



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

110

CWP-6109-2023
Date of Decision: 07.02.2025

Ankit

.....Petitioner(s)

Versus

Haryana Dairy Development Cooperative Federation Ltd.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sukesh Kumar Jindal, Advocate,
for the petitioner.

Mr. Prateek Mahajan, Mr. Daanish Mahajan,
and Mr. Vasu Gupta, Advocates,
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition filed under Article 226 of the Constitution of India is seeking setting aside of letter dated 16.11.2022 (Annexure P-4) whereby respondent has rejected his candidature for appointment on the post of Clerk.

2. The petitioner pursuant to advertisement No.5/2019 dated 20.06.2019 issued by Haryana Staff Selection Commission applied for the post of Clerk. He filed application form on 20.07.2019. At that point of time, an FIR No.349 dated 05.06.2018 under Section 420 IPC and Section 171 of the Haryana Panchayati Raj Act, 1994 (in short '1994 Act') registered at Police Station Samalkha, District Panipat was pending against him. He did not disclose in the application form that an FIR is pending against him. He came to be selected, however, was not permitted to join since he disclosed before the authorities that



he is facing criminal proceedings.

3. Mr. Jindal submits that petitioner had applied for the post of Clerk. He was not aware of pendency of FIR, thus, he could not disclose said fact in his application form. He was served notice under Section 41 of Cr.P.C. on 16.08.2019 whereas application was filed on 20.07.2019. Thus, there was no occasion to disclose factum of pending FIR. The case of petitioner is squarely covered by a three-Judge Bench judgment of Hon'ble Supreme Court in ***Avtar Singh vs. Union of India, (2016) 8 SCC 471.***

4. *Per contra*, Mr. Mahajan submits that petitioner was implicated in FIR registered under Section 420 IPC which was registered on 05.06.2018. The police under Section 41 Cr.P.C. had served notice upon his father much prior to filing application seeking post of Clerk. The petitioner intentionally did not disclose factum of pending FIR. Police after completing investigation has presented challan against him and even today he is facing trial.

5. I have heard the arguments and perused the record.

6. From the perusal of record, it is evident that petitioner was implicated in FIR dated 05.06.2018. He filed application seeking post of Clerk on 20.07.2019 meaning thereby FIR was registered much prior to date of filing application. He is not disputing the fact that notice under Section 41 was served upon his father and is claiming that he himself was served notice in August' 2019. Thus, there was no occasion to disclose the factum of pending FIR. The FIR was registered under Section 420 IPC apart from Section 171 of 1994 Act. There is allegation against him that despite being minor his family members got prepared his vote and he casted his vote in Panchayat elections. The police after completing investigation has preferred challan against him and he as on day is



facing trial. There was a particular column in the application form with respect to pending criminal cases. The petitioner did not disclose factum of pending criminal case.

7. A three Judge Bench of Supreme Court in **Avtar Singh (supra)** has adverted with question of appointment of a candidate who was/is involved in a criminal case. The Court after noticing plethora of judgments has culled out legal position as below:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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.”

[Emphasis Supplied]



Union of India and others., 2023 (7) SCC 536 has adverted with the question of appointment of a candidate against whom criminal case is pending/or was instituted. The Court has laid down guidelines as below:

“93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

93.1. Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials — more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. (See Raj Kumar [State v. Raj Kumar, (2021) 8 SCC 347 : (2021) 2 SCC (L&S) 745])

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc. has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

93.4. The generalisations about the youth, career



prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

93.5. The Court should inquire whether the authority concerned whose action is being challenged acted mala fide.

93.6. Is there any element of bias in the decision of the authority?

93.7. Whether the procedure of inquiry adopted by the authority concerned was fair and reasonable?"

[Emphasis Supplied]

9. In the case in hand, the petitioner concededly did not disclose his criminal antecedents in the application form. He is claiming that he was unaware of the pending FIR. The FIR was registered more than a year prior to his date of application. His father was served notice under Section 41 Cr.P.C. and said notice was served prior to date of application. The petitioner is still facing criminal proceedings. In such circumstances, the discretion needs to be left with authorities. It would not be just and fair on the part of this Court to direct the respondent to extend appointment to petitioner.

10. The Apex Court in **Avtar Singh (supra)** in Paragraph No.38.5 has held that where an 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. In Paragraph No.38.7, it has been held that in case of deliberate suppression of fact, an employer may pass appropriate order cancelling candidature or terminating services. A similar observation has been made by Supreme Court in Satish Chandra Yadav (supra). Case of the petitioner is squarely covered by aforesaid judgments. Had the petitioner disclosed his antecedents, this Court could consider nature of criminal cases or their status, however, the petitioner as per his wisdom had decided not to



disclose his antecedents. The act of the petitioner falls within negative observations made in afore-cited judgments.

11. In the wake of above discussion & findings and following the judgments of Apex Court in Avtar Singh (supra) and Satish Chandra Yadav (supra), this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

07.02.2025

shivani

(JAGMOHAN BANSAL)

JUDGE

Whether reasoned/speaking

Yes

Whether reportable

Yes