

**A.F.R.**

Neutral Citation No. - 2024:AHC:179432

**Court No. - 7**

**Case :-** WRIT - A No. - 18692 of 2022

**Petitioner :-** Saurabh Yadav

**Respondent :-** State Of U.P. And 6 Others

**Counsel for Petitioner :-** Ashish Mishra, Atipriya Gautam, Jitendra Kumar Singh, Seemant Singh, Srijan Pandey, Sr. Advocate, Vinod Kumar Mishra

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

**Hon'ble Neeraj Tiwari, J.**

1. Heard Sri Ashish Mishra alongwith Sri Jitendra Kumar Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. Present petition has been filed with the following prayers:-

*"(i) Issue, a writ, order or direction, in the nature of certiorari, quashing the impugned termination order dated 14.10.2022 passed by the Respondent no.6, the Senior Superintendent, Central Jail, Naini, Prayagraj*

*"(ii) Issue, a writ, order or direction, in the nature of mandamus directing the respondent authorities to reinstate the services of the petitioner on the post of Jail Warder/Bandi Rakshak, treating the petitioner continuous in service, with all consequential benefits and to pay the regular salary of the petitioner, month by month when it falls become due."*

3. Brief facts of the case are that pursuant to the advertisement dated 29.11.2018, he had applied for the post of Jail Warder (Male) & Constable Mounted Police in U.P. Police Department Direct Selection-2018. Final result was published on 1.7.2021 and petitioner was declared successful. On 9.8.2021, he called for document verification as well as submission of notary affidavit. After verification, he was issued appointment letter on 8.9.2021. Thereafter, petitioner has submitted his joining as Jail Warder in District Jail, Pratapgarh on 13.9.2021. Letter was issued by the Senior Superintendent, Central Jail, Naini, Prayagraj on 28.2.2022 to the Superintendent of Police, Azamgarh asking about the status of final report dated 30.1.2021 submitted in favour of petitioner. Thereafter, petitioner was issued show cause notice dated 21.7.2022 seeking written explanation for not disclosing about the FIR No.233 of 2020 under Section 3/4 of Prevention of Damage to Public Property Act, 1984, Police Station- Jahanaganj, District

Azamgarh. Petitioner has submitted specific reply that petitioner was having no knowledge about the registration of aforesaid F.I.R. against him. In the said matter, police authorities have ultimately submitted final report on 30.01.2021. Meanwhile, without considering the reply of petitioner, he was terminated from service vide order dated 14.10.2022. Hence the present writ petition.

4. Sri Ashish Mishra, learned counsel for the petitioner has taken specific stand in the writ petition that petitioner was having no knowledge about the registration of FIR against him, therefore, there is no occasion for him to disclose the aforesaid facts by submitting affidavit before joining the services. He also pointed out that in rejoinder affidavit, there is no denial of aforesaid facts. Not only this, final report was also accepted by the Court vide order dated 2.11.2022. He also pointed out that this Court vide order dated 24.10.2024 granted time to learned Standing Counsel to verify this fact that as to whether final report has been accepted by the Court vide order dated 2.11.2022 or not. In compliance of said order, learned Standing Counsel has produced the instruction and according to that final report was accepted by the Court on 2.11.2022. In support of his contention, he has placed reliance upon the judgment of Apex Court as well as this Court in the cases of **Avtar Singh vs. Union of Indian, (2016) 8 SCC 471 & Ram Millan Kushwaha vs. State of U.P. and others passed in Writ-A No.30826 of 1990**, in which it was held that a candidate cannot be blamed for concealment of fact in case he was having no knowledge about the criminal proceedings initiated against him, therefore, under such facts and circumstances, order impugned is bad and liable to be set aside.

5. Learned Standing Counsel could not dispute the contention so argued by the learned counsel for the petitioner.

6. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record as well as judgments relied upon. Facts of the case are undisputed and petitioner has taken specific plea in paragraph 43, 44, 45 & 49 of the writ petition that he was having no knowledge about the initiation of criminal proceedings against him. Paragraph 43, 44, 45 & 49 are relevant and same are being quoted hereinbelow:-

*"43. That, aforesaid the FIR dated 1.11.2020, has been lodged behind the back of the petitioner and the petitioner not aware with regard to the said First Information Report.*

*44. That, it is respectfully stated that in the aforesaid case crime No. 233 of 2020, under Section 3/4 of Prevention of Damage to Public Property*

*Act, 1984, Police Station Jahanaganj, District- Azamgarh, the petitioner was neither arrested and nor sent to Jail, and he was not obtained bail from any competent Court.*

*45. That, it is further specifically stated that till date no summon or warrant has been served upon the petitioner.*

*49. That, after receiving the notice dated 28.2.2022, it was first time came into the knowledge to the petitioner that the petitioner was falsely implicated in case crime No.233 of 2020. True copy of the notice dated 28.2.2022, issued by the respondent no.6, to the S.P. Azamgarh, is enclosed herewith and marked as Annexure-10 to this writ petition."*

7. I have also perused the paragraph 5 of the counter affidavit filed by the State. Paragraph 5 is having reply of the paragraph 5 to 50 of the writ petition and same is being quoted hereinbelow:-

*"That the contents of paragraph no.4 to 50 of the writ petition are matters of record, hence need no comments. It is stated that in his affidavit filed by the petitioner, he has not mentioned about the pendency of criminal case against him."*

8. From perusal of the aforesaid paragraphs of the writ petition as well as paragraph 5 of the counter affidavit, it is absolutely clear that petitioner has taken specific stand that he was having no knowledge about the pendency of criminal proceedings against him and that has not been denied in the counter affidavit rather accepted. In fact there is no dispute on the point that petitioner was having no knowledge of pendency of criminal case against him.

9. This Court vide order dated 24.10.2024 granted time to learned Standing Counsel to verify this fact that as to whether final report has been accepted by the Court vide order dated 2.11.2022 or not. Pursuant to that, learned Standing Counsel has produced the instruction dated 6.11.2024. Alongwith said instruction, copy of the order dated 2.11.2022 is annexed by which final report was accepted and protest petition was rejected, therefore, it is also undisputed that as on date charge sheet has not been filed against the petitioner.

10. I have perused the judgment of Apex Court in the matter of **Autar Singh (Supra)**. Relevant paragraph of the said judgment is quoted hereinbelow:-

*30. 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:*

*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.

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.

The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

3. 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 : -

4. 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. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. 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. (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. (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. (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.

(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.

(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.

(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.*

***(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.***

11. Apex Court has taken specific view in the aforesaid judgment that before a person is held guilty of suppression, he must have knowledge of that fact.

12. The similar view was also taken by this Court in the matter of ***Ram Milan Kushwaha (supra)*** by following the judgment of ***Autar Singh (Supra)***. Paragraph 12 of judgement of ***Ram Milan Kushwaha (supra)*** is being quoted hereinbelow:-

*" 12. In the present case, respondents have failed to prove that petitioner had knowledge about pendency of criminal case and was guilty of filing false affidavit. Therefore, I do not find that affidavit submitted by petitioner can be said to be a false affidavit or containing wrong information. This Court also informed that pursuant to an interim order passed by this Court, petitioner is working continuously since 1990."*

13. From perusal of the aforesaid judgment, it is apparently clear that respondents have failed to prove that petitioner has knowledge about the pendency of criminal case and was guilty of filing of false affidavit.

14. This Court is also of the same view that in case at the time of filing of affidavit before submission of joining, candidate is having no knowledge of pendency of any criminal case and at any point of time, case is found registered against him, he cannot be held guilty for concealment of fact, no action for termination or dismissal of service can be taken against him. Subsequently, if he is found guilty in the aforesaid criminal proceedings, it is always open for the respondents to proceed against him in accordance with law and rules occupying the field.

15. Now coming to the present case, from the facts so mentioned hereinabove, it is apparently clear that at no point of time, petitioner is having knowledge about the pendency of criminal case against him. Further, Investigating State Authority is Police and has found nothing against him and ultimately submitted final report, which was accepted by the Court vide order dated 2.11.2022.

16. Therefore, under such facts and circumstances as well as law settled by the Apex Court as well as this Court, the impugned termination order dated 14.10.2022 passed by the Respondent no.6 are hereby quashed and writ petition is

**allowed.** Respondents are directed to reinstate the petitioner in service forthwith alongwith all consequential benefits from the date of production of certified copy of this order.

**Order Date :- 14.11.2024**

Junaid