

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14975 of 2009
Date of decision: 13.01.2016

Pawan Kumar (Constable)

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. Puneet Gupta, Advocate,
Mr. K.S. Sidhu, Advocate,
Mr. L.S. Bhullar, Advocate,
Mr. Ashok Bhardwaj, Advocate,
Mr. Ramandeep Singh, Advocate,
Mr. J.K. Puri, Advocate,
Ms. Shallie Mahajan, Advocate,
for the petitioner.

Mr. Avinit Awasthi, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 12 writ petitions i.e. CWP Nos. 14975, 7049, 19179 of 2009, CWP Nos. 2036, 3038, 7234, 12174, 15815, 16856, 16894 of 2010 and CWP Nos. 12402 and 23269 of 2011. Facts, being common, are being taken from ***CWP No. 14975 of 2009, Pawan Kumar (Constable) vs. State of Punjab and others.***

The challenge in the present set of cases is to the order dated 09.09.2009 (Annexure P-7) passed by the respondent no. 4-Commandant 13th Battalion PAP, Punjab Police Head Quarter, whereby, the petitioner, who was working as a Special Police Officer (SPO) and had been absorbed in service was terminated from service on account of the fact that he had earlier been involved in a criminal case in spite of having been acquitted.

As per respondent no. 4, on account of the policy dated 11.05.2009 (Annexure P-4) issued by the DGP since the petitioner while working as SPO had been acquitted on the basis of technical grounds and the witnesses turning hostile, the case had been taken up for review and the impugned order had been passed. The policy dated 11.05.2009 itself is subject matter of challenge in CWP No. 23269 of 2011, Constable Mohinder Singh vs. State of Punjab and others, apart from the challenge raised to it in other connected matters also.

The facts go on to show that the petitioner was appointed as a SPO on 12.09.1994. An FIR bearing No. 160 was lodged on 05.07.2002 at Police Station Sadar Muktsar under Sections 304/120-B IPC on account of the unnatural death of his wife Kulwant Kaur, with whom he had got married on 24.11.1999. Keeping in view his arrest, the petitioner had been discharged initially on 10.07.2002 by the said respondent no. 4. The petitioner was thereafter acquitted on 07.04.2003 (Annexure P-2) by the Additional Sessions Judge, Muktsar. A perusal of the judgment would go on to show that two witnesses namely Avtar Singh and his son Sukhdev Singh had not supported the prosecution version and on account of that, since there was no incriminating evidence against the petitioner and his brother, both of them were acquitted of the charges framed against them. In pursuance of his acquittal, the petitioner was reinstated on 24.09.2004 (Annexure P-3) since there was no appeal filed and the period he remained out of service was considered as no duty period on the principle of 'no work no pay' by the Inspector General of Police, Patiala Zone.

It is the case of the petitioner that thereafter he was absorbed as a police constable on 30.01.2009 and formally, he was allowed to join only

on 06.05.2009 due to the enforcement of the election code of conduct. Thereafter, the show cause notice was issued to him on 27.08.2009 (Annexure P-5) on the strength of the policy dated 11.05.2009 as to why he should not be removed from government service. Reply was given to the said show cause notice (Annexure P-6) bringing the fact that he was absorbed and that as per the judgment of the trial Court, there was no benefit of doubt given and the acquittal had been on the ground that there was no incriminating evidence. As noticed, the impugned order has, thus, been passed on the strength of the policy.

The State has defended the said action on the strength of a judgment of the Apex Court in ***Delhi Administration through its Chief Secretary and others vs. Sushil Kumar, 1996 (11) SCC 605*** and the Division Bench judgment of this Court in ***Union Territory, Chandigarh Administration and others vs. Central Administrative Tribunal, 2008 (2) PLR 565***, which now stands over ruled. It is also admitted that the petitioner had been absorbed vide office order dated 30.01.2009 and an objection has also been taken that there is a provision to file an appeal against the order of dismissal and a revision before the authorities.

In the replication filed by the petitioner, the petitioner has taken the defence that the instructions do not have any retrospective effect and the remedy of appeal would not be available as the order has been passed on the instructions of the appellate authority.

Counsel for the petitioner has accordingly submitted that the remedy of appeal would not be a bar for this Court to entertain the present petition mainly on the account that instructions itself have been challenged.

Therefore, the appellate authorities would have to be bound by the same and

would only strictly decide within the parameters of the instructions and, therefore, the petitioner would only be going through the grind of the appeal and the revision and only a formality would be there before the authorities under the Punjab Police Rules and, therefore, the jurisdiction of this Court has rightly been invoked.

The above submission is acceptable as admittedly, a perusal of the impugned order would go on to show that it is on the basis of the instructions dated 11.05.2009 that the case has been reconsidered. The show cause notice was issued in spite of the fact that the petitioner had already been absorbed and, therefore, relegating the petitioner to the remedy of appeal would be a illusory remedy and, therefore, the preliminary objection as such raised by the State is without any substance.

The paramount issue which arises for consideration is two fold.

Firstly whether the instructions would have such retrospective effect as such to re-examine the cases which had already become final prior to the issue of the instructions and to reopen the whole issues again.

Secondly, whether instructions dated 11.05.2009 can now withstand judicial scrutiny in view of the changed circumstances.

The second issue is of a primary importance as a perusal of the policy dated 11.05.2009 would go on to show that it modifies the earlier policy dated 14.05.2008. The policy dated 14.05.2008 is appended as Annexure P-4 in CWP No. 7049 of 2009 Harpal Singh vs. State of Punjab, would go on to show that initially, the State had put the SPOs at par with the Punjab Police personnel. The benefit of acquittal was to be given to one and all and where they were discharged or acquitted by the Courts, they were to be taken back subject to the condition that a fresh verification

would be done. The relevant policy reads as under:-

“Subject : Policy decision to take SPOs back in service who have been acquitted in Criminal Cases by the Courts.

Please refer to your office memo No. 18313/CB-PC dated 31.8.2007 on the subject cited above.

2. *The case has been examined in this office in respect of those SPOs against whom criminal cases (s) were registered and they were discharged from service. Some of them have been acquitted. Clarification has been sought from time to time whether they are to be taken back in service or otherwise.*

3. *After thorough consideration, it has been decided that as a policy, as far as this issue is concerned SPOs should be treated at par with Punjab Police personnel. Therefore, those SPOs who were earlier discharged due to registration of criminal cases against them but subsequently either discharged or acquitted by the Courts may be taken back as SPOs or be enlisted as constable (in the case of eligible SPOs in list 'A') as the case may be. Fresh verification of antecedents may be carried out before taking them back. They should be discharged, if they come to adverse notice.”*

The same was then revised on the basis of the judgment of the Apex Court in *Sushil Kumar's case (supra)* and the Division Bench judgment of this Court in *Chandigarh Administration's case (supra)* decided on 24.03.2008. Four categories were made out where enlistment to SPOs was to be declined into the Police Force. The said categories read as under:-

(i) If acquittal was based on technical grounds

- (ii) There is benefit of doubt.
- (iii) Where witnesses have resiled.
- (iv) Where there is a compromise between the complainant and the accused.

An exception was also provided that cases not falling in the categories mentioned above could be referred to the office for decision. Accordingly, directions were issued that SPOs who had been enlisted under the provisions of the policy dated 14.05.2008, their acquittal would be reconsidered, as mentioned in para no. 4 and the cases should be reviewed. The reasoning of the relevant part of the policy dated 11.05.2009 (Annexure P-4) reads thus:-

“2. The Supreme Court judgment in Delhi Administration versus Sushil Kumar (1996) 11 SCC 605, suspects all doubts as to whether a person discharged or acquitted of an offence or offences can be refused appointed in the police in view of his antecedents or character. The material of Judgment read as under:-

“The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/ acquitted of the offence punishable under Section 304 IPC under Section 321 read with Section 34 IPC and under Section 321 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 candidates suitable to post under the State.

Though he was found physical fit, passed the written test and interview and was provisionally selected on account of his antecedents 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 directions 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 should be relevant is the conduct or character of the candidate to be appointed to the services and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of consequences, the consideration relevant to the case is of antecedents of the candidate. Appointing Authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service”.

3. *The views of the Supreme Court have been followed by the Division Bench of the Punjab & Haryana High Court, speaking through Justice Hemant Gupta, in its dated Judgment in CWP No. 5908/CAT/2003, rendered on March 24, 2008 in the group of three cases related to UT, Chandigarh itself. All the three cases were cases of acquittal/discharge of the concerned candidates seeking appointment in the Chandigarh Police.*

4. *Having given the matter in depth consideration*

from all angles, it has been decided as a matter of policy that the department should decline enlistment into the police force to those special police officers, if their acquittal is based on technical grounds, there is benefit of doubt, or where witnesses have resiled or where there was a compromise between the complainant and the accused. However, exceptional cases not falling in the categories mentioned above may be referred to this office for decision.

5. *In view of this, policy decision circulates by this office vide memo no. 2047-71/E-3(4) dated 14.5.2008 would stand modified accordingly. If some special police officers have been enlisted under the provisions of policy dated 14.5.2008 who's acquittal was on parameters mentioned in Para 4 there cases should be reviewed and if they are to be discharged they may be given show cause notices.*

6. *The pending cases may be decided under revised policy.”*

The said policy cannot stand judicial scrutiny in view of the fact that as noticed above, it revolves around and is centered around the fact that there were two judgments, one by the Apex Court and secondly by a Division Bench of this Court, on the basis of which, the policy saw the light of the day. The SPOs were put on a different footing than the regular constables regardless of the fact that they stood absorbed. The Division Bench judgment has now been reversed by the Apex Court in ***Joginder Singh vs. U.T., Chandigarh and others, 2015 (2) SCC 377***. The Division Bench had set aside the orders of the Tribunal whereby, directions had been issued for issuance of appointment order to a constable, who after verification, had been found involved in a criminal case under Sections 148,

149, 323, 325, 307 IPC at the time of the verification of his antecedents and character. The benefit had been granted on the ground that there was an acquittal at the time the candidate had been called for interview. The Division Bench had, however, held, keeping in view the provisions of the Punjab Police Rules, that since the candidate is required to be inducted as a member of a disciplined force, the appointments have to be above board and, therefore, the Tribunal had erred in directing the appointment. The said view has not been approved by the Apex Court and the argument that the acquittal was not honourable but was on account of benefit of doubt was also rejected. It was noticed that the complainant and even the injured had failed to identify the assailants and had been declared hostile and accordingly, it was held that an acquittal was always an honourable acquittal and the appellant could not be denied the benefit of being appointed by declaring him unsuitable to the post. Rules 12.12, 12.14 and 12.18 of the Punjab Police Rules were also taken into consideration wherein, the factum of the recruits having good character were to be taken into consideration. It was further held that police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court and it would amount to vicarious punishment. The relevant portion reads thus:-

“16.....The learned Additional Sessions Judge, Bhiwani held that the prosecution case has not been able to prove in any way the allegations against the appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges leveled against the appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional

Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal. Learned counsel has rightly placed reliance upon the decision of this Court in Deputy Inspector General of Police & Anr. v. S. Samuthiram, 2013(1) S.C.T. 115 : (2013)1 SCC 598, which relevant para is extracted as under :-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(Emphasis supplied)

17. Further, an acquittal of the appellant is an

"honourable" acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

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20. It is the submission made on behalf of the respondents that the above referred rules lay down the criteria that clean antecedents and good moral character is indispensable for a candidate to even fall within the zone of consideration. However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14.04.1998, after he had applied for the post of Constable. Further, he had been acquitted on 04.10.1999, i.e. much before he was called for the interview/medical examination/written test. Further, as per Rule 12.18, emphasis has been laid on the freedom and otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the Trial Court that as the prosecution has failed to prove the charges against the appellant by adducing cogent evidence, therefore, the Police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order passed by

the High Court is vitiated in law and liable to be set aside.

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22. *Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind."*

The said issue was also considered by a Division Bench of this Court in ***Shashi Kumar vs. UHBVN and another, 2005 (1) SCT 8576*** wherein, the issue of full back wages on account of acquittal and resultant reinstatement was in question under Rules 7.3 and 7.5 of the Punjab Civil Service Rules. Reference was made to the earlier Division Bench judgments in ***Hukam Singh vs. State of Haryana, 2001 (2) SCT 696*** to hold that "honourable acquittal" or "fully exonerated" were unknown in the Code of Criminal Procedure or in criminal jurisprudence. The relevant portion reads as under:-

"7. In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India v. Jayaram, AIR 1960 Madras 325. Rajammannar, C.J. delivering the judgment of the

Division Bench observed as under :-

"There is no conception like "honourable acquittal" in Criminal Procedure Code. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

*8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of **Jagmohan Lal v. State of Punjab through Secy. to Punjab Govt. Irrigation and others, AIR 1967(54) Punjab and Haryana 422 (Punjab)**. In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol. I Part-I, it was observed as follows:-*

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The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clearly in my mind that the intention underlying Rule 7.5 can be no other except this : the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal

courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

9. The judgment rendered in the case of **Union of India v. Jayaram** (supra) has also been followed by a Division Bench of the Gujarat High Court in the case of **Ramsinhji Viraji Rathod, Parmanand Society v. The State of Gujarat and another**, 1971 SLR 743. In the aforesaid case, it has been observed as follows :-

7Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words "fully exonerated" the words were "honourably acquitted". With respect we are in agreement with the reasoning of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal court is concerned. In a criminal trial the accused is only called upon to meet the charge levelled against him and he may meet the charge - (a) by showing that the prosecution case against him is not true; or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any one of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is

correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. in Jayaram's case, AIR 1960 Madras 325."

10. Furthermore a Division Bench of this Court, after examining the relevant rules in the case of Hukam Singh (supra) has held as under :-

"It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always take precedence over the general rule and consequently, it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the earlier decisions referred to above have little application in the present case.

*In our this view, we are supported by the judgment of this Court in the case of **Maha Singh v. State of Haryana and another**, 1994(1) SCT 154 (P&H) : 1993(8) Services Law Reporter 188. Same view was expressed by this Court in the case of **Lehna Singh v. The State of Haryana***

and others, 1994(1) SCT 173 (P&H) : 1993(3) Recent Services Judgments 119. Keeping in view the aforesaid, we have no hesitation in holding that the impugned order cannot be sustained. In terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal....."

11. We are of the considered opinion that in view of the settled law the petitioner is clearly entitled to be reinstated in service with all consequential benefits. We quash the impugned order dated 27.8.2003 (Annexure P-4). We direct the respondents to reinstate the petitioner into service with full back-wages. Mr. Agnihotri has argued that the respondents be given opportunity to now conduct a departmental enquiry. We are of the considered opinion that in view of the categorical findings recorded by the High Court, there would be hardly any justification in permitting further departmental action. We, therefore, decline the request made by the counsel for the respondents."

A similar view was also taken in ***Bhag Singh vs. Punjab and Sind Bank and others, 2005 (6) SLR 464*** and ***Shiv Kumar Goel vs. State of Haryana and another, 2007 (1) SCT 739***. The Apex Court also has taken into consideration the judgment in *Sushil Kumar's case (supra)* where the candidate did not have good antecedents and had concealed the said fact and it was held that it is distinguishable as there was no allegation of concealment against the petitioner.

Even otherwise, in the present case, issue of concealment does not arise. It is only a matter of policy which is based on the rendering of the judgments as noticed above that the same has been issued. Necessarily, in

view of the observations of the Apex Court, the three of the classifications which have been made for denial to reinstatement cannot be justified which pertain to technical grounds, benefit of doubt or resiling of witnesses since the matter has already been expounded upon and the law has been laid down that there is no distinction as such on an acquittal which has been made even if the witnesses resile.

Accordingly, this Court is of the opinion that the second question itself necessarily is to be answered in favour of the petitioners that the whole issue was not liable to be reopened in view of the observations of the Apex Court in *Joginder Singh's case (supra)*. Once that is held so, then the policy being bad, the whole proceedings as such would suffer from the vice of irrationality as they could not have been reopened on account of the fresh policy being issued since the petitioners already stood covered under the earlier policy dated 14.05.2008 and had been granted benefits of reinstatement keeping them at par with regular police constables. Nothing has been shown as how different parameters can apply to SPOs who were earlier being treated at par with regular constables. If the same principle is not being applied to them on their reinstatement or acquittal, in spite of the same was being on basis of resiling of witness, technical grounds and compromise, why the SPOs were being treated differently.

Accordingly, the present petitions are allowed. The policy dated 11.05.2009 is quashed and so are the resultant orders passed whereby, the petitioners' services had been terminated on account of being reopened under the policy. In CWP Nos. 12402 and 23269 of 2011, show cause notices had been issued, which were stayed initially. Accordingly, the termination orders are quashed including the show cause notices.

The petitioners accordingly will be entitled for reinstatement, which exercise may be done within a period of 3 months from the date of receipt of certified copy of the judgment. However, it is made clear that the petitioners who remained out of service shall not be entitled for any pay for the period which they remained out of service on the principle of 'no work no pay' on account of the fact that the State was acting bona fidely on the strength of the judicial decisions passed by this Court and by the Apex Court which has now been differed with. However, the petitioners will be entitled for all other notional benefits including continuity of service for purposes of seniority and for pension etc.

13.01.2016
shivani

(G.S. SANDHAWALIA)
JUDGE