

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-858-2021 (O&M)
Date of decision:- 30.05.2022

Bhupender

...Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Sunil Hooda, Advocate,
for the appellant.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

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RAVI SHANKER JHA, C.J. (ORAL)

This appeal has been directed against the judgement and order dated 22.04.2021 passed by the learned Single Judge dismissing the writ petition filed by the petitioner (appellant herein) seeking quashing of the order dated 30.09.2020 (Annexure P-7) passed by respondent No. 4 disqualifying him from selection to the post of Constable in the Haryana Armed Police.

Learned senior counsel appearing for the appellant submits that pursuant to an advertisement dated 19.07.2015 issued by the Haryana Staff Selection Commission inviting online applications for direct recruitment to 5000 posts of male constables including 1650 posts allocated to the general category, he applied for the same and participated in the physical test conducted on 13.07.2016. He further submits that the appellant cleared the physical test and thereafter appeared in the written examination on 28.08.2016 and also participated in the interview-cum-personality test on 17.06.2017 and his name was ultimately shown at Sr. No. 63 in the list of selected candidates which was published on 20.08.2020. It is alleged that the appellant went to join the training at the Haryana Police Academy, Madhuban on 24.08.2020 and on the completion of his medical examination on 27.08.2020, he was asked to fill up an attestation-cum-verification form. However, while filling up column No. 13 thereof, he got confused as he was under an impression that he

was only required to give information regarding any pending criminal case on account of which he did not mention the fact that FIR No. 930

dated 22.12.2013, under Sections 323, 341 and 34 of the Indian Penal Code had been registered against him at Police Station City, Bhiwani in which he was formally arrested and was later on released on bail and that thereafter he was acquitted by the learned Chief Judicial Magistrate, Bhiwani vide judgement dated 06.01.2015. It is further alleged that after the appellant's character verification, the Superintendent of Police, Bhiwani wrote a letter dated 01.09.2020 to the Commander of the Academy reporting the fact that the criminal case had been registered against him pursuant where to, the respondent-authorities rejected his candidature. He further submits that the appellant had already been acquitted prior to his participation in the selection process and that he did not suppress any material information except for the fact that he replied 'no' in the column relating to information regarding prosecution on account of misunderstanding. He further submits that even otherwise, the offence against the appellant was of trivial nature in which he was acquitted and in such circumstances and in view of the decision of this Court rendered on 06.09.2016 in CWP-9533-2014 titled as *Rajesh Vs. Union of India and others* and the decision of the Supreme Court rendered on 02.05.2022 in Civil Appeal No(s). 3574 of 2022 titled as *Pawan Kumar Vs Union of India* and another, the impugned decision of the respondent-authorities denying him the appointment deserves to be quashed. It is further submitted that as these aspects have not been taken into consideration by the learned Single Judge, therefore, the impugned order passed by the learned Single Judge also deserves to be set aside.

We have heard learned senior counsel for the appellant at length.

In the instant case, it is an admitted and undisputed fact that the appellant while filling up his attestation-cum-verification form was required to disclose the information as to whether he was convicted for any offence in response to which he had stated 'no'. Quite apart from the above, it is also evident that the appellant when asked as to whether he had ever been arrested or prosecuted had stated 'no'. It is also evident from the facts of the case that the appellant was acquitted by the trial Court only because material witnesses turned hostile. It is also evident from the facts of the case that though the appellant had applied pursuant to the advertisement dated 19.07.2015 and the case against him at that relevant point of time was fresh and pending, he did not

make any mention of the same either in his application or the attestation-cum-verification form. It is also undisputed that the appellant in the attestation-cum-verification form had categorically stated and certified that the information given by him was true to the best of his knowledge. Admittedly, all the aforesaid information has been suppressed by the petitioner and has not been disclosed.

The provisions of Rule 12.18(2) of the Punjab Police Rules (Haryana Amended Rule, 2015) provide that a candidate is required to disclose the fact regarding registration of an FIR or a criminal complaint against him for any offence under any law alongwith the current status of such case in application form and verification-cum-attestation form irrespective of the final outcome of the case and that non-disclosure of such an information would lead to disqualification of the candidature out-rightly solely on this ground.

The learned Single Judge taking the aforesaid facts and the provisions of the Rule (ibid) into consideration dismissed the writ petition

The issue involved in the present case is as to whether the impugned order passed by the learned Single Judge dismissing the writ petition filed by the appellant on the ground of non-disclosure of material information suffers from any material irregularity or arbitrariness warranting interference by this Court in appeal.

The present case is the one where it is factually established that the appellant inspite of having knowledge of the criminal case registered against him did not disclose the same either in his application or the attestation-cum-verification form and, therefore, squarely falls under the provision of Rule 12.18(2) of the Rules which provides that in case of suppression of material fact or furnishing of incorrect information, the candidate would stand disqualified.

The learned counsel for the petitioner, relying upon the decision in the case of *Rajesh* (supra), submits that inspite of such suppression he should not have been removed as the criminal case against him was of a trivial nature. The reliance placed on the decision in the case of *Rajesh* and the arguments based thereon are misconceived as the learned Single Judge in *Rajesh's* case (supra) has evidently decided that case without taking into consideration the

State of Uttarakhand and others (2013) 9 SCC 363, wherein it has been held that suppression of material information itself amounts to moral turpitude which is a separate and distinct matter than the gravity or otherwise of the criminal case. It is further held that in such a case of suppression of material information, the candidature of a person seeking appointment is liable to be terminated or cancelled inspite of triviality of the criminal case and even if there has been no further trial in the criminal case or the person concerned has been acquitted or discharged. The Supreme Court has also relied upon and quoted the maxim “Nullus commodum capere potest de injuria sua propria” (persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation).

We are, therefore, of the considered opinion that the decision rendered by the learned Single Judge in the case of *Rajesh* (supra) does not lay down the correct law. The reliance placed by the appellant on the decision of the Supreme Court in *Pawan Kumar*’s case (supra) is also misplaced and mis-conceived inasmuch as that was the case where the distinguishing factor was that a criminal complaint/FIR had been registered against the applicant post-submission of the application form.

The issue as to whether mere suppression or withholding of information in the attestation-cum-verification form by itself is sufficient to cancel the candidature or appointment is in fact conclusively decided against the petitioner by the Supreme Court in the case of *Devendra Kumar* (supra); *Jainendra Singh Vs State of U.P.*, (2012) 8 SCC 748; *Rajasthan Rajya Vidyut Prasaran Nigam Limited and another Vs Anil Kanwariya* (2021) 10 SCC 136 and *State of Rajasthan and others Vs Chetan Jeff*, 2022 SCC Online SC 597.

In the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited* (supra), the Supreme Court has analyzed and laid down the law in this regard by stating as under:-

“8.2. - - - - -
Dismissing the appeal, this Court observed and held that the question is not whether the employee is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. It is further observed that the information sought by the employer if not disclosed as

required, would definitely amount to suppression of material information and in that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

8.3. It is further observed by this Court in Devendra Kumar [Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363 : (2014) 1 SCC (L&S) 270] that where an applicant employee gets an order by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." It is further observed and held that dishonesty should not be permitted to bear the fruit and benefit those persons who have defrauded or misrepresented themselves and in such circumstances, the court should not perpetuate the fraud by entertaining petitions on their behalf.

8.4. The relevant observations in the said decision are in paras 12, 13, 18 and 25, which are as under: (Devendra Kumar case [Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363 : (2014) 1 SCC (L&S) 270] , SCC pp. 368-69 & 371)

"12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.

13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. 'Fraud avoids all judicial acts, ecclesiastical or temporal.' [Vide S.P. Chengalvaraya Naidu v. Jagannath [S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.] In Lazarus Estates Ltd. v. Beasley [Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702 : (1956) 2 WLR 502 (CA)] the Court observed without equivocation that : (QB p. 712)

‘... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.’

18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India v. M. Bhaskaran* [*Union of India v. M. Bhaskaran*, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162] this Court, after placing reliance upon and approving its earlier judgment in *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [*Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, (1990) 3 SCC 655 : 1990 SCC (L&S) 520], observed as under : (*M. Bhaskaran case* [*Union of India v. M. Bhaskaran*, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162] , SCC p. 104, para 6)

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of party cannot sanctify the same. *Sublato fundamento cadit opus* — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (*Vide Union of India v. Madan Lal Yadav* [*Union of India v. Madan Lal Yadav*, (1996) 4 SCC 127 : 1996 SCC (Cri) 592] and *Lily Thomas v. Union of India* [*Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056].) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).”

(emphasis in original)

8.5. *In Jainendra Singh [Jainendra Singh v. State of U.P., (2012) 8 SCC 748 : (2012) 2 SCC (L&S) 754], this Court summarised the principles to be considered in a case where the appointment is obtained by misrepresentation and/or suppression of facts by candidates/appointees as under : (SCC pp. 761-62, para 29)*

“29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

29.5. The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. *The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.*

29.8. *An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.*

29.9. *An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.*

29.10. *The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.”*

8.6. *In Daya Shankar Yadav [Daya Shankar Yadav v. Union of India, (2010) 14 SCC 103 : (2011) 2 SCC (L&S) 439] , this Court had an occasion to consider the purpose of seeking the information with respect to antecedents. It is observed and held that the purpose of seeking the information with respect to antecedents is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. It is further observed that when an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can lead to any of the following consequences : (SCC pp. 110-11, para 15)*

“15. ... (a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature

and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

Thereafter, it is observed and held that an employee can be discharged from service or a prospective employee may be refused employment on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the

declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

In view of the law laid down by the Supreme Court and the facts of the present case, we do not find any illegality or perversity in the impugned order passed by the learned Single Judge.

The appeal being meritless is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.05.2022
Amodh Sharma

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