

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

LPA No.668 of 2020 (O&M)

Reserved on:30.05.2023

Date of Decision.02.06.2023

State of Haryana and another

...Appellants

Vs

Surender Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

HON'BLE MS. JUSTICE SUKHVINDER KAUR

Present: Ms. Shruti Jain Goyal, Sr. DAG, Haryana
for the appellants.

Mr. Vivek Sharma, Advocate
For the respondent.

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JAISHREE THAKUR J.

1. The instant Letters Patent Appeal has been filed under Clause X of the Letters Patent Act against the judgment dated 06.03.2020 passed by the Ld. Single Judge in CWP No.11605 of 2015 praying for setting aside of the same being illegal, against the facts and evidence on record.

2. In brief, facts are that respondent herein had applied for the post of Conductor in a selection process initiated by the Haryana Staff Selection Commission. He was successful and thereafter, was offered appointment vide appointment letter dated 04.04.2012. The petitioner filled in his Attestation Form with regard to character verification form on 10.04.2012 and against para 13 of the same, seeking information regarding conviction by court for any offence and if yes, full particulars of conviction and sentence, the respondent submitted that he had not been convicted by any Court. However, on character verification, it was found that respondent had been involved in FIR No.467 dated 08.08.2011 registered under Sections 452, 323, 506, 147, 149 IPC at Police Station Jhajjar.

Thereafter, a show cause notice dated 04.10.2012 was issued to the respondent in

terms of clause 9 of the appointment letter alleging that there was non-disclosure about the fact that criminal case had been filed against the respondent and therefore, there was concealment. Respondent responded to the aforesaid show cause notice, however, vide order dated 28.01.2013, services of the respondent stood terminated with immediate effect. Aggrieved against the termination order dated 28.01.2023, petitioner approached this Court by way of CWP No.11605 of 2015, which was allowed by the Ld. Single Judge vide judgment dated 06.03.2020. Hence, the instant intra-court appeal.

3. Mr. Shruti Jain Goyal, Sr. DAG, Haryana appearing for the appellants would submit that the respondent herein was required to give all details of criminal case pending against him and therefore, he suppressed the material fact as he had not disclosed about the pendency of criminal case. The FIR was registered on 28.08.2011 and the attestation form for character verification was filled in by the respondent No.10.04.2012 i.e. subsequent thereto and therefore, he could not take the plea that he was unaware of criminal proceedings pending against him. She relied upon the judgment rendered by a Division Bench in LPA No.1215 of 2021 titled as *Ex. Const. Raical Vs. State of Haryana and others* decided on 27.07.2022 wherein decision of the State in discharging services of a person, who had obtained appointment by suppressing material fact of his conviction in the application form as well as the verification-cum-attestation form, had been upheld and the appeal was dismissed. Similarly, reliance has been placed upon a Division Bench judgment rendered in LPA No.406 of 2013 titled as *Devender Kumar Vs. State of Haryana and others* decided on 16.09.2016 and other connected matters.

4. Learned counsel appearing for the appellants tried to distinguish the judgments as referred to by the Ld. Single Judge by contending that in judgment

rendered in *U.T. Chandigarh and others Vs. Pardeep Kumar and others 2018 (1) SCT 394*, the action of respondent-State in denying employment as Constable to the respondents therein on the ground that they had been prosecuted in criminal trial though acquitted by the trial Court by giving them benefit of doubt, had been upheld. It was also argued that judgment as relied upon by the counsel appearing for the respondent in *Commissioner of Police Vs. Sandeep Kumar* passed in Civil Appeal No.1403 of 2007 would have no bearing in the instant case, because Constables therein had worked for almost a period of 20 years. It was argued that a person seeking appointment in government job is duty bound to disclose all material facts pertaining to pendency of criminal proceedings against him/her. It was further argued that in terms of clause 9 of the appointment letter, services of the respondents have rightly been terminated.

5. Per contra, learned counsel appearing for the respondent would submit that there has been no misrepresentation or concealment of any particular fact at his end. Being meritorious, he was offered job as a Conductor and continued to work till such time he was issued a show cause notice and thereafter, his services were terminated by invoking clause 9 of the appointment letter. It was argued that the appellants failed to take into account the fact that on the date, he filled in his attestation form for character verification, he had not been convicted by any court. He was convicted five years thereafter and in the appeal preferred against said conviction he stood acquitted.

6. We have heard learned counsel for the parties and have perused pleadings of the case as well as the case laws cited.

7. The facts emanated are that the respondent had applied for the post of Conductor and filled in his attestation form for character verification. Column No.13 of the said form, which is relevant is reproduced herein under:-

“13. Have you ever been convicted by court for any offence, if the answer is yes, full particulars of the conviction and sentences should be given.”

8. A perusal of column No.13 would manifest that the information sought by the employer was regarding conviction of the prospective employee by the court for any offence and if there was conviction, particulars of such conviction and sentence were required to be given. Admittedly, respondent did not furnish any information against the said column because at the first blush, he had to give information regarding his conviction for any offence, which was not the case when he filled in the attestation form. The position would have been different, if the employer had asked for the information regarding; *whether any criminal case has been registered against the applicant or whether any criminal proceedings are pending against the applicant* and the candidate would have answered in negative. Here, the details were asked regarding conviction of the respondent in any criminal case and since admittedly, he was not convicted at that point of time, he did not mention such details.

9. The argument raised by counsel appearing for the appellants looks attractive that a person seeking government job ought to be truthful and disclosed all material facts. Suppression of any material fact would disentitle him to a job, which carries higher responsibilities. But, whether suppression of said fact simplicitor gives right to the employer to terminate services of the employee in a mechanical manner by a stroke of pen or it is incumbent upon the employer to take into consideration certain facts/yardsticks? In our opinion, before passing the termination order, appellants herein ought to have taken into consideration the fact that respondent was implicated in the FIR in question, which was registered owing to a dispute arose of the respondent and his family with neighbours. It was the uncle of the respondent, who lodged the FIR first against one Sunita, who as a

counter blast registered FIR against the respondent and his family members. The respondent was convicted on 24.01.2017 but acquitted in appeal on 19.07.2018 on the ground that the injured-Sunita herself appeared in the witness box but did not mention name of the respondent as the person, who gave injuries to her and therefore, no role was attributed to the respondent.

10. The most important factor, which an employer ought to have taken into consideration the yardstick/standard, which has to be applied with regard to adjudging suitability of the incumbent, depending upon the nature of post and nature of duties. The effect of suppression over suitability is to be considered by the authority on due diligence of various aspects and no hard and fast rule of thumb can be laid down in this regard. A larger Bench in ***Avtar Singh Vs. Union of India (2016) 8 SCC*** has laid down broad guidelines, which has to be taken note of by the appointing/competent authority in dealing with the matters where there is a suppression of material information or disclosure of false information and after reconciling the earlier judgments succinctly summarized the conclusions as under:

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and

exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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

38.1. 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.

38.2. 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.

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

38.4. 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 recourses appropriate to the case may be adopted:

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. *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.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”*

11. The Hon’ble Supreme Court in ***Pawan Kumar Vs. Union of India and another*** (Civil Appeal No. Civil Appeal No(s). 3574 of 2022 decided on 02.05.2022) **2022 SCC OnLine SC 532** has held as under:-

“13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

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17. Adverting to the facts of the instant case, at the time of attestation form filled by the appellant, the criminal case was already registered against him but it may be noticed that at the very threshold, the complainant filed his affidavit that the complaint on which FIR came to be registered was due to misunderstanding and he did not want to pursue his case any further, but still charge-sheet came to be filed and on the first date of hearing, the alleged victim PW.1 did not support case of the prosecution and thus the order of clean acquittal came to be passed by the learned Judge of competent jurisdiction by judgment dated 12th August, 2011.

18. The criminal case indeed was of trivial nature and the nature of post and nature of duties to be discharged by the recruit has never been looked into by the competent authority while examining the overall suitability of the incumbent keeping in view Rule 52 of the Rules 1987 to become a member of the force. Taking into consideration the exposition expressed by this Court in Avtar Singh (supra), in our considered view the order of discharge passed by the competent authority dated 24th April, 2015 is not sustainable and in sequel thereto the judgment passed by the Division Bench of High Court of Delhi does not hold good and deserves to be set aside.”

12. The judgments relied upon by the learned counsel appearing for the appellants in *Ex. Const. Raical's case* (supra) and *Devender Kumar's case* (supra) are distinguishable one two counts. Firstly, in both the aforesaid judgments, specific questions were asked from the candidates therein ‘*whether they were ever been arrested/prosecuted/convicted by a court of law*’, against which they replied in negative. However, in the case at hand, the only information sought was regarding conviction of the respondent herein for any offence by the court and admittedly, he was not convicted at that very point in time when he filled in the attestation form. Secondly, judgments as relied upon by the counsel appearing for the appellants pertain to appointments made in the police force and therefore, may not be applicable in the instant case, since there

was no specific question posed as to whether the respondent was facing any criminal proceedings or not. *De hors* the above, authorities concerned are to consider various aspects as well, especially the fact that no role had been attributed to the respondent in giving injuries to injured-Sunita, who, in fact, had made a statement in that regard. Taking note of the fact that no injuries were attributed to the respondent, he has been acquitted by the Court in appeal. Another aspect, which is required to be taken into consideration, is that the attestation or character verification form must contain proper and adequate queries requiring a declarant to answer and it ought not to be vague. The only information sought in the attestation form for character verification was whether the respondent herein was convicted or not at the time of filling up the verification and since the respondent was not convicted, he chose not to give any detail. Moreover, it is settled proposition of law that mere registration of an FIR is no ground to dismiss the respondent from service, considering the fact that he was not convicted at that relevant point of time.

13. In view of the aforesaid facts and circumstances, we do not find any infirmity in the judgment dated 06.03.2019 passed by the Ld. Single Judge and consequently, the instant Letters Patent Appeal stands dismissed.

(JAISHREE THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

June 02, 2023
Pankaj*

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