

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

CWP No.6721 of 2017(O&M)

Reserved on:30.05.2022

Date of Decision.08.07.2022

Surinder Pal

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Akshay Kumar Goel, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

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JAISHREE THAKUR J.

1. The petitioner herein approached this Court under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing order dated 29.07.2015 (P-6) vide which respondent No.2 has declined to issue appointment letter to the petitioner on the ground that a case was pending trial against the petitioner at the time of declaration of the result and the petitioner stood acquitted after a period of 3 years 6 months of the declaration of the result.

2. In brief, facts, as enumerated in the writ petition, are that on 20.09.2010, the petitioner had applied for the post of Constable in the reserved category (SC), as he belongs to Bazigar caste in District Faridkot. The petitioner duly cleared the physical tests and appeared in the interview on 22.07.2011. Respondent No.3 had declared the final result on 27.09.2011 in which petitioner was shown to be selected for the post of Constable. Even in the medical test conducted by Civil Surgeon, Faridkot, the petitioner was found medically fit, however, at the time of character verification of the petitioner, it came forth that an FIR No.229 dated 10.08.2010 had been

registered against the petitioner under Sections 324, 326, 323, 34 IPC at Police Station City, Faridkot, which was pending trial. On the basis of aforesaid character verification report issued by the competent authority, the petitioner was refused appointment letter to be issued to him. Thereafter, vide judgment dated 21.03.2015, the trial court found that though no case is made out against the petitioner under Section 326 IPC yet he was found guilty under Sections 324, 323 read with Section 34 IPC and thereafter, while taking a lenient view, he was released on probation of good conduct for a period of six months with an undertaking to keep peace and be of good behaviour. In the appeal preferred against the aforesaid judgment dated 21.03.2015, the petitioner was acquitted by giving benefit of doubt by the Appellate Court vide its judgment dated 02.03.2016 against which no appeal had been preferred by the State. The petitioner approached respondent No.2 vide application dated 25.06.2015 to issue him appointment letter as he has now been acquitted by the appellate court, however, the same was declined vide letter dated 20.07.2015, which is under challenge in the instant petition.

3. Learned counsel appearing on behalf of the petitioner would submit that since no trial was pending against the petitioner at the time of filling up the application form on 20.09.2010, he rightly chose to mention 'NO' against the column of '*pendency of any criminal case in court of law*' in the application form. Since now the petitioner has been acquitted by the appellate court, he is entitled for appointment to be offered to him for the post of Constable in District Faridkot. It was argued that the impugned letter dated 29.07.2015 vide which respondent No.2 has declined offer of appointment to the petitioner on the ground that the petitioner has been acquitted after a period of 3 years and 6 months from the date of declaration of result i.e. 27.09.2011 is wholly illegal and arbitrary, as mere pendency of a criminal

case is not a ground to decline public appointment to a person. In support of his contention, counsel for the petitioner relied upon Rules 12.14, 12.18 and 12.21 of the Punjab Police Rules, 1934.

3. Per contra, learned counsel appearing on behalf of the respondents would submit that the petitioner filled up the application form for the post of Constable on 20.09.2010 whereas the FIR in question was registered against the petitioner on 10.08.2020. Therefore, it was very much in the knowledge of the petitioner that an FIR stood registered against the petitioner, which amounts to concealment and suppression of material fact, while mentioning 'NO' against Column No.14 i.e. 'if there is any criminal/fauzdari case pending against you? If yes then give details.' Counsel for the respondents has 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 was argued that verification of character and background of a candidate is of vital important 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. He laid great emphasis upon sub para (b) Para No.13 to contend that 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, such a candidate shall also not be considered for appointment. In the present case, the petitioner had been charged with offences, which are punishable for three years or more and his acquittal is based on benefit of doubt and not an honourable acquittal, therefore, his candidature has rightly been rejected.

4. It is further argued that the FIR in question was already in existence when the petitioner had applied for the post of Constable and while filling up the application he concealed the said information, which itself is suffice to reject his candidature. In support of his contention, he relies upon the judgment rendered by a Coordinate Bench of this Court in CWP No.21678 of 2017 titled as *Sandeep Vs. State of Haryana and others* decided on 09.10.2017 wherein petition preferred by the petitioner therein for continuation of his appointment as a Constable, who did not disclose the factum of registration of FIR against him, though subsequently he was acquitted by the trial court, has been dismissed. It is submitted that the judgment rendered by the single bench has been upheld in LPA No.1129 of 2019 titled as *Sandeep Vs. State of Haryana and others* decided on 30.05.2019 .

5. I have heard learned counsel for the parties and have perused the paper book with the assistance of learned counsel for the parties and is of the view that the writ petition is liable to be dismissed on the following grounds:-

- (a) The petitioner herein was very well aware of the existence of FIR in his name, which was dated 10.08.2010 whereas the application form was filled up by the petitioner on 20.09.2010

i.e. after 1 month and 10 days of the registration of the said FIR. Against Column No.14 against which the petitioner was supposed to give information whether there is any criminal/fauzdari case pending against him? If yes then give details, he mentioned ‘NO’. Column No.14 is reproduced as under:-

“14. If there is any Criminal/Fauzdari Case pending against you? If yes then give details:-

<i>Sr. No.</i>	<i>Court Case/FIR No.</i>	<i>Date</i>	<i>Name of Court/Police Station</i>	<i>Offence u/s and Act</i>	<i>Present Status</i>
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A perusal of the aforesaid column would reveal that there is no vagueness or ambiguity about the information asked for. It clearly asked for status of any court case or **FIR** number. It is not the case of the petitioner he could not understand the details asked for as he filled up the application form in vernacular language i.e. Punjabi. Interestingly, a bare perusal of the application form would show that though against column No.14 he initially answered in negative but subsequently struck off the word ‘*NO*’ but made a ‘X’, which can be presumed that he answered in negative. Therefore, it appears that he concealed/suppressed the factum of registration of FIR against him. In **Daya Shankar Yadav v. Union of India, (2010) 14 SCC 103**, the Hon’ble Supreme Court has held that 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. In **Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363**, the Hon'ble Supreme Court has held that 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 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. In **Avtar Singh Vs. Union of India 2016 (8) SCC 471**, the larger Bench has answered the question of suppression of information and submitting false information in the verification form as having been criminally prosecuted, arrested or as to the pendency of criminal case and the relevant portion is reproduced as under:-

“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.

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In Rajasthan Rajya Vidyut Prasaran Nigam Limited and another vs. Anil Kanwariya (2021) 10 SCC 136, the Hon’ble Supreme Court has held as under:-

“12. 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.”

Even recently in the judgment passed in **State of Rajasthan and others vs Chetan Jeff 2022 SCC OnLine SC 597** while relying the judgment passed in Anil Kanwariya's case (supra), the Hon'ble Supreme Court has upheld the decision of the appellant-State in rejecting the appointment of the candidate, who made a false statement in the application form regarding pendency of criminal cases against him.

- (b) As per Para 13 of the Standing Order dealing with 'Verification of Character and Antecedents' and Rule 12.14 of the Punjab Police Rules, the verification of character and background of a candidate is of vital importance in so far as recruitment to the Police Department is concerned and the recruits shall be of good character and great care shall be taken in selecting men of a type suitable for enrolment. In **Delhi Administration through its Chief Secretary and others Vs. Sushil Kumar (1996) 11 SCC 605**, the Hon'ble Supreme Court

while dealing with the case where appointment to the post of Constable was cancelled though the candidate was discharged/acquitted under Sections 304, 324 read with Section 34 IPC has held as under:-

“3.....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. Though the respondent was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable in the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences.”

- (c) It is admitted fact that the petitioner herein was held guilty under Sections 324, 323 read with Section 34 IPC, however, was released on probation with an undertaking to keep peace and be of good behaviour for a period of six months. It was in the appellate court that he was acquitted

by giving benefit of doubt. The Hon'ble Supreme Court in **Union Territory Chandigarh Administration and others Vs. Pradeep Kumar and another (2018) 1 SCC 797**, the Hon'ble Supreme Court has held as under:-

“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.”

- (d) Much water has flown under the bridge as about 11 years have lapsed since the final result was declared on 27.09.2011 and therefore, the petitioner cannot claim the

appointment to the post of Constable as his indefeasible right in view of the facts and circumstances as explained above.

6. As an upshot of my finding, the instant petition stands dismissed and the impugned order is upheld.

(JAISHREE THAKUR)
JUDGE

July 08, 2022
Pankaj*

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