

Sr.No.257

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-26064-2014(O&M)

Decided on: 12.10.2015

Rajesh KumarPetitioner

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Manoj Kumar Taya, Advocate for the petitioner.
Mr.Hitesh Pandit, Addl. A.G. Haryana.
Mr. R.K.Malik, Sr. Advocate
with Ms.Rimple Sohi Kadyan, Advocate
for respondent no.5.

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Mahesh Grover, J

The petitioner has filed the instant writ petition praying for appointment to the post of Constable. He being eligible applied for the same in response to the Advertisement of 2008 and after completing the recruitment process the result was declared in 2011 placing the petitioner in waiting list at serial no.6. When the selection process started resulting in appointments to the candidates on merit list some vacancies cropped up either on account of non joining of the candidates in merit or for some other reasons which may not be necessary to go into. Suffice it to say that the petitioner who stood at serial no.6 of the waiting list was sent up for appointment and a battalion assigned to him. In the information that the petitioner received under the RTI Act, the petitioner was assigned 5th battalion vide Endst. No. 4721 dated 06.02.2014. This order was passed on 30.10.2014 but for some reason which is now attributed to inadvertence, the official respondents instead of offering the appointment to the petitioner offered it to respondent no.5 who joined and subsequently it was discovered that the said respondent no.5 was involved in a criminal case which fact he had concealed from Department. He was involved in a case registered vide FIR No. 770 dated 26.10.2005 under Sections

399/406 IPC and 25/54/59 of Arms Act, Police Station City Gurgaon. He specifically stated in the column nos.14 and 15 of the application form warranting information to this extent as negative implying concealment.

On discovering this fact immediately official respondents dispensed with his services leading to the filing of writ petition by the said respondent no.5 bearing no.22875 of 2011 which was dismissed. LPA against this judgment stands admitted. An order was passed by the LPA bench on 09.07.2015 on an application filed by the present petitioner to the following effect:-

“ Heard learned counsel for the applicants and learned State counsel. If the applicants are entitled to appointment as per their merit and in accordance with law, the pendency of this appeal shall have no effect on their such right to appointment.

The applicants shall be further at liberty to assist this Court at the time of final hearing of the appeal.

CM stands disposed of.”

On August 6, 2015, a minor clarification was made that the aforesaid order be deemed to have been passed in CM No. 978 and 979 of 2015. An order was also passed granting status quo regarding services of the petitioner in case the order of termination be not taken effect and the said respondent not being relieved.

It is the conceded case that the respondents have dispensed with the services of respondent no.5 on 23.04.2015. Whether the order of status quo would be attracted in this case or not, the Court would not like to enter into this controversy at this stage. Suffice it to say that an order dispensing with the service of respondent no.5 has already been passed.

The entire situation is the creation of the official respondents themselves. Once they were convinced that the respondent no.5 had concealed material fact reflecting on its credential and integrity, they had no business to offer appointment to him by denying the same to the petitioner who was assigned a battalion as well.

It is not in dispute that the other persons who were in the

waiting list have since gained employment and it is the petitioner only who has been singled out because of the erroneous decision of the official respondents. The fact that the respondents have further confused the situation by giving assignment to the respondent no.5 once again and then withdrawing it again on 23.04.2015. Of course it has been stated that respondent no.5 was associated in the process and a show cause notice and hearing given to him.

In the considered view of this Court, there was no impediment in the way of the petitioner to gain employment particularly when the respondents had embarked upon the process which was hindered only because of their own error for which obviously the petitioner cannot be blamed particularly when his credentials are not in doubt whereas the respondent no.5 carried the cloud of concealment of a relevant fact of being involved in a serious criminal case impinging his credibility altogether.

Writ petition is thus, accepted and the respondents are directed to give employment to the petitioner as a Constable by assigning him the Constabulary number.

12.10.2015**mamta****(MAHESH GROVER)****JUDGE**