

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

CWP No. 13454 of 2014 (O&M)

Date of Decision: May 6, 2022

Girraj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mahipal S. Yadav, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition is seeking appointment to the post of constable in Haryana police.
2. In brief, the facts are that by the advertisement dated 20.07.2008, the State of Haryana advertised 5456 posts of Constable for recruitment in the Haryana police. The petitioner applied as BC-A category for the vacancies lying at District Police Lines Palwal. At the time of filling the application form, FIR No. 39 dated 19.01.2006 under Sections 498-A/406/323/506 IPC registered at Police Station City Palwal, District Faridabad, was pending adjudication in the court at Palwal. This information regarding the pendency of the same was supplied by the petitioner while filling up the application form. The petitioner was selected as his name appeared at serial No. 34 in the merit list prepared for BC-A candidates. The District Magistrate Palwal was asked to get the verification

done of the petitioner vide a letter bearing No. 2084–85 dated 13.03.2012.

Despite being meritorious, the petitioner was not selected and persons with lower merit were offered letters of appointment. The petitioner was informed that his name has been withheld on account of the pendency of the FIR against him. It is submitted that he was falsely implicated in the FIR on account of matrimonial disharmony between the petitioner and his wife and such matrimonial dispute cannot be termed as an offence involving moral turpitude. The petitioner requested the authorities that he may be allotted a Belt No. and since his request was not exceeded to, the petitioner approached this Court by way of filing Civil Writ Petition No. 8211 of 2012, which was disposed of by giving a direction to the respondent No. 3 to decide the representation within a period of 4 weeks. The representation was decided and the claim of the petitioner was rejected by order dated 27.10.2012 on the ground that all those candidates against whom cases of moral turpitude are lodged would not be given appointment. Aggrieved against the order rejecting the representation, the instant petition has been filed.

3. Mr. Mahipal Yadav, learned counsel appearing on behalf of the petitioner, would contend that the petitioner had the necessary merit to be appointed as a constable, but has been denied on the ground that he had concealed in the attestation form about the pendency of the criminal case. It is argued that this fact had been mentioned in the application form and in any case an offence under Section 498A/ 406 IPC would not constitute an offence involving moral turpitude. It is also submitted that the impugned

order is not sustainable as the appointment has been denied to him holding that he is involved in offences pertaining to moral turpitude, which is not correct. Learned counsel relies upon letter dated 26.3.1975 wherein the State Government has enlisted all the sections under the Indian Penal Code which would fall under an offence involving moral turpitude. It is submitted that offences under Sections 498-A/406 IPC are not the offences involving moral turpitude and hence cannot be denied the appointment. Learned counsel also points out that instructions have been issued on 13.11.2007 wherein it has been directed that those candidates against whom cases are pending should be considered for allotment of constabulary number, except those facing investigation/trial or have been convicted in offences pertaining to moral turpitude. It is also submitted that the petitioner now stands exonerated of all charges against him by the trial court on 12.11.2013, and this fact has not been taken into consideration while passing the impugned order.

4. Per contra, learned counsel appearing on behalf of the respondents would contend that there was non-disclosure of the pendency of criminal proceedings in the attestation form. The petitioner failed to disclose about the FIR pending against him and has been non-suited on this ground. The attestation form contained questions regarding the pendency of criminal proceedings, whether the candidate had ever been arrested etc. and the petitioner failed to mention the pendency of the FIR pending against him. It is also submitted that in the advertisement issued there was an exclusionary clause which term and conditions clearly specified that “**12 (i) a candidate**

against whom a criminal case stands registered and is under investigation or pending trial or has been convicted by a court of law need not apply.”

The petitioner was ineligible for appointment to the post of constable.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings and the case law cited.

6. The admitted fact is that the petitioner applied for the post of constable for the recruitment process held in the year 2011. He was successful and was brought on the merit list but denied the appointment on the ground that he had failed to mention about the pendency of a criminal case pending against him in the attestation form. However, to his credit he had mentioned the pendency of the FIR pending against him under Sections 406/498-A IPC in the application form.

7. Thus, the question posed is, whether the petitioner can be denied appointment on account of non-disclosure of his antecedents in the attestation form?

8. The petitioner has relied upon a number of orders of this Court whereby the petitioners, in those cases, who had been involved in cases pertaining to Section 323/324 IPC, were directed to be offered appointment holding that these sections do not involve the question of moral turpitude. Reference may be made to the judgments rendered in **CWP No. 20155 of 2008 titled Krishan Kumar Versus State of Haryana and others** and **CWP No. 17043 of 2007 titled Pardeep Kumar Versus State of Haryana and others**. Whereas, learned counsel for the respondent—State relies upon judgments as rendered in **Ranbir Singh Vs State of Haryana 2014**

(11) R.C.R. (Civil) 422 and Praveen versus State of Haryana 2020 (2) S.L.R 450, wherein it is held that non-disclosure of pendency of criminal cases is enough to deny appointment in a government job, especially to a police officer considering the nature of his work. It has been held that truthfulness and honesty of disclosure is the paramount consideration for enlistment as a police officer.

9. The law is no longer res-integra with the judgments as rendered by the Supreme Court in **Avtar Singh v. Union of India (2016) 8 SCC 471**, where a Larger Bench decided a reference made to it to resolve the conflict of opinion in the various decisions of Division Benches of the Supreme Court on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case, while applying for a Government job. The Supreme Court after going through the gamut of decisions taken summarized their conclusions as below:-

“(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 suppression or suggestion of false information, knowledge of the fact must be attributable to him.”

10. In a similar case reported as **State of Odhisa vs. Govinda Behra, Civil Appeal No 893 of 2020 decided on 31.1.2020**, a candidate applied for post of constable but failed to disclose his involvement in a criminal case pending against him. He was appointed and on verification the details emerged. He was dismissed from service and the order of

dismissal was upheld by the Tribunal on the ground of suppressing information. He challenged the order before the High Court and the writ petition was allowed. Against the said order State of Orissa filed SLP in the Supreme Court. The said petition was allowed by taking into consideration the judgment as rendered in **Avtar Singh's case (Supra)**. It was held: *“The respondent was seeking public employment in the State police service. His duties, on appointment to the service, would be of a responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens. To expect that an applicant for such a position would be truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of personality and character. The employer can legitimately conclude that a person who has suppressed material facts does not deserve to be in its employment.”*

11. Even though the petitioner stands acquitted by the trial court in offences under section 498-A/ 406 IPC, which do not pertain to offence of moral turpitude, it cannot be lost sight of that the petitioner did not disclose the true and correct facts regarding the pendency of criminal proceedings pending against him in the attestation form. There is deliberate suppression of material fact in attestation form. A perusal of the said form clearly reflects that the petitioner has checked ‘NO’ against the question whether there is any case pending against him in a court of law at the time of filling in of this attestation form, which reply is palpably false. As held in the judgment rendered in Avtar Singh's case (Supra) *“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.”

12. The argument raised that the petitioner stands acquitted by the trial court would have no bearing as the said acquittal was after he had filled in the attestation form. It is also not in dispute that the petitioner had no knowledge of the proceedings, as there was a mention in the application form that an FIR was pending. This court has no option but to come to the conclusion that there was suppression of a material fact, enough to deny appointment to the petitioner.

13. Another reason for not allowing the writ petition would be the terms and conditions as spelt out in the advertisement itself which clearly spelled that *“a candidate against whom a criminal case stands registered and is under investigation or pending trial or has been convicted by a court of law need not apply.”* This clause itself is binding and sufficient alone to disentitle the petitioner to seek relief who was facing trial in a FIR under Sections 498A/406 IPC at the time he had applied. It has been held in **Ranbir Singh's case (Supra)** that *“there can be no gainsaying that the terms of the advertisement alone are sufficient to exclude the petitioner from consideration altogether, which lay down that those who have criminal cases registered or are under investigation or pending trial or who have been convicted need not apply. This condition precedent is so incipient in its exclusion its design will run through till the end of the recruitment process sufficient to deny appointment even though there was no disability*

to start with but developed on the way. The paralyzing term in the advertisement laid down in 2008 goes further afield than the instructions dated 02.07.2007 and clarificatory instructions dated 13.11.2007 and the entire matter in the looming presence of the ratio of Sushil Kumar case.”

These observations were made in appointment sought under the same advertisement issued on 21.7.2008.

14. Consequently, writ petition stands dismissed for want of merit.

May 6, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No