

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3346 of 2013

Date of Decision: 24.09.2015

Harbans Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.P.S. Ishar, Advocate,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This case presents a point of view and the decision swings between whether the petitioner should be appointed as Constable or denied the consideration. The petitioner competed for the post of Constable applying under a public advertisement calling applications from eligible candidates to serve the police department in District Police Cadre, Mansa.

2. In the aftermath of the recruitment process and at the stage of background check/character verification it was discovered that the petitioner was involved in FIR No.4 dated January 02, 2008 registered in Police Station Jhunir under section 13-A of the Public Gambling Act, 1867 ("1867 Act"). The charge was that he was found indulging in darra satta by staking money on digits. The petitioner had pleaded guilty voluntarily and without pressure. The Sub Divisional Judicial Magistrate, Sardulgarh held him

guilty under section 13-A of the Act and convicted him on January 10, 2008 and sentenced him to pay a fine of Rs.200/-. The money recovered from the possession of the accused convict stood forfeited to the State by an order of the Magistrate of even date. The Senior Superintendent of Police, Mansa sought advice from the Director General of Police, Punjab on June 07, 2012 whether the petitioner should be allowed to join on the post of Constable. The decision was pending and no action was taken.

3. The petitioner approached this Court by filing CWP No.19539 of 2012 which was disposed of on October 01, 2012 directing respondent No.2 to take a final decision as regards the claim of the petitioner for his appointment/joining on the post of Constable. The consideration was to take place within a period of eight weeks' from the date of receipt of a certified copy of the order. In compliance of the orders passed by this Court, the Additional Director General of Police Administration, Punjab, Chandigarh has passed the impugned order dated December 18, 2012 and the claim has been rejected citing the law in **Delhi Administration vs. Sushil Kumar**, (1996) 11 SCC 605. The relevant para from the judgment of the Supreme Court reproduced in the impugned order reads:-

“It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for

reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”

4. The claim of the petitioner has been considered and rejected in the backdrop of Rule 12.14 (1) of Punjab Police Rules, 1934 which guards against recruitment of Constables who are not of good character. The rule reads as follows:-

*“12.14. **Recruits – Status of.**--- (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrollment.”*

5. The judgment of the Supreme Court and Rule 12.14 (1) are the foundation of the re-examination process of the case of the petitioner and for these reasons, consideration has been declined. The petitioner has been denied appointment. This is not a case where false information was supplied in the application or the conviction in the gambling case withheld. Section 4 of the 1867 Act falls in offences for which a fine not exceeding Rs.100/- or to imprisonment of either description as defined in IPC, any term not exceeding one month amended to read fine not exceeding Rs.200/- or to imprisonment of either description as defined in IPC, any term not exceeding three months can be imposed.

6. Any discussion on the subject would necessarily involve the issue of moral turpitude in a uniformed service. Ordinarily, the tests to be

applied in judging whether a certain offence involves moral turpitude or not would seek answers to three fundamental questions; (i) whether the act leading to a conviction was such as would shock the moral conscience of society in general; (ii) whether the motive which led to the act was a base one; and (iii) whether the act committed by the accused shows depraved character and lack of ethical fibre which society looks down upon as repulsive.

7. In **Pawan Kumar vs. State of Haryana and another**, (1996) 4 SCC 17 decided at about the same time as *Sushil Kumar* case which involved a conviction under section 294 IPC which offence was not enumerated by the State of Haryana in its list of offences involving moral turpitude in policy instructions dated February 02, 1973 as further explained in the instructions dated March 17/26th 1975 did not involve moral turpitude. The petitioner before the Supreme Court was appointed to the Class-IV post of Field Worker in the office of the Chief Medical Officer, General Hospital, Bhiwani, Haryana and was convicted under section 294 IPC by the Chief Judicial Magistrate, Bhiwani on entering upon a plea of guilt, for which he was ordered to pay a fine of Rs.20/-. The services of Pawan Kumar were terminated as no longer required. The challenge to the order of termination was brought before the Civil Court and the proceedings before the Supreme Court arose out of a Regular Second Appeal. The orders of all the three Courts were set aside and the suit was decreed and the order of termination was nullified. Before concluding the judgment, the Supreme Court observed as follows:-

“(1) Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the

*large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. **Life is too precious to be staked over a petty incident** like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever.” [emphasis added]*

8. Though this decision does not involve appointment to the police service but draws the canvass against which Mr. Ishar claims support to his case as the proposition is broadly similar.

9. Mr. Ishar would then refer to section 360 Cr.P.C. which deals with order to release on probation of good conduct or after admonition in cases where there is no previous conviction the Court would consider releasing an offender on probation or good conduct. The Court may, in respect of sentencing him at once to any punishment, direct to release convict on entering upon a bond for the period of the sentence and may direct person in the dock in the meantime to keep the peace and be of good behaviour. Counsel would draw the attention of the Court to the provisions

of section 3 of the Probation of Offenders Act, 1958 and section 12 thereof. However, these provisions have been ruled out of consideration and the disqualification attaching to conviction is not removed from sight in service matter domain while dealing with appointment and dismissal of Government servants and conviction recorded by a competent court of criminal jurisdiction. The conviction remains but the sentence is put on probation of good conduct. A mandamus cannot be issued by the writ court to treat conviction as one on probation since it lies in the province of the Judicial Magistrate. The offence does not stand washed off. The argument is not a sound one and is rejected.

10. Be that as it may, Mr. Ishar to further buttress his submissions relies on the ruling in **Commissioner of Police and others vs. Sandeep Kumar**, (2011) 4 SCC 644 which is a matter on common ground since it involved selection and appointment of a Head Constable (Ministerial) in Delhi Police which was cancelled on the ground that the candidate had concealed the fact, while filling the application form, about his involvement in a criminal case though acquitted later on. The Supreme Court went into the character of the offence involved in Sections 325/34 of the Indian Penal Code and whether it involved element of moral turpitude. The Delhi Police Department had cancelled the candidature of Sandeep Kumar and declined to offer him appointment as a constable though selected on merit. The Central Administrative Tribunal on an action brought by aggrieved candidate agreed that the cancellation order was justified and dismissed the OA. The Delhi High Court did not agree with the view of the Tribunal and the order cancelling the candidature of Sandeep Kumar was quashed. The

Supreme Court agreed with the view of the Delhi High Court but expressed its own opinion in the matter. The Court relied on the rationale in the decision rendered by Lord Denning in **Morris vs. Crown Office**, (1970) 2 Q.B. 114 observing in paragraphs 11 to 14-A of *Sandeep Kumar* judgment as follows:-

“11. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

12. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

13. The modern approach should be to reform a person instead of branding him as a criminal all his life.

14. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a

case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide : *Morris Vs. Crown Office, (1970) 2 Q.B. 114*]

13A. In our opinion, we should display the same wisdom as displayed by Lord Denning.

14A. As already observed above, youth often commit indiscretions, which are often condoned.”

11. The ruling in *Sandeep Kumar* case was applied in **Ram Kumar v. State of UP**, (2011) 14 SCC 709 where the post of Constable was involved in direct recruitment denied to the accused aspirant who was acquitted of offences under sections 325/34 IPC when the candidate was a young man even when in the proforma application he had not disclosed past acquittal when asked if he was convicted of a criminal offense by registration of an FIR. There is no other available precedent in the Supreme Court for this court to depart.

12. It is in this canvass of case law on the subject matter that the petitioner contends through his learned counsel that refusal to appoint him is not appropriate measure and the conduct which led to the conviction and sentence of fine of Rs.200/- ought to have been the predominant test applied to hold that he had not rendered himself completely unfit for appointment to the Police service and Rule 12.14 (1) has to be read accordingly when it uses the word “good character” without defining it. The single isolated incident in the past involving an offence under section 4 of the 1867 Act does not show depravity of character for all times to come. It is not such a serious offence against society which should disable the petitioner to seek public employment for ever. Gambling may be illegal and an unlawful act but the element of a reformatory approach deserves to be adopted when the offence does not shock the conscience of the court as reprehensible or of a hateful kind. It was mere indiscretion of a youngster which was not

unpardonable and could not be condoned as is the philosophy underlying *Sandeep Kumar* case. The Supreme Court has observed that the modern approach should be to reform a person instead of branding him as criminal all his life on a petty offence committed once in a life time without any evidence of repeat performance. From such a single act it cannot be assumed as a absolute proposition that a person is not of “good character” when committing such an offence rendering him totally unfit for police service, when life itself is a gamble. This would be like killing a fly with cannon. The attitude is one which is holier than thou. Both are not acceptable to decision making process.

13. This Court tends to think that denial of appointment based on Rule 12.14 of the PPR by applying the short order passed in *Sushil Kumar's* case is open to fuller debate to rationalize the law and codify it on who is to be appointed and who not when faced with slur in character verification. The subject matter is not free of doubt and a plurality of opinions make decision making even tougher. The Supreme Court in *Sushil Kumar* dealt with the case of a candidate discharged/acquitted of the offence punishable under section 304 IPC read with sections 324/34 IPC and section 394 of the Code. The orders passed in *Sushil Kumar's* case are reproduced:-

“We have heard learned counsel on both sides. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on September 6, 1995 in OA No. 1756/91. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No.65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character; and antecedents by the local

police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated December 18, 1990 culminating in cancellation of his provisional selection he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under [Section 304 IPC](#), under [Section 324](#) read with [34 IPC](#) and under [Section 394 IPC](#), he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, Passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined forces. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service.”

14. In the considered view of this Court denying appointment to the petitioner for the reasons contained in the impugned order is more mechanical application of discretion than informed by reason based on a

codified formula of ethical values which ought to be those everyone of us can agree upon, instructing court and counsel mnemonically of what is acceptable or unacceptable in the community to persuade the court to throw out the petition. The judicial dilemma is as to what is “good character” in rule 12.14 of PPR, 1934 governing recruitments to level I in Punjab Police.

15. Abraham Lincoln said, “Reputation is the shadow. Character is the tree.” Our character is much more than just what we try to display for others to see, it is who we are even when no one is watching. Good character is doing the right thing because it is right to do what is right. For good character one should be least talked about. Did the petitioner do this thing in his time which was talked about in his community as reprehensible and one which had adverse social consequences as say may not find him a bride or a refusal to employ in the local job market as one which may be improper for the employer of a person caught once indulging in darra satta or betting on digits. Was the petitioner a habitual gambler? I have no evidence to suggest it neither is it the case of the police department in the impugned order. Is the disqualification determinative of bad character if not “good character”? Of course the view of the police department must be respected as they have to run their own affairs. What is the nature and character of an offence under section 13-A of the Act? Certain offences are activated only on a conviction by the criminal court, while others are triggered by a finding of guilt. In the case of the petitioner there is a conviction on confession of guilt to avoid travails of a protracted criminal trial for not such a serious offence but at the same time there is no finding of guilt. The distinction between the two concepts is important. The Gambling

Act does not define conviction to include a finding of guilt. The petitioner alleges discrimination in employment on the basis of fine of Rs 200/- imposed when he admitted to guilt. Admission of guilt in non-serious offence is an ordinary human defence in India against police harassment and long drawn out trial that may ensue on a non-serious criminal charge which course may be worse than disaster itself than a simple conviction under section 13A of the Gambling Act and sentence of fine of Rs 200/- only allegedly for betting by *darra satta* in the marketplace. No reasonable person faced with a choice between the two alternatives as the petitioner had on one fine day would have opted for a full fledged trial to prove his innocence.

16. Nonetheless, this court does not for a moment approve of the conduct of the petitioner in the FIR but at the same time I see that it is called upon to measure proportionality under Article 14 by trying to truly gauge the gravity of the offence and the extent of /injury that may be caused by approval of the impugned order. The petitioner in that event in all probability can never aspire for a Government service. After all, the petitioner is not a common criminal; he is not a murderer, sex offender, thief, robber, felon, economic offender, drug user or peddler, property fixer, supari killer, maniac or a proclaimed offender running away from the law. Indian history is replete with wonderful stories and so is its mythology of dacoits turning sages-Maharishi Valmiki is in point, the great highway robber and killer named Ratnakar who was even a greater man who wrote the Ramayan. That is worse than what Jean Valjean did in stealing only a loaf of bread to feed his family. The world is full of robbers who become

saints and saints who become robbers. Let us no longer talk of honesty and character and parade it like models walk the ramp. We are as bad as each other and let us not wear character and honesty like a badge of honour since it goes without saying if we are not. The Constitution tries to regiment thinking of both the court and the administrator to temper their decisions with the spirit of “humanism” in Article 58 (j) falling in non-justiciable Part IV but all the same very salutary. The criminal justice system in India is anchored in reformation of which the State is the primary initiator unless it is confronted by the “rarest of rare cases” which are few and far between. The occurrence in this case is a “petty incident” in the widening light in *Pawan Kumar* case (supra). When “good character” is not defined, forget about with sufficient precision, there is always a danger of getting as many opinions with treatises in one hand and the internet in the other as many as there are administrators and judges. Then the choice has not been an easy one to understand and appreciate where comity lies in rule 12.14 of the PPR. Because of the difficulty faced in unravelling the meaning of good character as distinguished from bad character and therefore the interference. At the same time I would record that justice cannot be individualized when I speak of this case on its slippery complexion without prescription of binding dicta and statutory regulation of the kinds of conduct which fall in the recruitment rule and lessen the burden of the court to imagine what is right and what is wrong. It is for the police department to reduce and curtail the range of judicial review by well thought out executive instructions on the moot point defining what is meant by “good character” and fitness for police service otherwise the court will always be made to ride an unruly

horse without firm reins applying judicially recognized standards of past conduct. However, this is for the law maker in the assembly or the policy doer in State Government to rule on and till such time Court can only apply principles preserved in doctrines of equity, justice and good conscience and to apply the rule in *ex aequo et bono* of what is found just and fair to do *ex debito justitiae* when there is no guidance in rule 12.14 of the PPR worth the salt. It is trite proposition of law that judicial review is not directed against the decision but the decision making process. Decision making process most definitively includes proper reasoning to be adopted by the authority assigned the duty to discharge by virtue of office held to refuse an appointment citing a stray incident from past conduct which must be germane to the cause and always short of excessiveness and it is only then the court does not nit pick administrative action only to find faults in action taken unless the decision is wide off the mark or the choice of the administrator is out of the hat, completely disproportionate as one which might disturb its conscience. Excessive action is often unreasonable and reasonableness is a facet of Art. 14 of the Constitution.

17. For these many reasons, the present petition is allowed. A writ of certiorari is issued setting aside the impugned order. A mandamus is issued directing the respondents to consider offering appointment to the petitioner within eight weeks from the date of receipt of certified copy of this order on the principles which are foundation of this order. In the event of appointment on reconsideration by the police department in the office of the Home Secretary, Punjab, the seniority of the petitioner will relate back to his merit position determined by the recruiting agency. He will be entitled

to notional increments but the monetary benefits would accrue from the date of this order. This is to try and obviate at least one side of the coin of future litigation arising out of this order when the coin is tossed.

18. While the petition is accepted, the parties are left to bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

24.09.2015
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