

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5296 of 2023

=====

Aman Kumar Son of Nand Kishore Singh, resident of Village - Kodari Tola,
P.O. - Nawada Been, P.S. - Jagdishpur, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Chairman, Central Selection Board of Constable, Sardar Patel Bhawan, Bailey Road, Patna.
3. The Member Central Selection Board of Constable Sardar Patel Bhawan, Bailey Road, Patna.
4. The Assistant to Inspector General of Police (Welfare) Bihar, Patna.
5. The Superintendent of Police, Railway Katihar.
6. Chandan Kumar, Son of Chandeshwar Singh, resident of Koelari Tola, P.S.- Jagdishpur, District - Bhojpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Sinha, Advocate Mr. Navin Kumar Singh, Advocate Mr. Akhilesh Kumar, Advocate
For the Respondent/s	:	Mr. Md. N.H. Khan (SC-1)

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 21-06-2024 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The petitioner has invoked extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of the writ in the nature of mandamus commanding and directing the respondents to appoint the petitioner to the post of Constable and allot District Unit in the order of his seniority on the basis of Advertisement No.05/2020 published for the selection to the post of Constables



in the State of Bihar and other incidental and consequential reliefs.

3. It is the case of the petitioner that in terms of Advertisement No.05/2020 he submitted his candidature for the post of constable in the State of Bihar. After due process of examination and other requisite formalities, he was selected to be appointed for the post of Constable. However, at the time of police verification, the appointing authority found that he was implicated in connection with Jagdishpur P.S. Case No.182 of 2021 dated 18.05.2021 under Sections 341, 323, 379, 448, 504, 506/34 of the Indian Penal Code. On the basis of a written complaint submitted against him and other persons in connection with an alleged incident which took place on 18.05.2021 at 5:30 P.M. The petitioner had no knowledge about pendency of such case. He did not receive any summons or notice from the police station or the Court either. Only when the matter was revealed during police verification he took information about the case and found that the case is pending in the Court of learned Chief Judicial Magistrate, Bhojpur at Ara and cognizance of offence has been taken by the learned Magistrate. The case is still pending at the stage after cognizance and the petitioner received no summons from the



Trial Court.

4. It is submitted by the learned advocate on behalf of the petitioner that the respondents authorities are denying appointment to the petitioner on the ground of pendency of the above mentioned criminal case. Hence, the instant writ petition.

5. Learned advocate on behalf of the petitioner submits that the aforesaid criminal case pending against the petitioner is trivial in nature he is not implicated in any serious offence. He was not involved in the alleged incident dated 18.05.2021. He has been implicated in the criminal case due to land dispute. Therefore, the respondent authority has the power to condone pendency of such trivial criminal case against the petitioner and appointment letter should be issued in favour of him. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in *Avtar Singh Vs. Union of India and others* reported in **(2016) 8 SCC 471** relying upon the observation made by the Hon'ble Supreme Court in Para-21 of the aforesaid report it is submitted by the learned advocate for the petitioner that the purpose of staying the information during verification is to ascertain the character and antecedents of the candidate so as to assist the suitability for the post. Therefore, the candidate will have to answer the questions truthfully and



fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character undefeating for a uniformed police force.

6. Avtar Singh (supra) relied on an earlier decision of the Hon'ble Supreme Court in the case of ***Daya Shankar Yadav Vs. Union of India and Others*** reported in ***(2010) 14 SCC 103***. Para 14 to 16 of the Daya Shankar Yadav (Supra) was quoted in Avtar Singh case. For the purpose of this case it is relevant to record paragraph No.15(d) of Daya Shankar Yadav (Supra) it runs thus :-

“15(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.”

7. Sub paragraph (a) and (b) of Para-15 of Daya Shankar Yadav (Supra) states as follows :-

“(a) If the declarant has answered the question in



the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.”

8. Subsequently, in Para-38 of the judgment in Avtar Singh, the Hon'ble Supreme Court held as under :-

“38. 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:

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 recourse 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.”

9. It is submitted by the learned advocate for the petitioner referring to the decision of Avtar Singh (Supra) that at the time of submitting application form the petitioner was not involved in any criminal case. The relevant advertisement No.05/2020 was issued on 11.11.2020 and the last date of submission of online form was 14.12.2020. On the contrary, the accused was implicated on the basis of a written complaint on 18.05.2021. Finally, result of the selection test to the post of



Constable was published on 02.09.2022. As per the procedure after selection, a selected candidate is required to file police verification form alongwith other testimonials. Thus, police verification form was filed by the petitioner obviously after 02.09.2022. The criminal case was initiated on 18.05.2021. However, it is submitted by the learned advocate for the petitioner that as the allegation against the petitioner is trivial in nature and he was falsely implicated in the said case, the authority had the discretion to appoint him subject to the final result of the criminal case.

10. Learned advocate on behalf of the respondents, on the other hand, takes me to the relevant Advertisement No.05/2020, he refers to clause 19 of the advertisement. It is clearly stated that a selected candidate for the post of Bihar Police/Bihar Arms Police/Special Indian Reservation Force/Bihar State Industrial Security Battalion shall have to file the information as per Bihar Police Manual, 1978 with regard to his character, if adverse certificate is received by the authority or if on verification it is found that a candidate suppressed some information he will be declared unfit for the post of Constable in the above mentioned force.

11. It is contended by the learned advocate on behalf



of the State that the petitioner suppressed pendency of criminal case against him and therefore, following clause 19 of the advertisement he is not entitled to get appointment. The decision taken by the respondents cannot be said to be arbitrary or illegal or manifestly against due process of law. As such, the petitioner is not entitled to get any relief in the instant writ petition.

12. In support of his contention, the learned advocate on behalf of the petitioner refers to an unreported decision of the Hon'ble Supreme Court in the case of ***The State of Madhya Pradesh and others Vs. Bhupendra Yadav*** (Petition for Special Leave to Appeal (Civil) No.27301 of 2018) decided on 20.09.2023.

13. It is submitted by the learned advocate on behalf of the respondents that in the aforesaid decision, the Hon'ble Supreme Court duly considered the decisions in ***Mehar Singh (Supra)***, ***R.K. Kapur Vs. Union of India and Another (AIR 1964 SC 787)***, ***State of Madhya Pradesh and Others Vs. Parvez Khan (2015) 2 SCC 591*** and ***Avtar Singh (2016) 8 SCC 471***. On due consideration of the above mentioned decision, the Hon'ble Supreme Court held in Para-15 to 19 :-

“15. On applying the law expounded by this Court in a series of decisions to the facts of the instant case, we find that the Division Bench of the High



Court has dismissed the appeal preferred by the appellant – State Government and set aside the order passed by the learned Single Judge who had upheld the order passed by the Competent Authority, terminating the services of the respondent on the ground that he was candid enough to make a disclosure in his verification form stating that he had been charge sheeted in a criminal case³ wherein he was later on acquitted and there was no other criminal case pending against him at the relevant time.

16. We are, however, unable to concur with the aforesaid view. Even though the respondent had truthfully declared that he was involved in a criminal case which was decided by the trial Court vide judgement 26th October, 2015, on perusing the facts of the said case as noted hereinabove and the observations made in the judgement, quite clearly, this was not a case of clean acquittal. It is evident from the facts narrated that after the chargesheet was filed, the respondent had arrived at a compromise with the complainant and filed an application under Section 320 of the CrPC, based on which the offence under Section 341 IPC was compounded. As for the remaining offences for which the respondent was charged i.e. Section 354(D) of the IPC and Section 11 (D)/12 of the POCSO Act, they were non compoundable and therefore, the matter was taken to trial. The respondent was acquitted by the trial Court primarily on account of the fact that the complainant did not support the case set up by the prosecution and the other prosecution



witnesses had turned hostile. In such circumstances, the respondent's plea that he had been given a clean acquittal in the criminal case, is found to be devoid of merits.

17. This is a classic example of the situation contemplated in para 38.4.3 of **Avatar Singh** (supra) where the charges framed against the respondent herein involved moral turpitude and though he was acquitted on the prosecution witnesses having turned hostile, but given the facts and circumstances of the case which led to his acquittal, we are of the view that the appellant – State Government was well within its right to exercise its discretion against the respondent and terminate his services on the ground that he was unfit for appointment in the police department. Here was a case where the complainant had reneged from the statement made to the police in view of a settlement arrived at with the respondent. It is noteworthy that the incident, subject matter of the criminal case had occurred on 14th February, 2015, and judgement was pronounced by the trial Court on 26th October, 2015. In the very next year, when the appellant – State Government invited applications for appointment to the post of Constable, the respondent had submitted his application. Even though this is a case of candid disclosure of the criminal case on the part of the respondent, which had culminated in an acquittal, but having regard to the fact that the prosecution could not succeed in proving the case against the respondent for the reasons noted hereinabove and further, being mindful of the fact that



the case involved moral turpitude and the respondent was charged with non-compoundable offences of a serious nature, we are of the firm view that the judgment of the trial Court cannot be treated as a clean acquittal.

18. The aforesaid aspects were rightly factored in by the appellant – State Government while issuing the communication dated 24th August, 2017 and declaring that the respondent was unfit for appointment to the said post. The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.

19. We are, therefore, of the opinion that mere acquittal of the respondent in the criminal case would not automatically entitle him to being declared fit for appointment to the subject post. The appellant– State Government has judiciously exercised its



discretion after taking note of all the relevant factors relating to the antecedents of the respondent. In such a case, even one criminal case faced by the respondent in which he was ultimately acquitted, apparently on the basis of being extended benefit of doubt, can make him unsuitable for appointment to the post of a Constable. The said decision taken by the appellant–State Government is not tainted by any malafides or arbitrariness for the High Court to have interfered therewith. As a result, the judgement dated 17th November, 2017, passed by the learned Single Judge is upheld while quashing and setting aside the impugned judgment dated 24th January, 2018, passed by the Division Bench of the High Court. The appeal is allowed. Parties are left to bear their own costs.”

14. Thus, the Hon’ble Supreme Court held in the recent judgment that the yardstick to be applied in the cases where the appointment sought relates to a Law Enforcement Agency. The verification shall be more stringent than those applied to a routine vacancy. The Apex Court held that the standard of rectitude to be applied to any person seeking appointment in Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that of the police service.



15. The Hon'ble Supreme Court finally held that only where a candidate being an accused in a criminal case is honourably acquitted, he is entitled to get his appointment. However, mere acquittal of the candidate in a criminal case would not automatically entitle him to be declared fit for appointment to the subject post. Since, the decision of Bhupendra Yadav (supra) is the latest decision passed by the Hon'ble Supreme Court and the decision of Avtar Singh was distinguished in the said case, this Court has no other alternative but to follow the judgment passed in Bhupendra Yadav (supra).

16. For the reasons stated above, this Court is of the view that the petitioner is not automatically entitled to get appointment presently to the post of Constable as a criminal case is pending against him.

17. At the same time, the respondent authority is directed to consider the case of the petitioner, if he is honourably acquitted in future. For this purpose a post of Constable may be left vacant for consideration of the case of the petitioner in future.

18. If all the vacancies are filled-up, in the meantime, petitioner's case shall be considered by the respondents from future vacancy, because Bhupendra Yadav (supra) clearly states



that a person is entitled to be appointed in a post under Law Enforcement Authority if he is honourably acquitted.

19. As the pendency of the above mentioned criminal case stands as a rock block against appointment of the petitioner, the learned Chief Judicial Magistrate, Bhojpur at Ara is directed to take all possible steps to dispose of the criminal case within six months from the date of communication of this order.

20. With the above direction, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

mdrashid/-

U			
---	--	--	--

