

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-15081-2023 (O&M)
Date of Decision:- 17.08.2023

Sho Parkash ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajinder Kumar Singla, Advocate, for the petitioner.
Mr. Inderpreet Singh Kang, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner assails e-mail dated 21.6.2023 (Annexure P-9) sent by Recruitment Cell, Office of Additional Director General of Police, Punjab, vide which the medical examination which was to be conducted pursuant to his selection as a Sub-Inspector in Punjab Police, has been put on hold.
2. It may here be clarified that the name of the petitioner i.e. Sho is rather deceptive and is not to be confused with the abbreviation “SHO” for ‘Station House Officer’ although the petitioner has chosen to write his first name in capitals so as to state it as “SHO Parkash”. The Matriculation Certificate of petitioner wherein the name of the petitioner is also written in Punjabi

language clearly reveals that the name of the petitioner is Sho, which would be pronounced as “show”.

3. The State of Punjab had issued an advertisement dated 06.07.2021 (Annexure P-4) inviting applications for recruitment to the posts of Sub-Inspector. The petitioner applied for the said post and appeared in written examination and on the basis of the marks obtained by him in the written examination, physical measurement and physical screening test was conducted. Upon scrutinizing his documents he was provisionally selected and was issued a call letter dated 22.5.2023 (Annexure P-7), directing him to submit his original documents. Thereafter, a letter dated 19.6.2023 (Annexure P-8) was issued directing the petitioner to appear before Chief Medical Officer, Civil Hospital so as to get himself medically examined. However, subsequently the petitioner received e-mail dated 21.6.2023 (Annexure P-9) from Recruitment Cell, Office of Additional Director General of Police, Punjab State Intelligence, informing him that upon verification of his character and antecedents, it had been found that FIR No.185 dated 14.9.2020, Police Station Khuhi Khera, District Fazilka, under Sections 307, 353, 186, 341, 324, 323, 148, 149, 506, 120-B IPC was pending against the petitioner and that since the petitioner had concealed the said fact, therefore, his medical examination was being kept on hold.
4. Learned counsel for the petitioner submitted that there is no ground for withholding the medical examination of the petitioner and that he had not concealed any material fact or withheld any information and had duly complied with the requirements as were required of him. Learned counsel has submitted that as a matter of fact the FIR in question was lodged by specifically mentioning the names of Sushil Kumar and Rahul who were

stated to be accompanied by 7 unidentified persons and that the petitioner was nowhere named in the FIR lodged on 14.9.2020. It has been submitted that subsequently Sushil Kumar and Rahul, the accused named in the FIR, were arrested on 15.9.2020 and on the same day statement of one eye-witness Divanshu was recorded wherein he named 7 more persons as accused including the petitioner. It has been submitted that father of the petitioner, upon coming to know that the petitioner has been implicated in connection with FIR No.185 dated 14.9.2020 (Annexure P-10), moved an application dated 28.9.2020 to Senior Superintendent of Police, Fazilka and pursuant thereto an inquiry was conducted in the matter and the petitioner had been found innocent as would be evident from DDR No.46 dated 12.11.2020 (Annexure P-12). It has further been submitted that upon conclusion of investigation a challan was presented wherein the petitioner was not amongst the accused who were forwarded for trial, but his name was mentioned in column No.2.

5. Learned counsel for the petitioner submitted that the aforesaid circumstances clearly indicate that the petitioner was never named initially in the FIR and although he came to be nominated subsequently but had been found to be innocent and as such it cannot be said that he had concealed any material fact while furnishing requisite particulars. It has thus been submitted that the respondents are not justified in withholding his case for medical examination or for withholding issuance of appointment letter particularly when the petitioner till date has clean antecedents. Learned counsel in order to hammer forth his aforesaid submission has pressed into service the following judgments:

- (i) Loven Singla Vs. Punjab and Haryana High Court, Chandigarh and another 2022(3) S.C.T. 397;
- (ii) Balwant Ram Vs. State of Punjab and others 2019(3) S.C.T. 29;
- (iii) Ram Kumar Vs. State of U.P. and others 2011 AIR (SCW) 4807;
- (iv) Avtar Singh Vs. Union of India and others 2016(3) S.C.T. 672;
- (v) Kamal Singh Meena Vs. Union of India 2016 LIC 2908, Rajasthan High Court.

6. On the other hand, learned State counsel while opposing the petition has submitted that the petitioner was expected to disclose complete information with respect to the FIR in which he was involved, whether or not he had been found guilty or had been proceeded against, and that by concealing the said material fact he had disentitled himself for being considered for appointment. It has been submitted that the requirement for furnishing such information has been prescribed so as to enable the employing authority to conduct complete verification as regards the antecedents of a candidate and that the factum of the petitioner being named in a FIR even on the basis of some supplementary statement or having been found innocent by the police would be a relevant fact as in a given case such applicant may later be proceeded against by the Court with the aid of Section 319 Cr.P.C. or some supplementary challan could even be filed and in case appointment order is issued without conducting such kind of verification, a person with chequered history may be successful in getting the appointment order and which would subsequently lead to unnecessary multiplicity of litigation and legal battles which could be avoided.

7. It has been submitted that by concealing such information, the candidate deprives the employer of chance to conduct thorough enquiry as regards antecedents. It has also been added that factum of such concealment rather gives an insight into his character and shows that he has tendency to resort to guilefull means.
8. Learned State counsel, in order to hammer forth his aforesaid submission, places reliance upon a judgment of co-ordinate Bench delivered in CWP No.2331-2013 titled as Satnam Singh Vs. State of Punjab and others, decided on 12.04.2016 wherein the termination of services of a Constable on the grounds of concealment of factum of registration of a case at the time of his recruitment was upheld.
9. This Court has considered the rival submissions addressed before this Court.
10. The petitioner pursuant to having been short-listed the basis of the written test, had undergone the physical test and had been found to meet the required standards and had also been asked to get himself medically examined. However, subsequently, upon verification of the antecedents, his medical examination was put on hold as he was found to have concealed material information. The relevant extract from the application Form (Annexure P-5) requiring the candidates to furnish information as regards antecedents reads as under:

“Whether any FIR or criminal case(s) has ever been registered against you?”

11. The petitioner, in answer to the aforesaid query in the application form wrote “No”. Although, the learned counsel for petitioner has tried to justify his aforesaid denial i.e. writing “No” in the application form by submitting

that he was not named in the FIR and that in any case he had ultimately been found innocent, but the said justification does not appeal to reason inasmuch as the specific requirement was as regards the factum of “registration” of FIR or criminal case. Had the query been limited to information as regards an applicant having been convicted or not, the aforesaid argument on behalf of the counsel could have been accepted. However, having regard to the specific requirement in the present case being as regards the factum of “registration” of FIR or criminal case, the non-disclosure by the petitioner with regard to above FIR amounts to concealment. The factum of “registration” of the said FIR and the petitioner having been arrayed as an accused subsequently was very much in the knowledge of the petitioner and his family inasmuch as the petitioner’s father had submitted an application dated 28.9.2020 (Annexure P-10) to the police and on the basis of which DDR No.46 dated 12.11.2020 (Annexure P-12) came to be recorded which was recorded much before the submission of application form by the petitioner. Thus, the petitioner cannot feign ignorance as regards his involvement in the FIR in question and was thus expected to have disclosed about the same in the application form. The factum of concealment of material fact cannot be brushed aside or taken lightly merely on account of the fact that the petitioner subsequently came to be kept in column No.2 of the report filed under Section 173 Cr.P.C. As far as the judgments relied upon by learned counsel for the petitioner, a perusal of the same would indicate that the facts were distinct inasmuch as the requirement was not akin to the one as is there in the present case.

12. In Loven Singla’s case (Supra), the requirement in the application was as under:

“Have you ever been convicted for any criminal offence involving moral turpitude.

13. A perusal of the aforesaid requirement would indicate that the applicants were not required to specifically disclose about registration of FIR but were required only to disclose in case they had ever been convicted. The petitioner thus cannot get any advantage from the said judgment.
14. The judgment rendered in as Balwant Ram's case (Supra), pertains to a case where the promotion of the petitioner in the said case had been withheld and this Court held that mere registration of FIR and initiation of preliminary inquiry or investigation has no bearing on withholding of promotion if he otherwise finds fit. The said case pertains to a case of promotion and not to a case of initial appointment and as such the analogy cannot be imported in a case of fresh appointment where the element of verification of character and antecedents is much more strict, being a case of fresh induction.
15. The judgment rendered in as Ram Kumar's case (Supra), pertains to a case where the relevant Government order dated 28.4.1958 pertaining to the verification of the character and antecedents of Government servants before their first appointment, in the State of Uttar Pradesh as extracted from para No.7 reads as follows:

“The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be duty of the appointing authority to satisfy itself on this point.”

16. A perusal of the aforesaid requirement again indicates that there was no specific pointed requirement pertaining to disclosure as regards “registration” of FIR, as is there in the case in hand. Thus, the aforesaid judgment is not of any avail to the petitioner.

17. The judgment rendered in Avtar Singh’s case (Supra), pertains to a similar issue which had been referred to a Larger Bench of Hon’ble the Supreme Court as there was conflict in decisions of various Division Bench. Hon’ble the Supreme Court while examining the case law crystallized the position in this regard and the same reads 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 summarise our conclusion thus:

- (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.
- (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.
- (3) The employer shall take into consideration the Government/orders/instructions/rules, applicable to the employee, at the time of taking the decision.
- (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 recourse appropriate to the case may be adopted:-
 - (a) 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.

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

(c) 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.

- (5) In a case where the employee has made declaration truthfull of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.
- (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.
- (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.
- (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.
- (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.

(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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

(Emphasis Supplied)”

18. A perusal of the aforesaid conclusion particularly the conclusion in sub-para No.1 clearly shows that in information furnished with respect to involvement in a criminal case where even ‘acquittal’ may already have been recorded, there should be no suppression of required information. Further, sub-para No.4(c) shows that even in case of acquittal a discretion lies with employer to take any view as may be deemed appropriate in facts and circumstances.

19. In the present case, as already discussed above, the information required was very specific as regards “registration” of FIR or any criminal case, which has been intentionally withheld by the petitioner and thus would qualify to be called suppression of the material fact. Hon’ble Supreme Court, in Delhi Administration through its Chief Secretary Vs. Sushil Kumar, decided on 04.10.1996 Civil Appeal No.13231 of 1996, wherein under similar circumstances, a constable had been denied appointment, but CAT, Delhi had

set aside such order, reversed the said order of Tribunal, while holding as under:

“On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found destrable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 Indian Penal Code, under Section 324 read with Section 34 Indian Penal Code and under Section 324 Indian Penal Code, he cannot be denied the right of appointment to the post under the State. The question is : whether the view taken by the Tribunal is correct in law? It is seen 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. Though he was physically found 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 to 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. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”

20. A reference in this regard also needs to be made to a judgment delivered by a co-ordinate Bench in Satnam Singh’s case (Supra), wherein this Court in a

case of suppression of factum of criminal case against petitioner, even though acquitted, held it to be suppression of a material fact. The writ petition, filed by the dismissed Constable, was dismissed while relying upon a plethora of judgments. The relevant extract from the said judgment reads as under:

“Resultantly, keeping in view the above principles, this Court is of the view that the petitioner himself having concealed the factum of pendency of the criminal case is not entitled to take advantage of his own wrong. He cannot turn around and contend that the non-disclosure was of no material fact and the offences were petty in nature and acquittal had also been recorded. If, the said information had been furnished to the authorities, it would be open to them to apply their mind to the suitability of the petitioner and whether he was liable to be considered for appointment, specially keeping in view the fact that he was to become a uniformed personnel and, therefore, the standard reputation being higher as per the rules itself. No fault can be found in the action of the respondents by following the abovesaid procedure and dispensing with his services.”

21. The facts of present case, which is also a case of an appointment to a disciplined force, when examined in light of ratio of Satnam Singh’s case (Supra) leave no room for taking a lenient view in the matter.
22. The petition, as such, is found to be devoid of merits and is hereby dismissed.

17.08.2023
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No