

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

C.M. No. 5483 of 2016 in/and
CWP No. 19100 of 2003
Date of decision: 09.05.2016

Surinder Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Gaurav Singla, Advocate,
for Mr. Sanjiv Gupta, Advocate,
for the applicant-petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 5483 of 2016

The present application has been filed for early hearing of the main writ petition.

The main case is already on the regular Board before this Court at Sr. No. 969. Accordingly, the application is allowed and the main case is taken up for hearing today itself.

CWP No. 19100 of 2003

The petitioner challenges the order dated 17.11.2000 (Annexure P-1) whereby, he was discharged from service from the post of a Special Police Officer on which he was working since 1992. The ground for discharge was that FIR No. 74 dated 09.05.2000 had been registered at Police Station Ghanaur under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 against him. It is not disputed that apart

from the petitioner who was accused in FIR, one Kaka Singh and Gurmeet Singh, who were serving in the Punjab Home Guards, were also accused of the allegation that they were in custody of 18 kilograms of poppy husk. The criminal proceedings had eventually culminated in acquittal of all the three by the Special Court, Patiala on 04.07.2003 and the Court held that the prosecution was not able to prove its case against the accused beyond shadow of reasonable doubt and they were held entitled for benefit of doubt and they were acquitted of the charge against them. The other two accused, who were employees of the Punjab Home Guard, were taken back in service vide the order dated 08.10.2003 (Annexure P-3). Resultantly, the petitioner approached the respondents for similar benefit vide legal notice dated 20.10.2003 (Annexure P-6) and thereafter, filed the present writ petition.

State, in its defence, has taken the plea that where the work and conduct is not satisfactory and SPOs can be discharged as per the Standing Order dated 30.10.1990. Once the benefit of doubt is the ground for acquittal, than the petitioner was not entitled for reinstatement in service and the removal order was justified. The reinstatement of the other two accused was not by the respondents but they were the employees of the Punjab Home Guards. The plea that the petitioner was entitled for enlistment as constable was denied on the ground that the petitioner was not found suitable for enlistment for SPO and was informed of non-suitability by passing a speaking order.

The Division Bench of this Court in *Shashi Kumar vs. UHBVN and another, 2005 (1) SCT* has held that acquittal amounts to exoneration and there is nothing under the Code of Criminal Procedure as honorable acquittal. The said view has been followed in *Bhag Singh vs.*

Punjab and Sind Bank, 2005 (6) SLR 464 and Shiv Kumar Goel vs. State of Haryana and another, 2007 (1) SCT 739. The discharge of the petitioner was only on the basis of the lodging of the FIR and not on the basis of the conviction. Even under Rule 16.2(2) of Punjab Police Rules, 1934, if a regular employee is dismissed on account of the conviction in criminal proceedings and once the said conviction is set aside, the said employee would be entitled for having his dismissal reviewed.

In the present case, the petitioner has been acquitted and the State has already reinstated two similarly situated persons, though belonging to the Home Guards.

Reliance has rightly been placed upon a Division Bench judgment in ***CWP No. 3196 of 1997, Raman Kumar vs. State of Punjab and others*** decided on 09.09.1998 (Annexure P-4) wherein, in similar circumstances, the discharge order of an SPO on account of the registration of case under Prevention of Corruption Act, 1988 was set aside after acquittal. The issue was also whether the benefit is to be given to SPOs was also taken into consideration and directions were given to reinstate him as SPO, however, he was denied the benefit of back wages. The relevant portion reads thus:-

“The solitary ground on which the petitioner was discharged from service vide dated 29.1.1996 (Annexure P-1) is that he was involved in a case under the Prevention of Corruption Act. The petitioner was acquitted by the Special Judge, Patiala, vide judgment dated 7.9.1996 Annexure P-2 by observing that there was not even an iota of evidence against him to connect him with the crime and that the prosecution had failed to prove its case against him. As such, he was acquitted

honourably. In fact, the order Annexure P-1 is bad in law inasmuch as it indicated the petitioner before he could be tried by a court of Competent jurisdiction. After his acquittal in the case, the petitioner can not be denied reinstatement in service. In other words, the State is bound to take him back in service. The stand of the State that the petitioner was appointed on daily wages when he was discharged from service, is not supported by any document on the record. Moreover, the services of the petitioner were not dispensed with as no longer required, as is usually done in the cases of ad hoc/daily wage basis appointments. In this case, it may be stated, at the pain of repetition, that the only ground on which the petitioner was discharged from service was registration of a case against him under the Prevention of Corruption Act, in which he stands acquitted.

For the afore-mentioned reasons, this petition deserves to be allowed. Accordingly, the same is allowed and the order Annexure P-1 whereby the petitioner was discharged from service is hereby quashed with a direction to the respondents to reinstate him as S.P.O. on the same terms and conditions on which he was serving from service. However, the petitioner shall not get back wages between the date of his discharge from service i.e. 24.1.1996 and the date of this order.”

The Apex Court in ***Joginder Singh Vs. Union Territory of Chandigarh and others 2015 (2) SCC 377*** has also held that on account of an acquittal, the employee cannot be deprived from being appointed to the post by declaring him non-suitable, on the ground that it was not an honourable acquittal. It has been held that the police authorities cannot be

allowed to sit in judgment over the finding recorded by the Court and denying appointment would be like a vicarious punishment.

In such circumstances, the present writ petition is liable to be allowed since the basis of discharge order itself does not as such subsist any more. Accordingly, the present writ petition is allowed. The discharge order is set aside. The petitioner shall be taken back as SPO. However, he shall not be entitled for any financial benefits for the period he remained out of service keeping in view the observations of the Apex Court in ***Union of India vs. Jaipal Singh, (2004) 1 SCC 121.***

09.05.2016
shivani

(G.S. SANDHAWALIA)
JUDGE