

(2014) 07 DEL CK 0199

Delhi High Court

Case No: W.P. (C) 6034/2013

Sandeep Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 323, 325, 34

Citation: (2015) 213 DLT 151

Hon'ble Judges: Najmi Waziri, J; Kailash Gambhir, J

Bench: Division Bench

Advocate: K.G. Sharma, Advocate for the Appellant; Amrit Pal Singh, CGSC and Gurjinder Kaur, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Kailash Gambhir, J.

The present petition has been filed by the petitioner under Article 226 of the Constitution of India. The petitioner seeks to set aside and quash the order dated 19/21 August, 2013 and to direct respondent No.2 to appoint the petitioner forthwith against the offered post of constable in CAPFS.

2. Counsel for the petitioner states that there is no concealment on the part of the petitioner so as to suppress his alleged involvement in the criminal complaint registered against him vide FIR No. 83/2011 under Sections 323 & 325 read with Section 34 of IPC, as the relevant documents relating to the said criminal case were filed by the petitioner at the time of submission of the attestation form. Counsel further submits that the petitioner had applied to seek his appointment for the post of Constable (GD) in CAPFS-2011-2012 in SC Category, and the online application was filed by the petitioner. Counsel further submits that the said application was submitted by the petitioner in February 2011 while the criminal case was registered

against the petitioner and his family members on 29th April 2011 vide FIR No. 83/2011, which would make it clear that as on the date of submission of the said form, there was no criminal case pending against the petitioner. Counsel further submits that the petitioner has been acquitted in the said criminal case on 11th August 2011 and in the order, the learned trial court categorically observed that there is nothing incriminating against the accused in the said case and the offences against the accused are not proved beyond reasonable doubt. Respondent in their letter dated 16th March 2013 have called upon the petitioner to submit a legible copy of the final report of the police, which was submitted by the police in the court and this letter clearly refers to the documents placed on record by the petitioner alongwith his attestation form explicitly clarifying that on scrutiny of petitioner's documents it was found that a criminal case vide FIR No.83 dated 29.4.2011 u/s 323, 325 and 34 IPC was registered against him in the Police Station Khol. Distt. Rewari (Haryana). This letter also refers to the acquittal of the petitioner from the said criminal charge by the order passed by Mr. Lokesh Gupta, Judicial Magistrate 1st Class, Rewari vide order dated 11th August 2011.

3. Based on the aforesaid submissions, counsel for the petitioner submits that there was no suppression or concealment on the part of the petitioner and withholding of any information with regard to the registration of FIR or pendency of criminal case against the petitioner and in fact it was the petitioner who himself annexed the documents so as to apprise the respondent with the complete disclosure of facts at the time of submission of attestation form.

4. Per contra, Mr. Amrit Pal Singh, counsel appearing for the respondent submits that in the attestation form, in the relevant Column No.12, petitioner failed to furnish the relevant information and therefore, there is clear suppression on the part of the petitioner. Counsel further submits that this raises a doubt on the part of the petitioner in not disclosing his involvement in the criminal case registered against him vide FIR No. 83/2011 u/s 323, 325 and 34 IPC.

5. We have heard learned counsel for the parties and perused the relevant record.

6. The core issue before this Court is whether the candidature of the petitioner who had made a clean breast of his involvement in a criminal case by mentioning this fact at the time of submission of his attestation form; who was provisionally selected subject to verification of his antecedents and who was subsequently acquitted/discharged in the criminal case, could be cancelled on the ground that he is not found suitable for appointment to the post of constable because of his involvement in a criminal case.

7. The petitioner had applied for the post of Constable (GD) in CAPFS-2011-12, in the category of Scheduled Caste with a preference for State of Haryana in the month of February 2011. The petitioner had appeared in the written examination conducted by the Staff Selection Commission on 5th June 2011 and indisputably, he was

declared successful in the said exam. The petitioner had also qualified the physical test and with that his name appeared in the list of selected candidates at serial No.2683 in the select list. The petitioner had also received the offer of appointment vide letter dated 23rd January 2013 for the said post from the office of Chairman/Senior Commandant, CISF, Ministry of Home Affairs, 5th RB, Ghaziabad, UP-301014, directing the petitioner to report to the Principal, CISF MPRTC ANATPURA (BEHROR), Distt. Alwar, Rajasthan for joining the post and to attend basic training, scheduled to commence from 4th February 2013. On 2nd February 2013, petitioner had reported to the said office of CISF and also submitted the duly filled requisite documents including attestation form, antecedent certificate and certificate of character in accordance with the format notified by the CISF. The petitioner was also asked to get some of his documents attested from the concerned SHO and SDM and then to join the training programme on 4th February 2013. The petitioner fulfilled all the said requirements and attended the basic training programme on 4th February 2013 but to his utter shock, on 6th February 2013 he was sent back and was told not to continue with the training programme. He was also asked to bring the certified copy of the FIR and the order of the learned trial court in respect of the criminal case registered against him. The petitioner immediately furnished the said documents but was still was not allowed to complete his training programme.

8. Vide letter dated 9th March 2013, the petitioner took up the matter with the Principal of Training School and also with DIG (Training) as to why he was not permitted to participate in the training programme despite the fact that he had already submitted all the requisite documents. In response to the said letter, vide letter dated 16th March 2013, the office of the Assistant Inspector, General (Training Sector), Hyderabad asked the petitioner to submit a legible copy of the final report filed by the police in trial court within a period of ten days. In compliance thereof, the petitioner submitted judgment of the trial court vide his letter dated 22nd March 2013. Vide letter dated 19th/21st August 2013, the Respondent had cancelled the offer of appointment, earlier given to him on the ground of his involvement in the criminal case. Feeling aggrieved by the cancellation of his offer of appointment, the petitioner has filed the present writ petition.

9. Indisputably, the verification of the character and antecedents of the candidate is one of the important criteria to test whether the selected candidate is suitable for the post he had applied for. It is indubitable that employment in a police force or in para military services, the candidate must possess qualities like high level of physical endurance and most importantly should possess the aspect of integrity, as such person cannot be expected to be criminal by nature, or having any criminal background/antecedent. The character, integrity and antecedents of a candidate aspiring to join it, definitely assume importance. The standards expected of a person intended to serve in such a service is different from the one who intends to serve in any other services. The truthful disclosure of complete facts as per the

requirement of various columns of the application form cannot be compromised with.

10. There has been divergent view of coordinate Benches of the Hon"ble Supreme Court in the matter of grant of relief to such candidates who deliberately suppressed the information at the time of their recruitment with regard to their involvement in a criminal case and it is because of such conflicting views taken by various Benches of the Hon"ble Supreme Court, the matter has been referred to the Larger Bench of Hon"ble Supreme Court in a recent judgment titled as [Jainendra Singh Vs. State of U.P. Tr. Prinl. Section Home and Others,](#) . The decision of the Larger Bench on the said issue may not ponder us so far the present case is concerned as here the scenario is different.

11. In the case at hand, there was no criminal case pending against the petitioner as on the date of submission of his application in February, 2011. The FIR against the petitioner u/s 323, 325 and 34 IPC was registered on 29.04.2011 and he was acquitted by the trial court vide its judgment dated 11.08.2011. On perusal of the said judgment passed by the learned trial court, one can find that the trial court clearly observed that there was nothing incriminating against the accused (petitioner herein) in the present case and the offences against the petitioner are not proved beyond reasonable shadow of doubt.

12. There was an offer of appointment made to the petitioner to report on his duty and join the training programme on 2.2.2013 and by that date, the petitioner was already acquitted in the said criminal case. At the time when the petitioner had reported to join the training programme, he had furnished the requisite documents thereby informing the respondents about the registration of said criminal case against him and copy of the charge sheet was also filed by the petitioner. It is on the submission of the said documents by the petitioner, the Respondent vide letter dated 16th March 2013, called upon the petitioner to submit the legible copy of the final report as was filed by the police in the court. Para 2 of the said letter is reproduced as under:-

On scrutiny of your documents, it is found that a criminal case vide FIR No. 83 dated 29.04.2011uns 323, 325, 341 IPC was registered against him in the police Station Khol, Distt. Rewari (Haryana). Further you have been acquitted from the charges by the Hon"ble Court of Shri Lokesh Gupta, JMIC Rewari on 11.8.2001.

13. The contents of the aforesaid letter dated 16th March 2013 clearly reveal that the petitioner has filed those documents and it is through these documents, the Respondent got to know about the involvement of the petitioner in a criminal case vide FIR No.83 and about his acquittal from the court of Mr. Lokesh Gupta, Judicial Magistrate, vide order dated 11.08.2011.

14. From the aforesaid facts the position has become abundantly clear that there was no criminal case pending against the petitioner as on the date of his online

submission of his application seeking appointment on the post of Constable (GD) in CAPF's and on the date of his recruitment, he already stood acquitted from the criminal charges vide orders dated 11.08.2011.

15. In the case of Jainendra Singh (supra), Hon"ble Supreme Court considered the fact of appointment obtained by fraud and held in para 31.1 to 31.10 as under:

31.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

31.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

31.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

31.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

31.5. Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

31.6. The person who suppressed the material information and/or gives false" information cannot claim any right for appointment or continuity in service.

31.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

31.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement the the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

31.9. An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

31.10. The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

16. The factual matrix of the aforesaid case is completely at variance to that of the case at hand. None of the above ingredients satisfy the case at hand. Here, the petitioner has categorically disclosed of him being involved in a criminal case at the very instance of filing his attestation form which was within the relevant time. The punishment imposed on the petitioner was on account of his involvement in a criminal matter however, the same was never suppressed by the petitioner. There is no iota of doubt that furnishing of false information or suppression of any information would be a disqualification and is likely to render him unfit for employment.

17. In the present case, the petitioner was honest and truthful in placing the complete facts before the concerned authorities with regard to his involvement in a criminal case and his subsequent acquittal at the time of his joining the training programme after he was declared successful to be appointed on the said post of 23.01.2013.

18. The petitioner thus cannot be made to suffer for being honest in placing the correct facts before the respondents not only at the time of submission of his application but also at the time of his recruitment on the said post.

19. In view of the aforesaid discussion and directions, this petition stands disposed of.