

[153] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3127 of 2022

Date of Decision : 21.02.2022

Jitender ...Petitioner

Versus

State of Haryana and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sanjay Kaushal, Senior Advocate assisted by
Mr. A. P. Setia, Advocate for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

B.S. Walia, J. (Oral)

[1] Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order, Annexure P/17, dated 08.02.2022 dismissing the petitioner from service on account of his having concealed material facts while applying for the post of Constable.

[2] Brief facts of the case leading to the filing of the instant petition are that in response to Advertisement No.3/2018 by the Haryana Staff Selection Commission, the petitioner applied for the post of Constable on 10.05.2018 (although vide corrigendum, the last date for applying was extended to 22.10.2018.,) was selected and appointed as such vide appointment letter Annexure P/6 dated 02.03.2019 and issued Constabulary Number on the same day, that FIR No.437 dated 08.09.2014 stood registered against the petitioner and others under Section 354-D (1) IPC at Police Station DLF, Phase-II, Gurgugram but the same resulted in

acquittal of the petitioner vide order Annexure P/3 dated 10.05.2016,

another FIR i.e. FIR No.697 dated 10.10.2014 stood registered against the petitioner and others u/Ss 148/149/323/341 and 506 IPC at Police Station Civil Line, District Hisar, in which the petitioner was convicted on 06.08.2018 but was released on probation vide order Annexure P/4 dated 09.08.2018, that on the basis of a complaint, impugned order, Annexure P/17 dated 08.02.2022 was passed, inter alia on the ground of concealment of registration of aforementioned FIR, framing of charges, and consequential ineligibility of the petitioner to apply for the post.

[3] On 18.02.2022, learned Deputy Advocate General, had requested for an adjournment to enable him to assist in the matter by referring to the record. Accordingly, the case was adjourned for today on account of the order which is the subject-matter of challenge coming into operation w.e.f. 22.02.2022. Today, online application form has been produced. The same is taken on record as Mark 'A'. Translated version of Clause 4 of the instructions in the application form, is reproduced hereunder :-

“ I also declare that till date I have not been prevented from appearing in any examination / interview by any agency / selection committee of the State of Haryana and have not been found guilty by any court of law. ”

[4] In the aforementioned background, learned Senior Counsel contends that :-

- i) The application form is to be loaded online and there is no column in the same for mentioning details regarding involvement in a criminal case or the status in respect thereto, therefore the FIR or framing of charges could not have been mentioned in the application form ;
- ii) The petitioner had mentioned complete details of the criminal case

therefore now the respondents are estopped from passing the impugned order ;

iii) As per legal opinion, Annexure P/10, conviction, in case FIR No.697 dated 10.10.2014 under Sections 148, 149, 323, 341 and 506 IPC and subsequent release of the petitioner on probation did not attract / attach disqualification for employment in terms of Rule 12.18 (3) (a) of the Punjab Police Rules, 1934 as applicable to the State of Haryana, therefore the impugned order could not have been passed ;

iv) Complaint leading to passing of the impugned order was by the petitioner's disgruntled brother in law on account of the petitioner's matrimonial dispute, therefore the same ought to have been ignored ;

v) Show cause notice issued by the then Superintendent of Police, Fatehabad, proposing punishment of dismissal from service vide memo dated 06.07.2021 pursuant to inquiry under Rule 16.24 of the Punjab Police Rules 1934 as applicable to the State of Haryana, was with a predetermined mind as straightway a show cause notice was issued as to why the petitioner should not be dismissed from service, therefore the impugned order was vitiated.

[5] Learned Deputy Advocate General on the other hand contended ;

i) that although there is no column in the application form for giving details of the criminal case, however, Clause (iii) (a) & (b) of the General Instructions in the advertisement, Annexure P/1 created an embargo against a candidate against whom charges had been framed for an offence involving moral turpitude or which was punishable with imprisonment of three years or more from applying whereas despite registration of FIR

Station Civil Line, Hisar and charges having been framed against the petitioner in the said case with the offence u/s 148 being punishable with imprisonment upto 3 years, the petitioner applied for the post of Constable, therefore the impugned order was rightly passed. Clause (iii) (a) & (b) of the General Instructions, contained in advertisement Annexure P-1 are reproduced as under :-

“(iii) a) A candidate, who has been convicted for an offence involving moral turpitude or punishable with imprisonment for three years or more, need not apply.

b) Where charges have been framed against a candidate for offence(s) involving moral turpitude or which is punishable with imprisonment of three years or more need not apply. ”

that in the aforementioned circumstances, irrespective of there being no column in the application form, submission of form by the petitioner attracted consequences of disqualification of the candidature outrightly as stipulated under Rule 12.18 (2) and discharge from service of the petitioner by the appointing authority from the date of appointment, summarily in terms of Rule 12.18(4) of the Punjab Police Rules, 1934. Relevant extract of rule 12.18 of the Punjab Police (Haryana Amendment) Rules, 2015 notified on 18.06.2015, is reproduced as under:-

“12.18 : Verification of character and antecedents:-

(1) xxx

(2) The candidate shall disclose the fact regarding registration of FIR or criminal complaint against him for any offence under any law along-with the current status of such case in application form and verification cum attestation form irrespective of the final outcome of the case. Non-disclosure of such information shall lead to disqualification of the candidature outrightly, solely on this ground:

Provided that where a candidate, who as a juvenile had earlier come in conflict with law and was dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, shall not suffer any disqualification on account of non-disclosure of this fact either in application for or verification cum attestation form.

(3). xxx

(4) If it is ever revealed that a candidate has got appointment either by concealment of facts or by furnishing false or wrong information or by submitting fake or forged document/certificate, he shall be discharged from the service by the appointing authority from the date of appointment, summarily i.e. without holding a regular disciplinary proceedings, treating him ineligible for service and salary paid to him may also ordered to be recovered.”

therefore the impugned order was as per rules, thus immune from challenge ;

ii) that the matter was squarely covered against the petitioner by the decision of a Co-ordinate Bench of this Court in 2020(2) SLR 450 in case titled as ‘Parveen versus State of Haryana and others and other connected cases’. Relevant extract of the aforesaid decision is reproduced as under :

“14. However, this would form only the second ground of rejection of appointment, the first and foremost ground being the complete statutory bar imposed by Rule 12.18(2) of the Punjab Police Rules as applicable to Haryana without any exception providing that active nondisclosure of the factum regarding registration of criminal case (FIR) irrespective of its outcome in the application form and verification form shall lead to outright disqualifications of the candidature solely on this ground. Truthfulness and honesty of disclosure is of paramount

importance for enlistment as a police officer and this underscores the virtue engrafted in the amendment as a State policy decision. The essence is thus not really the nature of the criminal case and whether it involved major or minor offences or that the result of the trial was secured by default but the essence lies in not speaking the truth and because an untruthful man should not wear a police uniform. That was a false start by the petitioners which must end with Sub rule (2) to Rule 12.18. Speaking a lie is for what amended Rule 12.18(2) seeks to prevent as a prophylactic to the aberration.

”

“24. Haryana Government has completely overhauled its policy in a sensitive matter of appointments in the police department aimed at curbing dishonest self declarations in Forms from the lowest rung of service onward, to all of them who are entrusted the onerous duties of maintenance of law and order and the life and property of citizens. The rule would go a long way help in cleaning up the public image of a uniformed force from the entry point to service. The Government of Haryana have apparently done so in the strictest terms by introducing the amending Rule 12.18 (2) stringently for the first time on 18.06.2015 evidently to remove mischief in society and to purify the police department and invigorate it by appointing persons of unimpeachable character in the disciplined force. I do not wish to retard that process by causing interference in the orders passed by the authorities subscribing to the mandate of Rule 12.18 (2). ”

iii) that the essence of the matter was whether the applicant had spoken the truth because it was of paramount importance that an untruthful man should not wear a police uniform and that in the circumstances, a false start by the petitioner must end with the action

Rule 12.18(2) sought to prevent as a prophylactic to the aberration ;

iv) that legal opinion Annexure P/10 was irrelevant as it did not address the point in issue on the basis of which order, Annexure P/17 had been passed i.e. of the petitioner having concealed material facts while applying for the post despite prohibition in the advertisement of candidates against whom charges had been framed for an offence involving punishment of three years (Section 148 IPC) and the dismissal not having been ordered on account of conviction, but on account of concealment, consequentially attracting action under Rule 12.18 (2)& (4) of the Punjab Police (Haryana Amendment) Rules, 2015 ;

v) that the plea that the petitioner had mentioned complete details of the criminal case in the attestation form but was still appointed and no action was taken, therefore now the respondents were estopped from passing the impugned order, was devoid of merit as appointment letter Annexure P/6 and issuance of Constabulary Number was on 02.03.2019 whereas attestation form giving details of involvement in the criminal case was of a subsequent date i.e. 03.03.2019 and in the circumstances the respondents were well within their rights to process the complaint on receipt and take action in respect thereto as per law in terms of the rules applicable i.e. Rule 12.18. Besides, there was no estoppel against law ;

vi) that the plea of the show cause notice not being in accordance with law was also devoid of merit as the show cause notice was challenged by the petitioner by way of CWP No. 13572 of 2021 and said writ petition was disposed of as premature whereafter the petitioner as per his own showing in paragraph No. 22 of the writ petition filed a detailed reply, to the show cause notice, was afforded opportunity of personal hearing and

the petitioner had been pointed out, therefore the impugned order was immune from challenge.

vii) that the impugned order being appealable, the petitioner was liable to be relegated to avail remedy of appeal under Rule 16.29 of the Punjab Police Rules, 1934 as applicable to the State of Haryana.

[6] Learned Senior Counsel states that the petitioner would not be averse to availing remedy of appeal provided the impugned order is stayed for upto one week after the decision of the appeal as decision of the appeal would take a long time.

[7] I have considered the submissions of learned counsel. As per law well settled in cases titled as '**Bank of India versus M/s Maxim Infrastructure and Real Estate Pvt. Ltd. And another**' 2021 (1) RCR (Civil) 603, '**The Assistant Commissioner of State Tax and others versus M/s Commercial Steel Limited**' 2021(3) PLR 653, in view of the impugned order being appealable and no exceptional circumstances having been pointed out for entertaining the writ petition, therefore, without adjudicating the respective pleas on merit, lest the same prejudices any party, while rejecting the plea for stay of the impugned order in the light of totality of circumstances, I deem it appropriate to relegate the petitioner to avail remedy of appeal under Rule 16.29 of the Punjab Police Rules, 1934 as applicable to the State of Haryana before the Inspector General of Police (in view of the DIG as mentioned in Rule 16.29 being in reference to pre-partition period under the old Act of 1861 which stands repealed by the Haryana Police Act, 2007). The Learned appellate authority is requested to decide the appeal within 02 weeks from the date of receipt of appeal in accordance with law after taking into

account all aspects of the matter and to furnish a copy of the decision to

the petitioner within a period of 03 days thereafter. Needless to mention, no opinion has been expressed on the merits of the case.

[8] Writ petition stands *disposed of* as above.

[9] Copy of this order be given to learned counsel for the parties under the signatures of the Bench Secretary.

(B.S. Walia)
Judge

21.02.2022
'Rajneesh'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>