

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5981-2017 (O&M)
Reserved on: 21.09.2022
Date of decision: 02.11.2022

JAGDEEP SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R. S. Bains, Senior Advocate with
Mr. Amar Jeet, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. This is a petition that has been filed seeking issuance of a writ, order and direction for quashing order dated 19.01.2017 (Annexure P-5), wherein the petitioner herein has been declared as unfit for recruitment to the post of Constable and further to issue him the appointment letter to the post of Constable to which he has been selected.

2. In brief, the facts as culled out are that the Punjab Police invited online applications for 7416 posts (4915 for District Police Cadre and 2501 for Armed Police Cadre) for recruitment of Male and Female Constables in the District Police Cadre and Armed Police Cadre vide advertisement No.1/2016, dated 31.05.2016. The petitioner possessing all the requisite qualifications for

the post of Male Constable as per the advertisement, applied for both District Police Cadre and Armed Police Cadre and was issued Roll Number for the Physical Measurement Test and Physical Screening Test, which was to be conducted on 16.09.2016 at Police Lines Stadium, Sangrur. The petitioner cleared the qualifying race, long jump and high jump for Physical Screening Test and Physical Measurement Test and his name figured in the provisional merit list at serial No.192. Thereafter, the petitioner was sent for medical examination at Civil Hospital, Mansa and his medical examination was conducted on 05.11.2016 and he was found to be fit and the certificate of fitness was subsequently sent to the respondents by the Hospital. His police verification was sent on 06.11.2016 and petitioner was called for issuance of the appointment letter at 36th Battalion PAP, Bahadurgarh, Patiala on 21.11.2016, but the appointment letter was not issued to him on the ground that police verification report has not been received. The petitioner approached the Senior Superintendent of Police, Sangrur and also the Director General of Police, Punjab with the written representations requesting them to issue him the appointment letter. On 19.01.2017, without any show cause notice to the petitioner, the respondents passed an order rejecting the candidature of the petitioner for the post of Constable, on the ground that there is a pending criminal case against the petitioner bearing FIR No.0142, dated 06.10.2016, registered under Sections 307, 323, 506, 341, 148 and 149 of the IPC and Sections 3 and 4 of the SC/ST Act, at Police Station Lehra. Aggrieved against the impugned order, the petitioner submitted a legal notice to the Director General of Police, Punjab to withdraw the same, but to no avail. Thus, the

instant writ petition.

3. Mr. R. S. Bains, learned Senior Advocate assisted by Mr. Amar Jeet, Advocate appearing on behalf of the petitioner would contend that the aforesaid FIR was falsely registered against the father of the petitioner and others, in which all of them were later discharged. He would submit that no charge-sheet was filed against anybody in that case and it was only through the impugned order, that the petitioner came to know about his involvement in the said FIR. It is further submitted that neither the name of the petitioner is in the said FIR nor the petitioner was ever summoned, arrested, called for investigation or declared as a proclaimed offender.

4. Learned Senior Advocate for the petitioner would also submit that the petitioner was not even present in the village when the incident took place and did not suppress any of the information during the whole selection process. The whole selection process except the medical examination was completed before the registration of FIR and the petitioner at all stages of the selection process had disclosed all the facts and no information was concealed at any stage of the selection process. He would further submit that it is a settled principle of law that mere registration of an FIR or criminal case cannot be a ground for cancellation of the candidature and the FIR or criminal case can only be the ground for cancellation of the candidature only when the candidate has been charge-sheeted or convicted and concealed his/her involvement in the criminal case whereas there is no concealment by the petitioner herein in respect of involvement in the criminal case. He would submit that the impugned order dated 19.01.2017 is in violation of Punjab Police Rules, 1934

and Punjab Police Act, 2007. Reliance is placed on Rules 12.12, 12.14 and 12.18 of the Punjab Police Rules, 1934, in support of his arguments. He would further rely upon *Joginder Singh versus Union Territory of Chandigarh, 2015(2) SCC 377*, wherein it has been held that mere involvement in a criminal case cannot be a ground for cancellation of candidature. It is argued that the respondents-State while passing the impugned order has misplaced their reliance in the case of *Delhi Administration versus Sushil Kumar, 1997(1) SCT 474*, which is distinguishable from the present case because the candidate in Delhi Administration's case (supra) had concealed the relevant facts to be furnished and in the present case, there is no allegation of concealment of fact from the petitioner herein. It is contended that a legal notice dated 25.01.2017 (Annexure P-7) was also submitted by the petitioner to the Director General of Police, Punjab to withdraw the aforesaid impugned order, but till date no action has been taken thereon.

5. Per Contra, Mr. Rohit Bansal, Sr. DAG, Punjab, learned counsel appearing on behalf of the respondents-State would submit that before joining a recruit Constable, it is necessary to complete the process of recruitment as per Standing Order No.1 of 2016 issued under Section 4 (d) and Section 45 (g) of Punjab Police Act, 2007, as laid down in it. It is submitted that during verification of the character antecedents of the petitioner herein, which was got conducted by the office of Senior Superintendent of Police, Sangrur, it was found that the petitioner was found to be involved in case FIR No.0142 dated 06.10.2016 under Section 307, 323, 506, 341, 148, 149 of the IPC and Sections 3 and 4 of the SC/ST Act and, therefore, the name of the petitioner was not

recommended for the job. He would place reliance upon a judgment rendered by the Supreme Court in *Delhi Administration versus Sushil Kumar, 1997(1) SCT 474*, wherein it was held that the verification of the character and his antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the concerned State. He would also place reliance on Rule 12.14 of the Punjab Police Rules, 1934. He would further contend that as per report received from Senior Superintendent of Police, Sangrur dated 14.05.2019, the Court of SDJM, Moonak vide order dated 12.02.2019 (Annexure R-1) had issued a proclamation notice for appearance of Jagdeep Singh S/o Balvir Singh on 16.05.2019. The petitioner had not appeared as sought by the said order and, therefore, vide order dated 16.05.2019, another proclamation notice (Annexure R-2) was issued against the petitioner for 28.08.2019. He submits that the instant petition is devoid of any merit and is liable to be dismissed.

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

7. It is trite to hold that the police force is a disciplined force and the employer is well within his right to reject the candidature of a candidate, where the Appointing Authority upon verification of character and antecedents of the candidate recommended for appointment comes to know that criminal proceedings against a candidate is in progress and the status of the case is reported to be either under investigation or challaned and charges framed. In case, candidate stands convicted, then too appointment shall be denied to him. Where a candidate is found to have been convicted for an offence involving

moral turpitude or punishable with imprisonment for three years or more, he/she shall not be considered for appointment. Therefore, the question for consideration before this Court would be whether the petitioner herein can be denied appointment to the post of Male Constable (General Duty) on the ground that he had not disclosed about the pendency of the criminal case against him at the time he had filled in his application form or the attestation form. In the case in hand, the application was submitted pursuant to an advertisement dated 31.05.2016. On the date of filing in of the application form, he was not wanted in any FIR and thus, filled the appropriate column as "NO". His physical examination was done on 16.09.2016 and FIR No.0142 was registered under Sections 307, 323, 506, 341, 148 and 149 of the IPC and Sections 3 and 4 of the SC/ST Act, at Police Station Lehra on 06.10.2016.

8. A perusal of the documents filed along with the copy of the FIR would reflect that the petitioner was not named in FIR No.0142 dated 06.10.2016 under Sections 307, 323, 506, 341, 148, 149 of the IPC and Sections 3 and 4 of the SC/ST Act, giving credence to the averment that the petitioner was not in the village at the time of the occurrence. The sole reason for denying appointment to the petitioner herein is on account of the fact that he was found involved in the aforesaid FIR. The respondents-State has not been able to establish that the petitioner was nominated as an accused or was arrested under the aforesaid FIR. An argument has been raised by the respondents-State that the petitioner was aware about the pendency of proceedings against him and he evaded service, but again this argument is without substance since the document as relied upon and annexed as Annexure

R-1 does not reflect the name of the petitioner with the order reading “*this court is satisfied that **they** cannot be served in ordinary manner, it appears that **they** are intentionally avoiding service. Let, their proclamation be issued for 16.5.2019*” and on 16.05.2019, proclamation was issued again. On the asking of the Court on 21.09.2022, whether any proceeding had been initiated against the petitioner under Section 82 Cr.P.C. or not, learned State counsel on instructions from Assistant Sub-Inspector Devi Dayal has answered in the negative. It would be worthwhile to note that over 61 persons had been named in the aforesaid FIR and the order could perhaps pertain to any of those not arrested. The trial Court on 15.11.2016 had discharged few of the accused, who had been arrested and one of them is the father of the petitioner herein. The police has also filed a cancellation report and the same has been accepted by the Court of Judicial Magistrate 1st Class, Moonak as recently as on 06.04.2022.

9. The respondents-State relies upon the written statement to argue that as per Rule 12.14 (1) of the Punjab Police Rules, 1934, recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment. There can be no dispute with such an argument, but it must be established that the petitioner herein was involved under the FIR and does not bear a good character or has given false information while filling in his application form. The FIR came to be registered on 06.10.2016 much after his application form had been submitted and since he was not named in the aforesaid FIR nor arrested, did not face charges, therefore, it cannot be said that he had not

disclosed about the pendency of the FIR.

10. The case law as relied upon by learned counsel for the respondents-State in Delhi Administration's case (supra) to the effect that there is non-disclosure of pendency of FIR and since the petitioner was not truthful, he cannot be offered appointment, is distinguishable and not applicable to the facts of the present case, since in the present case, the petitioner herein was neither named in the aforesaid FIR, nor summoned or charge-sheeted.

11. In the light of the foregoing discussion, denial of appointment to the petitioner herein is held to be unjustified and the said action of the respondents is liable to be set at naught. For the reasons recorded above, the present writ petition is allowed. The impugned order dated 19.01.2017 (Annexure P-5) is set aside. Respondents are directed to issue an appointment letter to the petitioner herein for the post of Male Constable in the light of his merit position, within a period of eight weeks from the date of receipt of certified copy of this order. The petitioner is also held entitled to all the consequential benefits in the nature of seniority, pay, leave etc. with effect from the date, when person lower in the merit to him had been so appointed to the post of Constable in the same very process of selection. It is, however, clarified that the petitioner herein shall not be paid the actual arrears of salary for the period in question.

(JAISHREE THAKUR)
JUDGE

02.11.2022
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No