

**Court No. - 81**

**Case :-** WRIT - A No. - 9300 of 2020

**Petitioner :-** Mooni

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Manoj Kumar,Alok Kumar Yadav

**Counsel for Respondent :-** C.S.C.

**Hon'ble Yashwant Varma,J.**

Heard learned counsel for parties.

Amendment application is allowed. Appropriate amendments shall be deemed to have been carried forth in the original e-file of this writ petition.

The petitioner is principally aggrieved by the order of 21 November 2020 in terms of which the Superintendent of Police Amroha has proceeded to reject his claim for being accorded appointment on the ground of pendency of two criminal cases.

The petitioner admittedly was declared successful in the recruitment exercise which was undertaken by the Board for appointment as a Constable in the Civil Police. The petitioner had also undisputedly made a candid and truthful disclosure in respect of his arraignment in case crime No. 68 of 2016 and 147 of 2017. The Writ Petition as originally framed had impugned a decision of the Board by which it had held that it would be the S.P. Amroha who would have to take a decision with respect to the suitability of the petitioner for being accorded appointment. During the pendency of this petition, the S.P. Amroha was directed to take a decision accordingly. It is in that backdrop that the impugned order of 20 November 2020 has come to be passed.

The Court is constrained to note that although the S.P. does take note of the decision of the Supreme Court rendered in **Avtar Singh Vs. Union of India and Others (2016) 8 SCC 471**, a reading of the impugned order evidences an abject failure to apply mind to the principles ultimately enunciated and on the basis of which alone the claim of the petitioner was liable to be adjudged. In **Avtar Singh** the Supreme Court after noticing the previous decisions rendered on the subject of a fair disclosure and a right of appointment elucidated the guiding

principles in the following terms :-

**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 recourses 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."

From the principles as spelt out in Avtar Singh and more particularly paragraphs 38.5 and 38.6 thereof, it is manifest that an obligation stood cast upon the S.P. to consider the suitability of the petitioner being inducted in service notwithstanding his arraignment in the criminal cases especially in light of the full and fair disclosure that was made by him in that behalf. Rather than discharging that function, the S.P. has merely proceeded to postpone the taking of an appropriate decision till the conclusion of those two criminal cases. The decision so taken flies foul not just of the command of this Court but also in light of what was held in **Avtar Singh**. Surprisingly, although the Court had commanded the S.P. to consider the case of the petitioner specifically in light of the decision of the Supreme Court and which he has noticed himself in the order impugned, he has paid mere lip service to that direction and has clearly failed to comply with that direction. As noted above, the impugned order *ex facie* manifests a deliberate non application of mind. In any case the action of the S.P. to postpone the taking of a decision awaiting conclusion of the two criminal cases cannot possibly be countenanced. The learned standing counsel has fairly conceded to what has been recorded above and submits that the impugned order

would not sustain.

The Court while tempted to enter an adverse remark against the S.P. in light of what has been noted above, refrains from doing so in the hope and trust that he shall upon remit, decide the matter fairly and in light of the original directions issued by the Court.

The Court further clarifies that it has not taken a view on the merits of the suitability or otherwise of the petitioner's claim to appointment. That is a decision which must necessarily be taken by the S.P. himself bearing in mind the nature of allegations levelled against the petitioner in the two pending criminal cases and their impact on his suitability to be offered employment in the police force. That decision is left for the independent evaluation of the S.P. concerned.

Accordingly the writ petition is **allowed**. The impugned order dated 20 November 2020 is hereby quashed and set aside. The matter shall stand remitted to the Superintendent of Police Amroha who shall now take a decision afresh and strictly in accordance with the observations entered above. The exercise of consideration shall be concluded expeditiously and in any case within a period of two weeks from today.

**Order Date :- 2.12.2020**

Vivek Kr.