

5. Relying upon the said judgment, it was held by the Apex Court in **Pawan Kumar versus Union of India and another, CA No.3574/2022**, decided on 02.05.2022 as under:-

“18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into

consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside.

19. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17th November, 2015 and the order of discharge dated 24th April, 2015 and dated 23rd December, 2021 are hereby quashed and set aside. The Respondents are directed to reinstate the appellant in service on the post of Constable on which he was selected pursuant to his participation in reference to employment notice no.1/2011 dated 27th February, 2011. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force and at the same time he will be entitled for all notional benefits, including pay, seniority and other consequential benefits, etc. Necessary orders shall be passed within a period of one month from today. No costs.”

6. In view of the aforesaid, writ petition is allowed in terms of **Avtar Singh and Pawan Kumar’s case (supra)**. Respondents are directed to re-consider the case of the petitioner for appointment and pass a speaking order within 4 months. If such order is unfavourable, the petitioner will be at liberty to challenge the same.

(ARUN MONGA)
JUDGE

September 06, 2022
mahavir

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