

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

CWP No.24042 of 2018(O&M)

Reserved on:01.06.2022

Date of Decision.08.07.2022

Kulbir Singh

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. PKS Phoolka, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

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JAISHREE THAKUR J.

1. The petitioner herein has approached this Court under Article 226/227 of the Constitution of India praying for issuance a writ in the nature of certiorari for quashing order dated 18.01.2017 (P-3) vide which respondent No.4 has rejected the candidature of the petitioner for appointment to the post of Constable, with a further prayer to direct the respondents to grant appointment to the petitioner to the post of Constable as per his merit.

2. The facts as noticed from the paper book are that the petitioner had applied for the post of Constable in the Punjab Armed Police and was selected, however, vide letter dated 18.01.2017, candidature of the petitioner stood rejected on the ground of pendency of FIR No.90 dated 31.05.2014 under Sections 420, 465, 467, 471, 120-B IPC. It is further stated in the abovesaid letter that though the petitioner has been declared innocent upon inquiry dated 20.07.2015 conducted by Station House Officer, Police Station, Ferozepur Cantt yet the final decision qua acceptance of the aforesaid inquiry report/final report under Section 173 Cr.P.C. will be taken by the court of competent jurisdiction and therefore, rejected the candidature of the petitioner.

It is further submitted that the aforesaid FIR was registered at the instance of the Army Recruiting Office C/o 56 APO against 31 candidates including the petitioner, who appeared in the recruitment rallies conducted by them and during the said recruitment rallies, it came forth that these candidates produced matriculation certificates issued by the Hindi Sahitya Sammelan, Allahabad when they had already appeared and cleared their matriculation examination from the Punjab School Education Board. It was noticed that though candidate's name, father's name, mother's name given in the certificates issued by the Hindi Sahitya Sammelan, Allahabad were matching with that of the certificates issued by the Punjab School Education Board yet the date of birth was different and therefore, it could be an attempt by these candidates to reduce their age in the mark sheet issued by the Hindi Sahitya Sammelan, Allahabad to make them eligible for enrolment into the Army. An investigation was sought in the matter so that genuine candidates could be sent for training. An inquiry was conducted in the matter and vide inquiry report dated 20.07.2015 the Station House Officer, Police Station Cantt. Ferozepur, the petitioner and other candidates were found innocent and action was recommended against 11 agents, who though received certificates issued by the Punjab School Education Board from the candidates yet before the Army Recruiting Office, they produced certificates issued by the Hindi Sahitya Sammelan in order to get them selected. Thereafter, the petitioner in the year 2016 had applied for the post of Constable in the Punjab Police but since the report under Section 173 Cr.P.C. has not been presented, the candidature of the petitioner has been rejected by respondent No.4 vide order dated 18.01.2017, on the ground that the Court would decide whether the inquiry report/investigation report qua petitioner is to be accepted or not.

3. Learned counsel appearing for the petitioner argued that the petitioner had approached this Court vide CRM-M No.3476 of 2017 titled as *Kulbir Singh Vs. State of Punjab and others* for issuance of direction to the respondents therein to submit final report under Section 173 Cr.P.C. before the court of competent jurisdiction. The respondents therein had appeared and filed the status report admitting the innocence of the petitioner in the FIR in question. The said petition was disposed of with a direction to complete the investigation at the earliest and if the petitioner was not required then appropriate action be taken in this regard at the earliest, preferably within a period of two months. It was further argued that as per status report filed by SSP, Ferozepur dated 23.05.2022, after completion of investigation qua Shiv Kumar, Shamsheer Singh, Amarjit Singh, Gurmeet Singh and Bhupinder Singh, challan has been presented against them and petitioner has been declared innocent. Therefore, since the petitioner has been declared innocent both in the initial inquiry conducted by SHO, Police Station, Ferozepur Cantt as well as in the final report submitted before the court of competent jurisdiction, the petitioner is entitled to be appointed to the post of Constable.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that the candidature of the petitioner was not considered as on police verification it was found out that there was an FIR pending and until and unless the cancellation report was not accepted, no appointment can be offered. It was also submitted that the petitioner had not disclosed about the pendency of the FIR against him. He relied upon the Standing Order No.1 of 2016 issued under Section 4 (d) and Section 45(e) of the Punjab Police Act, 2007 which lays down detailed guidelines for the recruitment of Constables (both Male & Female) including Ex-servicemen, except recruitment against 3% posts reserved for Sportspersons) in both the District Police Cadre as well

as the Armed Police Cadre of Punjab Police as well as the entire process of recruitment and detailed provisions under which the process of recruitment will be completed. It is argued that verification of character and background of a candidate is of vital importance in so far as the recruitment to police department is concerned. Rule 12.14 of the Punjab Police Rules, 1934 provides that the recruits shall be of good character and great care shall be taken in selecting men of a type suitable for Police Service from the candidates presenting themselves for enrolment. Therefore, selection of the candidate is always subject to the verification of his antecedents in the verification process and if anything adverse is found against the candidate during the verification process, his/her candidature is liable to be rejected summarily.

5. It was further argued that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State and since the FIR in question is still in existence and the petitioner has not been declared innocent by the competent court of law, he is not entitled for appointment to the post of Constable in the Police Department, it being a disciplined force. He relied upon the judgment passed by the Hon'ble Supreme Court in **Union of India and others Vs. Methu Meda (2022) 1 SCC 1** wherein it has been held that if a person is acquitted giving him benefit of doubt, from charge of offence involving moral turpitude or because witnesses turned hostile, it would not automatically entitle him for employment, that too in disciplined force.

6. I have heard learned counsel for the parties and have perused the paper book with the assistance of learned counsel for the parties. In the present case, the FIR was registered at the behest of Army Recruiting Office in order to make an inquiry regarding submitting false documents at the best of some aspiring candidates including the petitioner. An inquiry was conducted

by the SHO, Police Station, Ferozepur Cantt. wherein the petitioner has been declared innocent vide inquiry report dated 20.07.2015 and thereafter, in the year 2016, petitioner had applied for the post of Constable. It was pointed out that the petitioner had not disclosed about the pendency of the FIR and therefore would not be entitled to be considered for appointment. The only plea taken in the written statement is that the appointment could not be offered on account of the FIR and cancellation report not having been accepted.

7. In the case at hand, petitioner has been declared innocent in the inquiry conducted by the SHO, Police Station, Ferozepur Cantt. on 20.07.2015 and thereafter in the year 2016, the petitioner had applied for the post of Constable in Police Department. As on date of filing in the application form, the petitioner had not been summoned as an accused and in fact had been found to be innocent after a detailed inquiry was held. Even in the status report filed by SSP, Ferozepur by way of affidavit dated 23.05.2022, it has been pointed out that investigation has been completed and challan has been presented against certain persons/agents, who produced the false certificates before the Army Recruiting Office in order to get the aspiring candidates selected in the Army including the petitioner. On inquiry, it came forth that though matriculation certificates issued by Punjab School Education Board were taken from the candidates by the agents but before the Army Recruiting Office, false documents issued by Sahitya Sammelan, Allahabad were produced in order to get benefit in age. In the final report presented under section 173 Cr.P.C, the petitioner has been kept in column no 2.

8. The question of suppression of information and submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to the pendency of a criminal case, was

referred to the larger Bench of Hon'ble Apex Court in **Avtar Singh Vs. Union of India 2016 (8) SCC 471** and the said reference was answered as follows:-

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

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.

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.

The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

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 : -

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.

Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

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.

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.

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.

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.

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.

In case the employee is confirmed in service, holding Departmental inquiry would be necessary before passing order of

termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

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.

Before a person is held guilty of suppression veri or suggestion falsi, knowledge of the fact must be attributable to him.”

9. A perusal of the aforesaid judgment would reveal that the Hon’ble Supreme Court has observed that 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 and 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. In the instant case, the petitioner has been declared innocent at the very initial stage of inquiry and in the final report submitted by the prosecution under Section 173 Cr.P.C. also, he has been declared as innocent and challan has been presented against other persons. It is also interesting to note that in the written statement the only plea for rejecting the candidature of the petitioner is that the final report has not been accepted. Therefore, the respondents ought to have taken into

consideration the aforesaid special circumstances while rejecting the candidature of the petitioner.

10. The judgement relied upon the counsel appearing for the respondents in **Methu Meda's case (supra)** is distinguishable on facts of the case as that was the case where the candidate was acquitted by giving benefit of doubt.

11. Therefore, in view of peculiar facts and circumstances of the case, this Court deems it a fit case to direct the respondent authorities to take into consideration the special circumstances of the case where the petitioner has been declared innocent vide inquiry report dated 20.07.2015 that was conducted before submitting application by the petitioner and even in the final report submitted by the prosecution under Section 173 Cr.P.C. The instant petition is accordingly allowed. The impugned order is set aside. The respondent authorities are directed to reconsider the case of the petitioner for appointment to the post of Constable in view of the facts and circumstances as noticed above within a period of four weeks from the date of receipt of certified copy of this order and if upon verification of antecedents of the petitioner, he is found of good character, appointment letter be issued to the petitioner within a period of two weeks thereafter. He would be allowed all consequential benefits other than back wages.

12. Needless to say, appointment of the petitioner shall be subject to the acceptance of the final report submitted under Section 173 Cr.P.C. by the court of competent jurisdiction and outcome of the trial.

(JAISHREE THAKUR)
JUDGE

July 08, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No