



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

**CM-4175-CWP-2026 in/and
CWP-34538-2024 (O&M)
Date of Decision:24.03.2026**

VIJAY KANSAL

....PETITIONER(S)

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENT(S)

**CORAM:- HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Shreenath A. Khemka, Advocate
for the applicant-petitioner.

Mr. Rajesh Gaur, Addl., AG, Haryana.

ASHWANI KUMAR MISHRA, J. (Oral)

CM-4175-CWP-2026 (recalling)

1. This application under Section 151 Code of Civil Procedure, 1908 read with Article 226 of the Constitution of India has been filed on behalf of the applicant-petitioner seeking recalling of order dated 12.02.2026 passed by this Court.

2. Record reveals that main writ petition was dismissed by this Court on 12.02.2026 for non-prosecution.

3. Reason for non-appearance on behalf of the applicant-petitioner on 12.02.2026 has been satisfactorily explained.

4. The application is accordingly ***allowed***. The order dated 12.02.2026 is hereby recalled and the main writ petition is restored to its original number and position.

Main Case (O&M)

5. With the consent of both the parties, main writ petition is taken on Board for hearing today itself.



6. This petition seeks to assail Rule 12.18(3)(b) of the Punjab Police (Haryana Amendment) Rules, 2015 (for short, '*Rule*') which reads as under:-

“Where charges have been framed against a candidate for offence(s) involving moral turpitude or which is punishable with imprisonment of three years or more, shall also not be considered for appointment.”

7. It transpires that the petitioner applied for appointment to the post of Constable in Haryana Police and was selected on 17.10.2024. However, by order dated 21.11.2024, the petitioner's candidature was cancelled relying upon the aforesaid Rule. It appears that, in an offence relating to outraging the modesty of a woman, the petitioner has been charged under Sections 148, 149, 323, 325, and 354 of the Indian Penal Code at Police Station Chhappar, District Yamuna Nagar. Since the charges had been framed and the petitioner was facing trial, the appointing authority exercised its right to adjudge the suitability of the employee for appointment and consequently held him ineligible for appointment to the post of Constable.

8. Learned counsel for the petitioner has laid challenge to the aforesaid provision primarily on following three grounds:-

(i) In view of the judgment rendered by the Hon'ble Supreme Court of India in ***Avtar Singh vs. Union of India and Others, 2016 (8) SCC 471*** the discretion is vested in the appointing authority to appoint a candidate notwithstanding pendency of criminal case which discretion is curtailed by



the impugned Rule.

(ii) It is then argued that the Rule cannot be cast in a straight-jacket formula such that the discretion of the employer gets obliterated.

(iii) The petitioner relies upon a judgment of the Supreme Court in ***Lily Thomas vs. Union of India, (2013) 7 SCC 653***, to submit that ineligibility cannot be contemplated differently for continuance and appointment, otherwise, it would violate Article 14 of the Constitution of India. This submission is advanced on the premise that if a serving employee is charge-sheeted, then he is not debarred from continuing in employment, whereas the offending Rule, if allowed to stand, would curtail the right of appointment in the event that charges are framed.

9. Learned State counsel opposes the submissions on the ground that the discretion of the employer to determine suitability for employment is not in any manner curtailed, rather, the provisions provide appropriate guidelines for the exercise of such discretion. It is also argued that the principle laid down in ***Lily Thomas*** (supra) would not be attracted, as the judgment of the Supreme Court was delivered in the context of a challenge to electoral laws, which have no applicability to the facts of the instant case.

10. We have heard the learned counsel for the respective parties and have perused the materials available on record.



11. The sheet anchor of the petitioner's case is the judgment of the Supreme Court in **Avtar Singh** (supra), wherein the Court has observed as under in paragraph No.38.5, 38.6 & 38.10 of the judgment:-

“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.

38.10. 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.”

12. The aforesaid observation of the Supreme Court in **Avtar Singh** (supra) recognizes the right of the employer to determine the suitability of a candidate for employment to a public office. The judgment of the Court does not approve of discarding the candidature of a person accused in a criminal case, except where the charges are trivial in nature and do not adversely impact the suitability of the candidate for employment. The right of the employer to adjudge suitability is in no



manner curtailed by the judgment of the Supreme Court in **Avtar Singh** (supra). Rather, the Court specifically recognizes such a right in an employer.

13. In service jurisprudence, it is otherwise well-settled that the employer has the right to adjudge the suitability of a candidate for public employment. While exercising such right, the employer must act reasonably, and its decision must aid in adjudging the suitability of the employee. Various instances noted by the Supreme Court in paragraph 38 of the judgment in **Avtar Singh** (supra) deal with different exigencies so as to reinforce such right. Mere pendency of a criminal case has been held not to be sufficient to hold a person ineligible for appointment. It is in the above context that sub-paragraphs (5) and (6) of paragraph No.38 need to be examined.

14. The Court has observed that the employer retains the right to consider the antecedents of a candidate for employment and cannot be compelled to appoint a candidate notwithstanding his disclosure of involvement in a criminal case. Discretion has been vested in the employer in sub-paragraph (6) to examine the facts and circumstances of a case where the candidate's involvement is in a criminal case of a trivial nature. When the aforesaid observations of the Supreme Court are examined in the context of the provision herein, the Rule makes it apparent that ineligibility for appointment arises only in cases involving moral turpitude where the candidate has been charged with an offence punishable with imprisonment of three years or more. This Rule draws a



distinction and places a candidate outside the zone of consideration for appointment where he is facing a criminal trial. Such a trial pertains to an offence involving moral turpitude and carries a sentence of more than three years.

15. In our considered view, the offending Rule makes a clear distinction and deals with a distinct exigency that has a direct bearing on the suitability of a candidate for public employment. When such public employment is in a disciplined force, it becomes all the more important. In our view, the observations made by the Supreme Court in **Avtar Singh** (supra) cannot be stretched so as to impeach the aforesaid Rule as being inconsistent with the principles of law laid down therein.

16. So far as paragraph No.15 is concerned, it deals with a distinct exigency and has no applicability in the facts of this case. In such view of the matter, we are not persuaded to interfere in the specific provision on the basis of the judgment rendered by the Supreme Court in the case of **Avtar Singh** (supra).

17. So far as the judgment of the Supreme Court in **Lily Thomas** (supra) is concerned, it dealt with an entirely distinct exigency relating to election of a person to the office of Member of Parliament, Member of Legislative Assembly or Member of Legislative Council etc. It was in that context that the Supreme Court has observed as under in paragraphs No.32 & 33 of the judgment:-

“32. The result of our aforesaid discussion is that the affirmative words used in Articles 102(1)(e) and 191(1)(e) confer power on Parliament to make one law laying down



the same disqualifications for a person who is to be chosen as Member of either House of Parliament or as a Member of the Legislative Assembly or Legislative Council of a State and for a person who is a sitting Member of a House of Parliament or a House of the State Legislature and the words in Articles 101(3)(a) and 190(3)(a) of the Constitution put express limitations on such powers of Parliament to defer the date on which the disqualifications would have effect. Accordingly, sub-section (4) of Section 8 of the Act which carves out a saving in the case of sitting Members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of Section 8 of the Act or which defers the date on which the disqualification will take effect in the case of a sitting Member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution.

33. *Looking at the affirmative terms of Articles 102(1)(e) and 191(1)(e) of the Constitution, we hold that Parliament has been vested with the powers to make law laying down the same disqualifications for person to be chosen as a Member of Parliament or a State Legislature and for a sitting Member of a House of Parliament or a House of a State Legislature. We also hold that the provisions of Article 101(3)(a) and 190(3)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting Member of Parliament or a State Legislature. Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution.”*

18. First and foremost, it is undisputed that the principles



governing electoral laws have no direct application in service jurisprudence, and therefore not much strength can be derived from the judgment in *Lily Thomas* (supra). Even otherwise, we find the argument of the petitioner in this regard to be misconceived, inasmuch as the right of the employer to determine the suitability of a candidate for employment is distinct in nature and subserves a purpose different from the continuance of an employee in service once he is appointed.

19. The argument that ineligibility for continuance in employment ought to be uniform is misplaced, inasmuch as the consideration for adjudging suitability is a distinct aspect altogether. At this stage, the employer only examines whether a person is suitable for employment or not. However, once appointment is offered, a vested right of continuance in terms of the statutory Rules comes into existence, and therefore the curtailment of such right would depend upon the specific provisions contained in the applicable Service Rules. These two distinct contingencies cannot be treated at par, nor can the principle applicable in the later exigency be applied at the earlier stage of adjudging suitability.

20. In view of the deliberations and discussions held above, we are of the view that the impugned Rule is reasonable and neither curtails the right of an employer to examine the suitability of a candidate nor imposes an unreasonable restriction on the right of a person to claim appointment. The challenge laid to the impugned Rule, therefore, fails.

21. Coming to the facts of the case, we are not inclined to embark upon a factual exercise so as to determine the nature of charges



levelled against the petitioner or the evidence which may be available in that regard. This is an aspect to be gone into by the appropriate Court at the first instance.

22. We therefore refrain from commenting on such aspects and leave those aspects open for determination at appropriate stage.

23. The writ petition is accordingly ***dismissed***.

24. All pending misc. application(s), if any, also stand disposed of.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

MARCH 24, 2026

Rahul Joshi

1. Whether Speaking/reasoned	Yes/No
2. Whether Reportable	Yes/No