

Dharmendra Kumar Recruit Constable ... vs State Of U.P. And Others on 18 June, 2020

Equivalent citations: AIRONLINE 2020 ALL 1284

Author: Ravi Nath Tilhari

Bench: Ravi Nath Tilhari

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved on 9.1.2020

Delivered on 18.6.2020

In Chamber

Case :- WRIT - A No. - 19777 of 2007

Petitioner :- Dharmendra Kumar Recruit Constable Chest No. 424

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Satya Prakash Pandey

Counsel for Respondent :- C.S.C., J.P. Singh

Hon'ble Ravi Nath Tilhari, J.

1. Heard Sri Satya Prakash Pandey, learned counsel for the petitioner and the learned Standing Counsel.

2. By means of the present writ petition, the petitioner has prayed for issue of a writ in the nature of certiorari quashing the order dated 7.4.2007 passed by the Superintendent of Police Kannauj (Annexure No.2 to the writ petition), by which the petitioner's services were no longer required, giving him one month's salary and allowances, if any, for the notice period, under the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred as the Rules, 1975). The petitioner has further prayed for issue of a writ of mandamus, commanding the

respondents to permit him to continue and complete his training of constable and to appoint him as constable in U.P. Police and pay salary and other emoluments, in accordance with law.

3. Facts of the case are that in the recruitment process for the post of constables in U.P. Police, year 2005-06, the petitioner qualified in physical and written test and after interview he was declared successful and was selected on the post of constable in District Kannauj. The selected candidates were required to submit an affidavit in the prescribed proforma for police verification. The petitioner also filed an affidavit dated 10.6.2006 verified by public notary, but in the said affidavit the petitioner stated that there was no criminal case pending against him. On police verification, the Station Officer, Police Station- Vidhunu submitted report dated 23.6.2006 that a Case Crime No. 409 of 2005 under Sections 324, 504 and 506 I.P.C. was registered against the petitioner, in which charge sheet had also been filed. However, the police report stated that the petitioner was a person of good character and reputation.

4. After the police verification report, the Superintendent of Police, Kannauj/Respondent No.3 vide letter dated 18.7.2006, sought opinion from the District Magistrate, Kannauj for sending the petitioner on training and after the letter of the District Magistrate, Kannauj, dated 23.8.2006 to the effect that, there was no legal impediment in the petitioner's appointment, the petitioner was sent for initial training to Etawah by order dated 30.8.2006.

5. A show cause notice dated 27.11.2006 (Annexure No.1 to the writ petition) was served to the petitioner to show cause as to why his selection be not cancelled, for concealment of the fact of pendency of the criminal case against him.

6. The petitioner filed reply dated 14.12.2006 stating, inter alia, that on the date of submitting application for recruitment process i.e. on 3.9.2005, no case was registered against him. The Case Crime No. 409 of 2005 under Sections 324, 504 and 506 IPC was registered against him due to minor family disputes. The petitioner, however, admitted that in the affidavit filed by him due to inadvertent mistake and oversight of the learned advocate, as many affidavits were being prepared of so many candidates, the petitioner's case could not be separated and the pendency of Case Crime No. 409 of 2005 could not be disclosed and his affidavit was also prepared on the same lines as of so many other candidates.

7. At this stage it requires mention that, later on, in case Crime No. 409 of 2005 under Sections 323, 504 and 506 IPC, the petitioner was acquitted by judgment dated 23.12.2006 passed by the Metropolitan Magistrate, Kanpur Nagar and considering the petitioner's acquittal, he was sent to Etawah for intensive training vide letter dated 8.1.2007, by the Superintendent of Police, Kannauj.

8. The Superintendent of Police, Kannauj by the impugned order dated 7.4.2007 terminated the services of the petitioner, under the U.P. Temporary Government Servant (Termination of Service) Rules, 1975, as no longer required on the ground that the petitioner concealed the material fact of pendency of Case Crime No. 409 of 2005 against him. The petitioner's reply to the show cause notice was not found convincing. The petitioner has submitted that he was undergoing intensive training and in the meantime he received the order dated 7.4.2007.

9. Sri Satya Prakash Pandey learned counsel for petitioner has submitted that the order dated 7.4.2007 is without jurisdiction as the Rules 1975, are not applicable to the police constables. Reliance has been placed on the judgment of this Court in the cases of Anuj Yadav Vs. State of U.P. and three others (Special Appeal Defective No. 1330 of 2013) (DB) decided on 3.1.2014; State of U.P. Vs. Praveen Tyagi recruit constable (Special Appeal Defective No. 341 of 2010 decided on 20.11.2013, and Vijay Singh and others Vs. State of U.P. and others reported in 2004 (4) ESC 2209 (FB).

10. Learned counsel for the petitioner next contended that the impugned order is stigmatic and punitive. The alleged misconduct is the foundation of the order and as such a regular enquiry must have been conducted. In any case, he submits that on two petitioner's acquittal in case Crime No. 409 of 2005 the stigma attached in view of pendency of criminal case also stood vanished. He has placed reliance on the judgment in the case of Dipti Prakash Banerjee Satyendra Nath Bose National Centre for Basic Sciences (1999) 3 SCC 60 and Awadesh Kumar Sharma Vs. Union of India (2000) 1 UPLBEC 763 (DB).

11. Lastly, placing reliance on the case of Avatar Singh Vs. Union of India reported in (2016) 8 SCC 431, the learned counsel for petitioner submitted, that in case of suppression of relevant information or furnishing false information, the competent authority is required to consider various aspects and take appropriate decision to appoint or not to appoint the selected candidate. The impugned order dated 7.4.2007 does not stand the test of the law laid down in the case of Avatar Singh (supra) and deserves to be quashed.

12. Learned Standing Counsel has submitted that the petitioner concealed the material fact of pendency of criminal case against him, which had material bearing on the petitioner's selection and appointment. The antecedents of a candidate are required to be looked into and a person of criminal nature or with criminal background cannot be allowed to enter the services and in particular the services of a disciplined force. He has next submitted that the impugned order is not stigmatic but an order of termination simplicitor and as such any regular inquiry was not required to be conducted in the matter before passing the impugned order.

13. Learned standing counsel has, however, not disputed the fact that the petitioner was acquitted in Case Crime No. 409 of 2005 by the competent court of law, but he has submitted that another Case Crime No. 956 of 2006 under Sections 420, 467, 468 and 471 IPC, was also registered against the petitioner for filing false affidavit for police verification, in the present recruitment process. To this submission, learned counsel for the petitioner submitted that in Case Crime No. 956 of 2006 also the petitioner was acquitted vide judgment dated 8.2.2012 passed by the Chief Judicial Magistrate, Kannauj. (Annexure SA-1 to the supplementary affidavit).

14. I have considered the submissions advanced by the learned counsel for the petitioner and the learned standing counsel and have also perused the material on record.

15. The petitioner, a selected candidate for the post of constable in U.P. Police in the recruitment process year 2005-06, was given a show cause notice dated 27.11.2006 as to why his selection be not

cancelled as the petitioner did not disclose pendency of Case Crime No. 409/2005 under Sections 323/504/506 I.P.C. against him in the affidavit for police verification. The order of termination of services as no longer required was passed by the Superintendent of Police, Kannauj, after considering the petitioner's reply, on the ground that the petitioner by playing fraud and concealment of material fact appeared in the recruitment process for the post of constable. The order was passed making specific reference to the U.P. Temporary Government Servants (Termination of Service) Rules, 1975.

16. In the case of Vijay Singh and another Vs. State of U.P. and others reported in 2004 (4) ESC 2209 (F.B.), it has been held that the field, the police service, is already occupied by the provisions of the Police Act, 1861, and as such Rules 1972 as involved in that case, passed under Article 309 of the Constitution of India would not be attracted at all. It is relevant to reproduce paragraph Nos. 17,18,64 and 65 of Vijay Singh case (supra) as under:-

"17. Police Service may, under certain circumstances, be considered as separate and distinguishable from any other State Public Service for the reason that police is subject matter of Entry 2 of List II and State Public Service falls under Entry 51 of List II, therefore, it cannot be held that whatever laws are framed for State Public Service, will automatically become binding for police personnel unless so adopted by the State Government or Rules are framed to that extent. There can be no doubt to the settled legal proposition that any order issued under the provisions of an Act has statutory force. Section 2 of the Act, 1861 empowers the State Government to frame Rule or issue Government Order. It reads as under:

"The entire police establishment under a (Provincial Government)..... shall be formally enrolled.....and shall be constituted in such a manner as shall from time to time be ordered by the Provincial Government.

Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government."

64. In the view of the above, we reach the inescapable conclusion that statutory rules cannot be set at naught by issuing executive instructions. But the facts of the instant case do not make the said proposition of law applicable at all. As herein the field is already occupied by the provisions of Act, 1861 which is in operation by virtue of the provisions of Article 313 of the Constitution, thus, Rules, 1972 could not be attracted at all. The Government Orders issued for fixing the maximum age for recruitment on subordinate police posts operate in an entirely different field and are not in conflict with the Rules, 1972. The case stands squarely covered by the Apex Court judgment in Chandra Prakash Tiwari (supra) and, thus, it is not possible for us to take any other view. The main submissions made by Mr. Chaudhary that Pre-Constitutional law stands abrogated altogether by commencement of the Rules, 1972, is devoid of any merit.

Therefore; our answer to question No. 1 is that the field stood occupied on account of the provisions of Section 2 of the Act, 1961. The Legislature while enacting the provisions of Section 2 of Act, 1961

itself delegated the power to the statutory authorities to fix the eligibility including the age etc, The statutory authorities had performed their duties in exercise of the delegated powers from time to time without any deviation therefrom.

65. In such facts and circumstances, there was no occasion for His Excellency, the Governor to frame the Rules under the proviso to Article 309 of the Constitution, also applicable in the case of recruitment of subordinate police officers."

17. In the cases of Anuj Yadav Vs. State of U.P. Special Appeal (Defective) No. 1130 of 2013 and Praveen Tyagi Vs. State of U.P. and others 2010 (1) U.P.L.B.E.C. 478 this Court held that the rules framed under proviso to Article 309 of the Constitution of India including the U.P. Temporary Government Servants (Termination of Service) Rules, 1975, are not applicable to the police force as their services are governed by the Police Act, 1861, the Rules and the U.P. Police Regulations, framed under the Police Act, 1861.

18. In view of the above, I find force in the submission of the learned counsel for the petitioner that the impugned order of termination passed by the Superintendent of Police, Kannauj dated 7.4.2007 passed under Rules 1975 cannot be sustained being without jurisdiction.

19. The question if the impugned order is stigmatic or an order of termination simplicitor loses significance, once the order is held to be bad for want of jurisdiction under Rules 1975, which rules are not applicable to the police force.

20. The next submission of the petitioner's counsel is that the competent authority has not considered various aspects of the matter before passing the impugned order on the ground that the petitioner did not disclose pendency of the criminal case against him in his affidavit. He submits that the effect of acquittal and that the petitioner was sent for training, after his acquittal have not been duly taken into consideration, which vitiate the impugned order.

21. The whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. The information on prescribed proforma is required to ascertain antecedents of the candidate to judge his suitability for appointment or continuance in service. Character, conduct and antecedents do have impact on the nature of employment. The candidate must answer the questions in the affidavit/proforma truthfully and fully. Any misrepresentation or suppression or false statement would demonstrate conduct or character unbefitting for service and in particular security service like police force.

22. There is no dispute that the petitioner in the affidavit, did not disclose the correct fact as regards pendency of criminal case against him. On the date the affidavit was filed the Case Crime No. 409 of 2005 was pending, although, on the date the petitioner applied for the post in the recruitment process, there was no criminal case against him. The petitioner's contention that the Case Crime No. 409/2005 was lodged due to minor family dispute, might be correct, but did not absolve him from disclosing the correct facts.

23. In the case of Avatar Singh Vs. Union of India and others 2016 (8) SCC 471 the Hon'ble Supreme Court has discussed in detail the object of verification, suppression of material facts in the information furnished, its effect on selection/appointment and the power of the authorities to be exercised and the manner of exercise of such power when the material fact comes to their knowledge. It is relevant to reproduce paragraph Nos. 29, 30, 32, 34, 35 and 36 as under:

29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully

the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

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 concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

24. In Avatar Singh case (supra) Hon'ble Supreme Court has summarized conclusions in paragraph 38 which is also being reproduced 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."

25. It is thus settled in law that the information given to an 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 must not be suppression of the required information. In case, there is suppression, or false information is furnished as regards involvement in a criminal case, where conviction or acquittal has already been recorded or pendency of a criminal case; and such fact, later on comes to the knowledge, the employer may in its discretion, ignore such suppression of fact or false information by condoning the lapse considering the nature of offence, if trivial in nature; or/and suppression is immaterial as even if the facts would have been disclosed, would not have adversely affected fitness of the incumbent. Where conviction has been recorded in a case which is not trivial in nature the employer may cancel the candidature or terminate the services of the employee. If acquittal has already been recorded in a case involving moral turpitude or offence of heinous/serious nature, the employer may consider if 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 the antecedents and may take appropriate decision as to the continuance of the employee or in case of selection for his appointment.

26. In the present case there was suppression of material fact but later on the petitioner was acquitted in Case Crime No. 409 of 2005. Another Case Crime No. 956 of 2006 under Sections 420/467/468 and 471 IPC, which was registered against the petitioner in view of the fact that he had suppressed pendency of Case Crime No. 409 of 2005 in his affidavit for verification, also resulted in

petitioner's acquittal. Yet, another important aspect of the matter, is, that the petitioner was sent on initial training of constable by order dated 30.8.2006 of the Superintendent of Police, Kannauj, after seeking legal opinion in view of pendency of Case Crime No. 409/ 2005 under Sections 323/504/506 IPC against the petitioner at that point of time. Again, after the petitioner was acquitted in Case Crime No. 409 of 2005 on the petitioner's representation for sending him for intensive training, in view of his acquittal by order dated 23.12.2006 the Superintendent of Police, Kannauj, on consideration of legal opinion and the judgment of the Court dated 23.12.2006, sent the petitioner for intensive training with request to the Senior Superintendent of Police, Etawah, by letter No. 300/2005/06 dated 8.1.2007 along with his records.

27. The most relevant part of the order dated 8.1.2007 is that the Superintendent of Police, Kannauj after considering the judgment of acquittal dated 23.12.2006 recorded specific finding that the petitioner/recruit constable, Dharmendra Kumar, was suitable for the post of Arakshi/Constable and, as such, it was preferable to send him for intensive training. This letter dated 8.1.2007 is Annexure No.5 to the writ petition which is being reproduced as under:-

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28. Thus the Superintendent of Police, Kannauj on consideration of the legal opinion and the judgment of acquittal dated 23.12.2006 found the petitioner suitable for the post of constable and in its discretion took a conscious decision to send the petitioner for intensive training, notwithstanding the fact that the petitioner, in his affidavit for verification did not disclose the pendency of Case Crime No. 409 of 2005 against him. The authority thus determined the suitability and condoned the lapse of the petitioner candidate in not disclosing the correct fact .

29. A perusal of the impugned order dated 7.4.2007 passed by the Superintendent of Police, Kannauj, does not show that it took care of the petitioner's acquittal dated 23.12.2006 or of the letter/order of the Superintendent of Police, Kannauj dated 8.1.2007, whereby, the petitioner, after having been found suitable for the post of constable was sent for intensive training. Once, the Competent Authority/Superintendent of Police, Kannauj found the petitioner suitable for the post after his acquittal and sent him for intensive training, the impugned order dated 7.4.2007 could not be legally passed on the ground it has been passed. The impugned order thus has suffers from legal infirmity on this count as well.

30. During the continuance of the petitioner's intensive training, the impugned order dated 7.4.2007 was passed. This Court by interim order dated 1.5.2007 stayed the order dated 7.4.2007 to the extent that the petitioner was permitted to complete the training. Learned counsel for the petitioner is not able to state if the petitioner has been allowed to complete the intensive training or not.

31. In view of the order dated 8.1.2007 of the Superintendent of Police Kannauj (Annexure-5 to the Writ Petition) as quoted above, finding the petitioner suitable for the post of constable after his acquittal and sending him for intensive training, I do not find any reason or justification to remit the matter to the Superintendent of Police, Kannauj for reconsideration of the matter.

32. Thus considered the writ petition deserves to be allowed and the impugned order dated 7.4.2007 deserves to be quashed.

33. The impugned order dated 7.4.2007 is hereby quashed. The Respondents 1 to 3 are directed to take necessary and further action consequent upon quashing of the impugned order, in the matter of the recruitment of the petitioner for his appointment on the post of constable if there is no other legal impediment. The authorities shall ensure that the petitioner is allowed to complete the intensive training, if not already completed. The entire exercise shall be done within a period of three months from the date of production of a certified copy of this judgment before the Respondent

Nos. 1 to 3.

34. The writ petition is allowed. No orders as to costs.

Order Date :- 18.6.2020 Manish Tripathi