

Court No. - 83

Case :- WRIT - A No. - 5720 of 2019

Petitioner :- Kailash Chaudhary

Respondent :- State of U.P. and another

Counsel for Petitioner :- Ishan Deo Giri

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

1. By the order dated 28.01.2019, the candidature of the petitioner for appointment on the post of Constable in the U.P. Police, has been invalidated.

2. The impugned order dated 28.01.2019 records that the petitioner had tendered a declaration on oath in the form of an affidavit sworn on 11.06.2018, wherein he categorically asserted that (i) no criminal cases were pending against him, (ii) no criminal case was registered against him in his knowledge (iii) no police investigation was pending against him (iv) the petitioner has never been arrested in any criminal case. The said declaration in the form of an affidavit also asserts that in future if any of the aforesaid facts are found to be false or it is found that the petitioner had suppressed any material facts, the petitioner shall not be permitted to join training course and his candidature shall be invalidated.

3. The petitioner suppressed the details of three criminal cases pending against him in the aforesaid declaration on oath regarding the pendency of the criminal cases. The impugned order dated 28.01.2019 cancelled the candidature of the petitioner on the foot of suppression of material facts and assertion of false facts.

4. Shri Ishan Deo Giri, learned counsel for the petitioner fairly

contends that the petitioner admittedly did not disclose the pendency of the three criminal cases, while filing the declaration on oath in the form of an affidavit. He, however submits that the aforesaid facts were not relevant at the time of passing of the impugned order dated 28.01.2019 due to following reasons:

I. The petitioner was acquitted in Case Crime No. 801/2012, under Sections 147/148/452/323/504 and 506 I.P.C, registered at Police Station Sadabad, District Hathras.

II. The investigation of the Case Crime No. 849/2012, under Sections 110G UP Goondas Act, at Police Station Sadabad, District Hathras, had been concluded.

III. The Case Crime No. 1020/2017, under Sections 147/148/149/307/354/325/504 and 506 I.P.C. at Police Station Sadabad, District Hathras, was compromised between the parties and the proceedings were quashed by orders of this Court."

5. These facts were overlooked by the respondents while passing the impugned order. Learned counsel for the petitioner further contends that the case of the petitioner may be considered in light of the law laid down by the Hon'ble Supreme Court in *Avtar Singh Vs. Union of India and Ors.* reported at **2016 (8) SCC 471**.

6. Per contra, Shri Birendra Pratap Singh, learned Standing Counsel submits that the suppression of the facts of criminal cases was wilful. The petitioner was being tried for commission of grave offences in the three criminal cases. The petitioner was never acquitted honourably and the fact of the prosecution was never wiped out. Learned Standing Counsel also placed reliance on the case of **Avtar Singh (supra)** to contend that this writ petition is liable to be dismissed.

7. Heard learned counsel for the parties.

8. After the selection of the petitioner for appointment on the

post of Constable in the U.P. Police, the verification of character and antecedents of the petitioner was made by the State authorities. At the stage of verification the petitioner was required to submit a declaration on oath in an affidavit. The petitioner made the required declaration in an affidavit which was sworn on 11.06.2018. The relevant parts of the said declaration made on affidavit are extracted hereinunder:

"2- यह कि मेरे विरुद्ध कोई अपराधिक मुकदमा / मामला मेरी जानकारी में कभी पंजीकृत नहीं हुआ है। और न ही कोई पुलिस विवेचना (INVESTIGATION) लम्बित है।

3- यह कि मैं किसी राष्ट्र विरोधी राजनैतिक पार्टी की कभी भी सदस्य नहीं रहा हूँ।

4- यह कि मुझे कभी भी किसी अपराधिक मामले में गिरफ्तार नहीं किया गया है।"

9. The impugned order dated 28.01.2019 notices the following criminal cases against the petitioner were pending when the said declaration was made:

"I. Case Crime No. 801/2012, under Sections 147/148/452/323/504 and 506 I.P.C, at Police Station Sadabad, District Hathras.

II. Case Crime No. 849/2012, under Sections 110G UP Goondas Act, at Police Station Sadabad, District Hathras.

III. Case Crime No. 1020/2017, under Sections 147/148/149/307/354/325/504 and 506 I.P.C. at Police Station Sadabad, District Hathras."

10. The order impugned lastly records that a criminal case has already been registered against the petitioner as Case Crime No. 26 of 2019, under Sections 420 and 465 I.P.C. at Police Station Civil Lines, District Etawah, on 21.01.2019, for giving false declaration on oath in an affidavit.

11. It is admitted that three criminal cases were pending against the petitioner on the date of swearing of the aforesaid affidavit, i.e. on 11.06.2018, which were not disclosed in the affidavit.

Case Crime No. 801 of 2012, under Sections

147/148/452/323/504 and 506 I.P.C, at Police Station Sadabad, District Hathras, against the petitioner went to trial. The pendency of the case under the Goonda Act is also undisputed. Third case i.e. Case Crime No. 1020 of 2017, pending against the petitioner was under Sections 147, 148, 307, 323, 354, 325, 504 and 506 I.P.C. These are grave offences. The petitioner had approached this Court with an Application under Section 482 Cr.P.C., registered as Application U/S 482 No. 24525 of 2018, Girraj Singh and Others Vs. State of UP and another. The said Application under Section 482 Cr.P.C. was decided by the judgment and order rendered by this Court on 23.07.2018. The same is extracted below:

"Heard learned counsel for the applicants, learned A.G.A. for the State and Sri O.B. Mishra, learned counsel for the opposite party no.2.

The present application under Section 482 Cr.P.C. has been filed for quashing the cognizance order dated 30.1.2018 as well as charge sheet dated 7.1.2018 alongwith entire Criminal Case No. 736 of 2018 (State vs. Girraj and others), arising out of Case Crime No. 1020 of 2017, under Sections 147,148,149,307,323,354,325,504,506 I.P.C. P.S. Sadabad Kotwali, District Hathras pending in the court of Chief Judicial Magistrate, Hathras.

Learned counsel for the applicants submitted that compromise has been entered into between the applicants and the respondent no.2, Indra Devi on 27.6.2018 which is authenticated by Annexure no.11 to the affidavit accompanying this application.

Learned counsel for the applicants states that the matter has been compromised and the respondent no. 2 does not want to pursue the matter any further as the matter has been amicably settled between the parties, therefore, the present case be finally decided.

In view of the above, the applicants and respondent no. 2 do not want to pursue the case any further as stated by them. The matter has been mutually settled between the parties, therefore, no useful purpose would be served in proceeding with the matter further.

Thus, in view of the well settled principles of law as laid down by

the Hon'ble Apex Court reported in 2003(4) SCC 675 (B.S. Joshi Vs. State of Haryana) as well as the Judgment of the Apex Court reported in J.T., 2008(9) SC 192 (Nikhil Merchant Vs. Central Bureau of investigation and another), the proceedings of the Criminal Case No. 736 of 2018, arising out of Case Crime No. 1020 of 2017, under Sections 147,148,149,307,323,354,325,504,506 I.P.C., P.S.- Sadabad Kotwali, District- Hathras and the impugned charge sheet as well as cognizance order are hereby quashed.

The present application is accordingly allowed."

12. The criminal proceedings were quashed on the most grave charges on the foot of a mutual agreement between two private parties. Such compromise between private parties and consequent quashment of criminal proceedings by this Court, does not amount to an honourable acquittal by a court of law. The criminal proceedings of Case Crime No. 1020 of 2017, under Sections 147/148/149/307/354/325/504 and 506 I.P.C. at Police Station Sadabad, District Hathras, on the contrary are relevant material which were liable to be considered while forming an opinion about the criminal antecedents of the petitioner and his suitability for employment in the police force. The aforesaid material was considered in the correct perspective while passing the impugned order. In the facts of this case, the aforesaid conduct is not mitigating factor but has an aggravated consequence on the antecedents of the petitioner.

13. Further, I see merit in the submission of the learned Standing Counsel that the case of the petitioner is liable to be dismissed in light of the law laid down by the Hon'ble Supreme Court in **Avtar Singh (supra)**. The relevant part of the judgement in **Avtar Singh (supra)** is extracted hereinunder:

"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."

14. The petitioner was fully aware of the pendency of the multiple criminal cases against him. I find that the declaration was false and made with the deliberate intention to mislead the authority and to secure employment in the police. The suppression of the fact of pendency of multiple criminal cases thus assumed significance, and became a material consideration for invalidation of his candidature. The candidature of the petitioner was liable to be invalidated, and was rightly cancelled by the competent authority.

15. The police is a disciplined force. The police force is charged with the duty to uphold the law and order in the State. Personnel in uniform belonging to disciplined forces, are expected to bear impeccable character and possess unimpeachable integrity. Adherence to these standards is required to enable them to discharge their duties effectively and retain the confidence of the public at large. No relaxation or compromise with the highest standards of character and integrity can be permitted.

16. The Hon'ble Supreme Court in ***Devendra Kumar Vs. State of Uttarakhand***, reported at **2013 (9) SCC 363**, emphasized the importance of utmost rectitude in candidates applying for appointment in the police force by holding as under:

*"12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but **suppressing of this information itself amounts to moral turpitude**. In fact, the information sought by the employer if not*

disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged. (emphasis supplied)"

17. Judged in light of such requirements of the police force, the candidature of the petitioner was found to be unsuitable for appointment in the police force. The impugned order is not liable to be interfered with.

18. In the wake of the preceding discussion, I am not persuaded to exercise the discretionary jurisdiction vested under Article 226 of the Constitution of India to interfere with the impugned order dated 28.01.2019. The impugned order dated 28.01.2019 is upheld.

19. The writ petition is liable to be dismissed and is, accordingly, dismissed.

Order Date :- 5.10.2020
Dhananjai Sharma