

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

(119)

LPA-243-2023

Reserved on: 02.03.2023

Pronounced on: 12.04.2023

Navjeet Singh

....Appellant(s)

Versus

State of Punjab and others

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Sanjay Kaushal, Senior Advocate with
Ms. Ojaswani Gagneja, Advocate for the appellant.

Mr. Abhay Pal Singh Gill, DAG, Punjab.

G.S. Sandhawalia, J.

In the present Letters Patent Appeal consideration is sought of the judgment of the learned Single Judge passed in **CWP No.5928 of 2017** filed by the appellant which was dismissed on 02.02.2023.

2. Challenge was to the order dated 11.02.2017 (Annexure P-11) wherein he was held to be not eligible for appointment in the Police Department, since in the verification it had been found that FIR No.62 dated 25.09.2011 under Sections 21/61/85 of NDPS Act was lodged against him at Police Station Sadar, District Gurdaspur, in which he had been acquitted on 02.04.2016. Another FIR in which he had been declared innocent had been lodged bearing FIR No.185 dated 07.11.2014 under Sections 414, 411 IPC, Section 3 of the Passport Act, Sections 3/4 of the Official Secrets Act and 18/21/22 of NDPS Act at Police Station City, Gurdaspur.

3. While placing reliance upon Standing Order No.1 of 2016 issued under Section 13 sub-Section (c), the Commissioner of Police, Jalandhar came to the conclusion that even a person who had been found

acquitted in offences related to sovereignty of the State or National Integrity and involved in NDPS cases are not to be considered for appointment and, accordingly, rejected the claim of the writ petitioner.

4. Senior Counsel for the appellant has vehemently tried to make out a case for interference in the order of the learned Single Judge, wherein it was opined that right of consideration has to be there, but a candidate has no absolute right for seeking appointment. Once a conscious decision has been taken and a person has been charged as defined in the standing order, mere acquittal would not entitle the person for appointment.

5. The order of acquittal of the Trial Court dated 02.04.2016 (Annexure P-4) was accordingly examined, wherein benefit of doubt had been given to hold out that it was technical benefit granted and there was only recovery of 4gm of Smack. Accordingly, while placing reliance upon **Union of India and others Vs. Methu Meda, (2022) 1 SCC 1** it was held that once the employer has taken a conscious decision not to recruit a person with criminal antecedents, the writ Court need not interfere in the same.

6. It was, accordingly, argued that in the other case challan has not been presented and the appellant had been exonerated, which would be clear from the order dated 08.03.2017 passed in CRM-M-45914 of 2016 (Annexure P-10), wherein the appellant had approached this Court seeking anticipatory bail. It was further argued that it was not a case where the witnesses had turned hostile or were not available or had died and acquittal was on merits.

7. Counsel for the State having advance notice puts in appearance and has pointed out that apart from that even otherwise there

was concealment when the form was filled in as much as he had not disclosed the lodging of the FIR while referring to the reply filed before the learned Single Judge. It is submitted that he had made a wrong statement in his application form while applying for the post of constable. In the application form he had written 'NO' against the column whether any FIR criminal case has been registered against him.

8. Counsel for the State has relied upon the judgment of the Apex Court passed in **Daya Shankar Yadav Vs. Union of India, (2010) 14 SCC 103**, wherein it was held that furnishing factual information which were wrong by a Constable for consideration for appointment would be a reason for not employing the declarant, once there is suppression or non-disclosure of material information which would have a bearing on his character. Resultantly, it was laid down that once a false statement had been made that he was not prosecuted in any criminal case, the employer was justified in dispensing with his services on the ground that he was not truthful in giving material information regarding the antecedents and, therefore, the discharge was held justified as he was seeking employment in a uniformed service.

9. A perusal of Application Form (Annexure R-1) would go on to show that the form had been filled by him wherein he had not disclosed the fact regarding the FIR. The law on the said issue is clear, where a candidate does not disclose the factum of a concluded criminal case, the employer has a right to consider the antecedents and cannot be compelled to appoint the candidate. Reliance can be placed upon a three Judge Bench judgment passed in **Avtar Singh Vs. Union of India, 2016 (8) SCC 471**, wherein it was held that mere involvement in some petty kind of case would not render a person unsuitable for the job. However, it was

open to the employer to form opinion as to fitness on the basis of material on record. While resolving the conflict of opinion of various Two Judge Benches of the Apex Court, the said conclusion was arrived at that in case of the uniformed personnel the declarant was under the bounden duty to furnish correct information. Any suppression of material facts or submitting false information would itself lead to termination of his services or cancellation of candidature in an appropriate case and non disclosure or submitting false information would make out a ground for the employer to cancel candidature or to terminate services, since the employment has been taken by holding out wrong facts. Accordingly, the question was answered.

10. The said view was followed by the Apex Court in **SLP No.678 of 2021 ‘Imtiyaz Ahmad Malla Vs. The State of Jammu & Kashmir and others’** decided on 28.02.2023, wherein involvement in a criminal case had been concealed and appointment order had been secured, which was unsuccessfully challenged before the High Court. Eventually, the Apex Court upheld the order of the High Court while placing reliance upon judgment passed in **‘Commissioner of Police, New Delhi and another Vs. Mehar Singh’, (2013) 7 SCC 685** by holding out that even if there was a true declaration of a concluded criminal case, the employer still has a right to consider antecedents and cannot be compelled to appoint the candidate.

11. On an earlier occasion in **Devendra Kumar Vs. State of Uttaranchal, (2013) 9 SCC 363**, the Apex Court held as under:-

“21. [In R. Radhakrishnan v. Director General of Police & Ors.](#), AIR 2008 SC 578, this Court held that furnishing wrong information by the candidate while seeking appointment makes him unsuitable for appointment and liable for

removal/termination if he furnished wrong information when the said information is specifically sought by the appointing authority.

22. In the instant case, the High Court has placed reliance on the Govt. Order dated April 28, 1958 relating to verification of the character of a Government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority.

The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.”

12. Thus, keeping in view the settled principle, the order passed by the learned Single Judge is self speaking and the facts as such make out no case for interference on account of concealment of facts to obtain the job without disclosing all relevant material facts. Accordingly, there is no merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

12.04.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No