

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

CWP No.24687 of 2015

Reserved on: 31.05.2022

Pronounced on: **08.07.2022**

Simranjit Singh Chadha

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Prateek Mahajan, Advocate and
Mr. Ashish Gupta, Advocate, for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR.J

1. The petitioner herein is seeking a writ in the nature of Mandamus directing the official respondents to consider his case for appointment to the post of Male Constable in the Punjab Police. He has also prayed for quashing the letter/instructions dated 01.02.2013 issued by the Director General of Police, Punjab, to the Commissioner of Police, Ludhiana, vide which instructions, his case for selection to the said post was ignored.

2. Briefly stated, on 28.09.2011, an advertisement was issued by the office of Director General of Police, Punjab, i.e. respondent No.2 for 382 posts of Male Constables in the District of Ludhiana C.P. The last date for submission of application was fixed as 17.10.2011. The petitioner participated in the selection process under the General Category and his name figured in the list of selected candidates. Since the petitioner was amongst the selected candidates, his character verification report was called

for from the local police at Gurdaspur. It was intimated that petitioner was involved in FIR No.38, dated 17.03.2010 registered under Sections 376, 34 IPC at Police Station Sadar, Gurdaspur. His candidature was rejected on account of the FIR and non-disclosure of the pendency of the same in the application form. Thereafter, the office of Commissioner of Police, Ludhiana i.e. respondent No.5 sought clarification for the candidates against whom some criminal cases were pending, or those who were acquitted by the criminal court. Accordingly, respondent No.2-Director General of Police, Punjab, issued instructions/directions vide his letter dated 01.02.2013 (Annexure P-6) to respondent No.5-Commissioner of Police, Ludhiana, which reads as under:-

- (1) the candidates, who have been acquitted by learned courts before applying for the post, be considered for appointments;
- (2) those candidates who fall in the declared result or in the waiting list of 6 months, and have been acquitted by learned courts, the cases of such candidates be considered for recruitment;
- (3) the cases of those candidates have been filed, the cases of whom are pending in learned courts.

The respondent-department rejected the case of the petitioner while stating that his case does not fall under the said instructions.

3. Mr. Prateek Mahajan, learned counsel appearing on behalf of the petitioner would argue that in the aforesaid FIR, an untrace report was submitted by the police of Police Station Tibri on 10.11.2010, which is prior to the advertisement issued on 28.09.2011 and that report was accepted by

the court on 30.11.2012, on the statement of the victim dated 05.06.2012. He has further argued that since no case was registered against him on the date of submission of the application form, he was not required to state regarding the FIR in column No.14 which talks about pendency of criminal case and the details regarding court proceedings. A mere registration of FIR subsequently does not amount to disqualification. He has further argued that the petitioner cannot be treated separately from other candidates who had been charged with offences and thereafter acquitted by the Courts and offered appointment. In this regard, he submitted various representations and even sent a legal notice dated 20.09.2015 to consider his case for appointment, but to no avail.

4. On the other hand, Mr. Pawan Sharda, learned State counsel would submit that the candidature of the petitioner was rejected on the ground that *“his case does not fall under the instructions issued vide letter dated 01.02.2013.”* He would submit that the petitioner did not disclose in his application form that an FIR stood registered against him and, therefore, he concealed and suppressed material information.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the paper book.

6. Admittedly, an FIR No 38, dated 17.03.2010 was registered against the petitioner involving the offence of rape. However, the victim did not recognize the petitioner as having committed the said offence and accordingly an untrace report was filed on 10.11.2010 which was accepted by the Court vide order dated 30.11.2012. It would also be worthwhile to note that the prosecutrix had suffered a statement in court on 28.09.2012 that

she was accepting the untrace report filed. This Court, while issuing notice of motion, also called for medical report of the victim, wherein Chemical Examiner in his report dated 06.04.2010, has stated that no spermatozoa was detected in the contents of exhibits 1 & II i.e. lower vaginal swab and upper vaginal swab. Even the medical report furnished did not support any possibility of an offence having been committed.

7. On a representation made by the petitioner seeking appointment, clarification was sought by respondent No.3 on 19.12.2012, from the office of Director General of Police and a decision was taken regarding recruitment of candidates against whom cases were lying registered before recruitment or at the time of recruitment. Based on the instructions, mentioned therein, the order dated 01.02.2013 (Annexure P-6) was passed rejecting the candidature of the petitioner.

8. It would be relevant to note that when the Director General of Police, Punjab issued instructions on 01.02.2013 regarding joining of candidates against whom cases were registered before recruitment or at the time of recruitment, the respondents were well aware of the fact that an untrace report had been filed much prior to the issuance of the advertisement and the same stood accepted. The untrace report stood accepted by the court on a statement of the prosecutrix that she agreed to the untrace report. The order of rejection of the claim of the petitioner is a non-speaking one as no reason has been given therein justifying rejection. Even the instructions dated 01.02.2013 would be made applicable in a positive way as the case of the petitioner also stood filed. Another reason for this court to entertain this writ petition would be that the medical report and the FSL report do not support

the case of the prosecutrix and, therefore, on account of false implication, especially when an untrace report has been accepted by the court, the petitioner cannot be made to suffer.

9. A stand has been taken in the written statement that the petitioner has not mentioned about the pendency of the FIR against him in column No.14 of the application form, to which it has been replied that the petitioner has not suppressed any material information as he had not been summoned as an accused. In fact, an untrace report stood filed in court one year prior to the issuance of advertisement. In the opinion of the court, the candidature of the petitioner could not be ignored on the ground that he had not mentioned the pendency of an FIR against him. In fact, an untrace report had already been presented in court when the application form had been submitted. Column 14 of the application form clearly asked the applicant to mention “*whether any criminal case pending against you, if yes, give details.*” The column is depicted as under:-

Sr. No.	Court Case/Case No.	Name of Court/Police Station	Criminal Section/Act	Present Status

On the date of filling in the application form, the petitioner had not been summoned as an accused nor had a final report under Section 173 Cr.P.C. been presented before the court against him. On the contrary, an untrace report had already been presented in Court on 10.11.2010, i.e. much prior in time to the issuance of the advertisement inviting applications in the month of September 2011. In ***State of A.P. Versus B. Chinnam Naidu, (2005) 2 SCC 746***, the Supreme Court has observed that the object of requiring

information in the attestation form and the declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. The question as to whether there has been concealment about the pendency of criminal proceedings, would stand answered in the negative, as an untrace report had already been submitted in court long before the application form was filled in. It would be worthwhile to note that the petitioner had not been summoned as an accused to face trial. No charges had been framed against him at that relevant point in time. A reading of column No.14 would reflect that the details of the case pending had to be mentioned and when the petitioner was not named as an accused nor was summoned to face trial, it cannot be held that he was facing criminal prosecution. Therefore, not mentioning the details of FIR by the petitioner would not necessarily amount to concealment or suppression of information. In the case of ***Avtar Singh Versus Union of India, 2016(8) SCC 471***, the Supreme Court has culled out provisions as to how to deal with a situation when false information has been given by an applicant seeking appointment. Para 38.10 stipulates *“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.”

10. This Court, vide order dated 04.02.2019, had sought for the details of identically placed persons who have been given appointment in District Ludhiana and accordingly, a list of candidates, who are serving in the police department against whom criminal cases were pending and who have been acquitted or untrace reports have been submitted before the trial Court, has been furnished. A reading of the said list would reflect that for the recruitment years pertaining to 2010/2011, several persons have been appointed as constables who were either facing criminal charges and were acquitted thereafter or an untrace report stood accepted by the court or proceedings were quashed on the basis of compromise. Why should the petitioner not be treated at par with them? On the question of parity too, the order declining to offer appointment to the petitioner would not stand judicial scrutiny.

11. In view of above, the present writ petition is allowed. The order/letter dated 01.02.2013 (Annexure P-6) is set aside qua the petitioner. The petitioner would be entitled for appointment as Constable with all consequential benefits including seniority, notional fixation of salary etc. but for back wages.

(JAISHREE THAKUR)
JUDGE

08.07.2022

sanjeev Whether speaking/reasoned: Yes/No
 Whether Reportable: Yes/No