

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 14462 of 2013
Date of decision: August 5 , 2015

Shri Bhagwan

..... Petitioner

Versus

The Director General of Police, Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G. S. Gopera , Advocate
for the petitioner.

Dr. Sushil Gautam, DAG., Haryana.

Amit Rawal, J (oral).

The petitioner has knocked the door of this Court for issuance of a writ in the nature of certiorari for quashing the order dated 24.6.2013 (Annexure P-18).

The present writ petition has been filed by the petitioner for consideration of his claim for appointment to the post of General Duty Constable in terms of clarification issued by the Director General of Police, Haryana dated 2.7.2007 and 13.11.2007 (Annexures P-5 and P-6) with a further prayer to issue appropriate directions to respondent No.2 to issue appointment letter/appoint petitioner as Constable in IRB, Haryana.

Learned counsel for the petitioner submits that in response to the advertisement dated 8.11.2003 issued by the State of Haryana whereby the applications were invited for filling up 740

posts of General Duty Constables(males) in Haryana Police, the petitioner submitted an application and as per the eligibility conditions only those candidates would have been eligible who would be 18 years and not more than 27 years and have minimum height of 5.9'. In pursuance to the application he was given registration No.229/SC-A. It is submitted that the petitioner was called for interview appeared before the Selection Board, Gurgaon and thereafter his name appeared in the selection list at S.No.20. The grievance, is that despite having been selected, he was not issued appointment letter, much less allotted constabulary number for the reason that he was implicated in FIR No. 330 under Section 323/324/34 IPC and FIR No.27 dated 31.1.2000 under Sections 354/452 IPC registered at Police Station, Sadar Bahadurgarh. It is submitted that the petitioner in both the cases vide judgment dated 24.4.1995 and 15.9.2004 (Annexures P-3 and P-4) a representation submitted in this regard was rejected on the premise, that acquittal was not honourable. He submits that the impugned order is most sketchy and non-speaking and no reasons have been assigned, though, he has been acquitted but the reasoning which probably weighed in the mind of the authorities was that he was not honourably acquitted. He further submits that the case of the petitioner is covered by the judgment in CWP No. 16827 of 2004 decided on 8.2.2012 titled as **Ashok Kumar Vs. State of Haryana and others.**

Dr. Sushil Gautam, DAG., Haryana submits that though the order dated 24.6.2013 (Annexure P-18) is not a speaking order but the fact remains that on perusal of judgments of acquittal

dated 24.4.1995 and 15.9.2004 (Annexures P-3 and P-4), the petitioner was not honorably acquitted as one case was of compromise and another where witnesses turned hostile so he was not issued appointment letter, much less constabulary number.

He further submits that the judgment relied upon by the learned counsel for the petitioner is not applicable to the present case as it was a case of honorable acquittal.

I have heard learned counsel for the parties and appraised the paper book.

No doubt that on perusal of judgments dated 24.4.1995 and 15.9.2004 (Annexures P-3 and P-4) charges against the petitioner, have not been proved, as in one case the victim had compromised and in another case the witness turned hostile but the fact remains that the petitioner has not been convicted. The Haryana Government instructions dated 2.7.2007 (Annexure P-5) and clarification dated 13.11.2007 (Annexure P-6) wherein the Director General of Police in a similarly situated case, although not relating to the same selection, in response to the query to the Chairman Selection Board constituted for selecting the candidates, clarified that the candidates who were involved in criminal cases stand acquitted at the time of declaration of selection list can be considered for appointment, even if they had not disclosed the factum of facing trial or acquittal in the particular column of application form.

The aforementioned instructions are still in vogue and have not been withdrawn as is evident from the averments in the written statement.

The Hon'ble Supreme Court in Civil Appeal No. 1403 of 2007 titled as **Commissioner of Police and others Vs. Sandeep Kumar** wherein in similar circumstances the candidate was denied appointment because of non-disclosure of the information held that since the candidate had been acquitted and the instance was of 20 years back, therefore, non-disclosure would not be detriment in seeking appointment.

There is another aspect of the matter a Division Bench of this Court in CWP No. 4452 of 2008 titled in **Amit Kumar Vs. State of Haryana and others** decided on 15.5.2008 on going through the order of acquittal passed by the trial Court, proceeded to direct the respondents to grant the appointment to the post of Constable when the petitioner was found to be honourably acquitted . Though, the present case is not of honourable acquittal, but the fact remains, that since the accused victim and the witnesses have compromised/ turned hostile the prosecution would not have been able to prove alleged charges and in such situation the petitioner would have been honourably acquitted, had the matter been tried on merits.

Keeping in view the aforementioned facts and that order dated 24.6.2013 (Annexure P-18) rejecting the representation is wanting material reasoning, the writ petition is allowed. The order dated 24.6.2013 (Annexure P-18) is quashed. The respondents are directed to appoint the petitioner from the date the candidates lower in the merit to him were appointed.

It is made clear that he shall not be entitled to

financial benefits for the period he remained out of service but shall be entitled to all other consequential benefits.

(AMIT RAWAL)
JUDGE

August 5 , 2015
archana