

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) 370 of 2014

Sri Abani Shil,
son of Sri Amulya Shil,
resident of village Nepal Tilla,
P.O. & P.S. Nepal Tilla,
Sub-Division: Longtharai Valley,
District : Khowai Tripura

..... **Petitioner**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary,
Home Department, Govt. of Tripura,
Civil Secretariat, P.O. Kunjaban, Agartala, West Tripura
- 2. Director General of Police,**
Government of Tripura,
Police Head Quarters,
P.O.: Agartala, Tripura West
- 3. Superintendent of Police,**
Dhalai District, P.O. Jawaharnagar, Dhalai, Tripura

..... **Respondents**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. G.S. Bhattacharjee, Advocate				
For the respondents	:	Mr. T.D. Majumder, G.A.				
Date of hearing	:	07.09.2015				
Date of delivery of Judgment & Order	:	05.10.2015				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
YES	NO					
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JUDGMENT & ORDER

(S. Talapatra, J)

By means of this writ petition the petitioner has challenged the discharge order under No.498-93/SP(DIB)/DLI/JWN/13, dated 16.01.2013, Annexure P/4 to the writ petition.

[2] To be precise, the petitioner has prayed in the writ petition, for allowing him to participate in the selection process for recruitment to the post of Constable, as per the advertisement dated 10.06.2014, Annexure P/6 to the writ petition and to be considered in the category of the special police officer (SPO). That apart, the petitioner has prayed for reinstatement, as he has been exonerated from the charge of rape which was framed against him in the case No.S.T.111(ST/U) of 2013.

[3] The petitioner has stoutly stated in the writ petition that Kakraban P.S. Case No. 06 of 2013 registered under Section 366A/376 of the IPC and instituted on 09.01.2013 was malicious and on such malicious complaint the petitioner was arrested. For his arrest in the said police case, the petitioner was discharged from his service by the impugned discharge order dated 16.01.2013, which reads as under:

“Subject: Discharge Order

Whereas a case vide KKB PS (Gomati Distt.) Case No. 06/13 u/s 366(A)/376 IPC has been registered against SPO No.257 Abani Shil S/o of Lt. Amullya Shil of Bhumihin Colony, PS NTL, Dhalai District &

subsequently arrested from his house located at Bhumihin Colony under NTL PS by the I/O of the Case W/SI Sukantala Debbarma of KKB PS (Gomati Distt) on 11.01.2013 at about 12.30 hrs.

NOW, therefore,

The said SPO No. 257 Abani Shil S/o Lt. Amullya Shil of Bhumihin Colony, PS NTL, Dhalai District is discharged from the job of SPO with effect from the afternoon of the 16th January 2013.

**(Lalhminga Darlong, IPS)
Superintendent of Police
Dhalai District, Jawaharnagar”**

[4] There is no dispute that the petitioner was appointed as Special Police Officer (SPO) by the order dated 24.09.2002 issued by the District Magistrate and Collector, Dhalai and he was rewarded for his act by the Superintendent of Police, Dhalai District by the D.O. No. 906/2010 dated 15.05.2010. The petitioner after getting acquittal from the charge under Section 232 of the Cr.P.C., for wanting in the evidentiary material against him, prayed for his reinstatement by filing series of representations, but without any avail.

[5] The respondents by filing a composite affidavit, have stated that the petitioner did not challenge the said discharge order dated 16.01.2013 immediately after its issuance and as such the discharge order remained unchallenged till the advertisement dated 10.06.2014 for recruitment of the police constables on regular basis was issued. In the said advertisement dated 10.06.2014, relaxation regarding educational qualification was given for the Special Police Officers (SPO). The minimum educational qualification

otherwise for appointment of the constable of police is Madhyamik passed, but for the SPOs the said qualification has been relaxed and reduced to class-VIII passed. According to the respondents, the purpose of this writ petition is to avail the benefit of the special educational qualification. They have vehemently denied the allegations of arbitrariness as made by the petitioner. The respondents have categorically asserted that someone having a criminal antecedent cannot be retained in the service of the Special Police Officer. Hence, the Superintendent of Police discharged him for his involvement in the said criminal case. The respondents have asserted further that the petitioner has been acquitted on 'benefit of doubt'.

[6] The representation dated 20.07.2014, according to the respondents, was not at all received by the respondents and that representation is an act of fabrication. On the face of such rival contentions, projected by the petitioner and the respondents, a short scrutiny of the records has been carefully carried out and from such scrutiny, it has surfaced that after investigation, the final police report was filed in Kakraban P.S. Case No. 06 of 2013 under Section 417/366/376 of the IPC and under Section 4 of Dowry Prohibition Act, 1961. It has transpired as well that the petitioner was discharged under Section 232 of the Cr.P.C. as there was no tenable evidence against the petitioner. It has been observed by the Asstt. Sessions Judge, South Tripura, Udaipur while acquitting the

petitioner under Section 232 of the Cr.P.C. from the charge as under :

“On scrutiny of the evidence of the victim girl, her mother and her brother, it is clear that they have no grievance against the present accused nor the accused kidnapped the victim girl. The evidence of the victim girl fairly indicated that she went on roaming with the accused of her own. So, it cannot be said that the victim girl was kidnapped by the accused and after kidnapping she was raped by the accused since the victim girl herself deposed that the accused did not do anything wrong with her. Though vaginal swab was collected and doctor opined that the victim girl had regular intercourse. Even her hymen was ruptured but in this regard there is no evidence pointing involvement of the present accused to do any intercourse with the victim girl at any point of time. Rather, if we consider the evidence of the victim girl then it reveals that the accused did nothing wrong with her.

So, on marshalling the above evidence of the prosecution witnesses, I find nothing incriminating evidence against the present accused pointing to the involvement of him for the alleged offence for which the charges were framed. So, I find sufficient force in the submission of the Ld. Counsel on behalf of the accused as well as Ld. P.P.

In my considered view, this is a fit case where invoking the provision U/S.232 of Cr.P.C. I can pass an order of acquittal which I hereby do.”

[7] The petitioner was not holding any civil post. For maintenance of law and order in the vulnerable areas, the auxiliary police volunteers (the SPOs) are raised. The SPOs do not hold any civil or regular post. Their engagements are casual, subject to the special terms and conditions. As a result, when the petitioner was arrested in connection with the criminal case he had been discharged from the roll. As the petitioner was not holding any civil post there had been no disciplinary proceeding against the petitioner for his apparent involvement, in a

criminal case. Even though the District Magistrate and Collector engaged the petitioner, but by a special notification, the Superintendent of Police has been made the controlling authority of the SPOs and the Superintendent of Police, the respondent No.3 has the power to discharge the SPOs for their conduct, detrimental to the discipline of the police and the public order. The said auxiliary force called Special Police Officers are not borne in the regular establishment and hence they do not have any right to continuance in the civil post. In the perspective, the action of the respondent No.3 cannot be held wholly unjustified for discharging the petitioner from the service. Whether the petitioner has got any right to be reinstated for his acquittal by the order dated 29.05.2014 in ST 111 (ST/U) of 2013? The answer must be in the negative inasmuch as the petitioner does not hold any civil post.

[8] However, since the petitioner has been acquitted by the trial court for total lack of evidence, the respondents owe an obligation to re-engage the petitioner as the SPO. If there is any vacancy of the SPO in the Dhalai District, the District Magistrate and Collector or the Superintendent of Police, Dhalai shall unleash the process for engaging the petitioner as the Special Police Officer (SPO) within a period of 3(three) months from today. However, this court does not find any substance in the prayer to direct the respondents to allow the petitioner participate in the selection of Constable of Police on the relaxed educational qualification, in as much as, at the

relevant point of time, the petitioner was not a Special Police Officer (SPO).

[9] It can be conveniently inferred that pursuant to the employment notification issued on 10.06.2014, the entire process of engaging Constable (Male) by now is over and as such that prayer has become infructuous for all purposes.

[10] Having held thus, the writ petition is allowed to a limited extent as stated above.

There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Moumita