

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15943 of 2023

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Rakesh Kumar Singh son of Sri Kanhaiya Singh, Resident of Village-Narayanpur, Police Station-Suryapura, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Government of Bihar, Patna.
2. The Director General of Police Bihar
3. The Director General of Police (Personnel) Bihar
4. The Inspector General of Police, Shahabad Range, Dehri-on-Sone, Rohtas
5. The Deputy Inspector General of Police, Shahabad Range, Dehri-on-Sone, Rohtas
6. The Superintendent of Police, Rohtas at Sasaram
7. The Bihar Police Subordinate Services Commission through its Secretary, Santosh Mansion, B-Block, near R.P.S. Law College, Raghunath Path, Police Station Rupaspur, Danapur, Patna- 801503
8. The Secretary, the Bihar Police Subordinate Services Commission B-Block, near R.P.S. Law College, Raghunath Path, Police Station - Rupaspur, Danapur, Patna- 801503

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Kr Kaushik, Namrata Dubey, Advocates
For the S t a t e	:	Mr Manoj Kumar, AC to GP IV
For the BPSSC	:	M/s Sanjay Pandey, Nishant Kr Jha, Advocates

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

CAV JUDGMENT

Date : 17-01-2025

This petition has been preferred by the petitioner seeking the following reliefs

“(i) For issuance of an order, direction or a writ of certiorari for quashing and setting aside the order contained in Memo No 434 dated 24.01.2022 whereby and where under the candidature of the petitioner has been cancelled for appointment to the post of Sub Inspector of



Police against Advertisement No 01 of 2019 dated 21.08.2019 published by the Bihar Police Subordinate Service Commission.

(ii) For issuance of an order, direction or a writ of certiorari for quashing and setting aside the order contained in Memo No 896 dated 09.08.2023 whereby and where under the appeal filed by the petitioner against the order dated 24.01.2022 has been rejected by the Director General of Police (Personnel), Bihar.

(iii) For issuance of an order, direction or a writ of mandamus for directing the respondent authorities to appoint the petitioner to the post of Sub-Inspector of Police in consequence of the petitioner having been declared successful against Advertisement No 01/2019 by the Bihar Police Subordinate Service Commission with full back wages and consequential seniority and continuity of service.”

2 Facts of the case are that an advertisement was issued for recruitment against 206 vacancies of police Sub Inspector bearing Advertisement No 01 of 2019 on 21.08.2019. While filling up of the online application form on 14.09.2019 (Annexure P/2), the petitioner had declared that no FIR or criminal case has ever been registered against him nor any criminal case is pending against him in any Court of law. Preliminary examination was conducted on 22.12.2019. The result was published on 28.01.2020 wherein the petitioner was declared successful. Subsequently mains examination was conducted on 29.11.2020 and the result was published on 16.01.2021 and the petitioner was again declared



successful. The physical test was conducted on 27.03.2021 and final result was declared on 17.06.2021. The petitioner emerged successful in the selection process. Thereafter, the petitioner reported for document verification and filled up a character verification form, (Annexure P/8) on 15.07.2021. While filling up the character verification form, the petitioner declared that there was no case pending against him.

3 The petitioner was earlier made an accused in Suryapura PS Case No 143 of 2019 dated 11.09.2019, i e, just three days before he has filled up his application form (Annexure P/2). The FIR was under Sections 379, 323, 341, 147, 149 and 504 of the IPC. The petitioner was under an impression that the said case was closed against him. He went to the concerned Police Station on 20.07.2021, i e, after he filled up the character verification form and came to know that charge sheet has been submitted against him. Immediately, the petitioner disclosed the pendency of the case before the Superintendent of Police, Rohtas vide Annexure P/9 on 23.07.2021 and requested him to supervise the case again so that his selection is not affected as much as he was innocent and on the date of occurrence, he was taking training at Dhanbad Training Institute (Safety Camp) while working as Group D employee of the Railways. He also disclosed the



pendency of the criminal case to the DIG, Shahabad Range vide Annexure P/11 on 27.07.2021. On the direction given by the Sub Divisional Officer, Bikrmganj, the SHO, Suryapura PS conducted an enquiry and submitted a report stating that the petitioner was innocent. Thereafter, the Deputy Inspector General of Police, Shahabad Range directed the reinvestigation of the case after obtaining permission from the Court concerned (Annexure P/13). Pursuant to the order passed by the Revisional Court, the investigation was conducted and final form was submitted on 22.04.2023 (Annexure P/15 series) which was accepted by the learned Judicial Magistrate, 01st Class, Rohtas on 24.05.2023 and the case was closed against the petitioner (Annexure P/16). Meanwhile, during pending further investigation, the appointment of the petitioner was cancelled by the respondents (Annexure P/18) on the ground that while submitting the form, he concealed the material facts. The appeal was also filed by the petitioner which was rejected on 09.08.2023 (Annexure P/19). Hence, this petition has been preferred by the petitioner.

4 It is submitted by the learned counsel for the petitioner that at the time of filing up his online application form, the petitioner erroneously made a statement that no FIR or criminal case has ever been registered against him. The form was filled by



him on 14.09.2019, and just three days prior, i.e. on 11.09.2019, the Suryapura PS Case No 143 of 2019 was registered against him. The petitioner was not aware of registration of the said Suryapura PS Case No 143 of 2019 at the time of filling up the online application form. Subsequently, he knew about the registration of the said FIR. However, due to mistake, he did not disclose this fact to the respondents at the time of filling up the character verification form also. At that time, the age of the petitioner was only about 23 years. He was a young boy. He has no knowledge that he had to inform the respondents regarding registration of any FIR against him. Learned counsel further submits that the character verification report of the petitioner was received on 10.08.2021 from which it came to light that there was a case pending against him in which charge sheet has been submitted but prior to that, the petitioner had already informed the DIG regarding pendency of criminal case vide letter dated 27.07.2021 (Annexure P/11) and the DIG had also issued a letter on 04.08.2021 directing reinvestigation of the case much before the character verification report was received on 10.08.2021 which clearly shows that there was no mala fide intention on the part of the petitioner to suppress the pendency of the case since he has himself informed about it to the authorities. Learned counsel



further submits that the impugned order rejecting the candidature was passed by the same authority which had directed the reinvestigation of the case. Once reinvestigation of the case was directed, the authority concerned ought to have waited for the result of the reinvestigation of the case before cancelling the appointment. Once the petitioner was exonerated fully and was not even sent up for trial, punishing him for merely being falsely made an accused, is highly arbitrary and unreasonable. The petitioner was exonerated at the stage of investigation itself by giving a finding that he was not present at the place of occurrence on the date of occurrence. In such circumstances, the impugned orders taking away the right of public employment is too harsh and inequitable and has the effect of ruining the life of the petitioner. Reliance has been placed by the counsel on the judgments passed by the Supreme Court in the cases of *Commissioner of Police, Delhi & Another -Versus- Dhaval Singh, (1999) 1 SCC 246, Avtar Singh -Versus- Union of India & Others (2016) 8 SCC 471, Pawan Kumar -Versus- Union of India & Another (2023) 12 SCC 317 and Ravindra Kumar -Versus- State of Uttar Pradesh & Others (2024) 5 SCC 264.*

5 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and



submits that from the pleading made by the petitioner, it is quite clear that, while filling up the application form and subsequently at the time of filling up the character verification form, the petitioner has not disclosed the criminal case pending against him. Since the material fact has been concealed by the petitioner, therefore, his candidature has rightly been cancelled by the respondents. The petitioner is not entitled to get any relief.

6 Heard learned counsel appearing for the parties. Perused the documents annexed with the petition as well as counter affidavit and the rejoinder affidavit of the petitioner.

7 Before going to the facts of the case, it would be appropriate to quote the observations made by the Supreme Court on this issue. In the case of *Dhaval Singh (supra)*, the Supreme Court observed at Paragraph 5 as under:

“5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as “information”. Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent



on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court – it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.”

8 Subsequently, in the case of *Avtar Singh (supra)*, the law on this issue has been settled by the Supreme Court and it was observed and held at paragraphs 34, 35, 36, 38.10 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.

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.”

9 Subsequently, the case of *Avtar Singh (supra)* has been reiterated by the Supreme Court in the case of *Pawan Kumar*



(*supra*) and it was observed by the Supreme Court at Paragraph 13 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 where 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 has been 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.”

10 Recently, in the case of ***Ravindra Kumar (supra)***, the Supreme Court, reiterating the earlier judgments in the cases of ***Avtar Singh (supra)***, ***Pawan Kumar (supra)*** and ***Satish Chandra Yadav -Versus- Union of India (2023) 7 SCC 536*** observed and held at paragraph 34 as under:

“34. On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant. Broad-brushing every non-disclosure



as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.”

11 In the light of the above observation made by the supreme Court on examination of the facts of this case, it is quite clear that at the time of filling up of application form (Annexure P/2) on 14.09.2019, the petitioner had declared that no FIR or criminal case has ever been registered against him though Suryapura PS Case No 143 of 2019 has been registered on 11.09.2019, i e, just three days prior to filling up the online application form. The respondent-State has totally failed to produce any material which shows that on the date of filling up of application form, i e on 14.09.2019, the petitioner was aware about the registration of Suryapura PS Case No 143 of 2019 against him. Thus, the contention made by the learned counsel for the petitioner is acceptable that on the date of filling up of application form, the petitioner was not aware about any FIR that has been registered against him.

12 Perusal of the documents further shows that at the time of filling up the character verification form on 15.07.2021, it



was within the knowledge of the petitioner that an FIR has already been registered against him, i e, Suryapura PS Case No 143 of 2019 but he did not disclose this fact while filling it. However, subsequently before submission of character verification report and before issuance of any appointment, the petitioner himself informed the DIG regarding pendency of criminal case against him vide letter dated 27.07.2021 (Annexure P/11). The document further shows that on the basis of application form (Annexure P/11) made by the petitioner himself, the DIG issued the letter on 04.08.2021 directing reinvestigation of the case and subsequently reinvestigation was conducted and it was found that at the time of incident, the petitioner was not present on the place of incident and a final form was submitted before the competent Court of Magistrate which was also accepted by the concerned Magistrate.

13 At the time of filling up his application form as well as character verification form, the age of the petitioner was only about 23 years. He was a young boy. He erroneously, at the time of filling up of character verification form, did not disclose that any criminal case is pending against him, appears to be a bona fide mistake as immediately after some period and before submission of character verification report as well as issuance of any appointment order, he himself disclosed the fact regarding



pendency of criminal case against him. It would also be relevant to mention that as of now Suryapura PS Case No 143 of 2019 has been closed in so far as the petitioner is concerned and final form (closure report) has also been accepted by the competent Court. Therefore, considering the law laid down by the Supreme Court in the cases of *Avtar Singh (supra)*, *Revindra Kumar (supra)* and further considering the special circumstances as discussed hereinabove, I find the mistake committed by the petitioner regarding non-disclosure of criminal case against him is not fatal.

14 Therefore, the impugned orders dated 24.01.2022 (Annexure P/18) and 09.08.2023 (Annexure P/19) are quashed and set aside.

15 The respondents are directed to appoint the petitioner in service on the post of Sub Inspector for which he was selected pursuant to his participation in response to the Advertisement No 1 of 2019 dated 21.08.2019 published by Bihar Police Subordinate Service Commission.

16 It is made clear that the petitioner would not be entitled to arrears of salary for the period during which he has not served the police force.



17 It is further directed that the petitioner will be entitled for all notional benefits including pay, seniority and other consequential benefits.

18 Necessary orders shall be passed within a period of 45 days from today.

19 The writ petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	07.01.2025
Uploading Date	17.01.2025
Transmission Date	NA

