

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

Civil Misc. No.5882 of 2016 in/and
Civil Writ Petition No.12976 of 2010
Date of decision: 17.5.2016

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. Rajesh Bansal, Advocate for the applicant-petitioner.

Mr. L.S.Virk, Addl. Advocate General, Punjab for the
respondents.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.5882 of 2016

Prayer made in the present application is for early hearing of
the case.

Since the pleadings are complete, with the consent of the
counsel for the parties, the case is ordered to be taken up on the Board for
regular hearing today itself.

The Civil Misc. Application stands disposed of accordingly.

Civil Writ Petition No.12976 of 2010

The petitioner challenges order dated 1.12.2004 (Annexure P/3)
whereby he was terminated from the designation of SPO with immediate
effect by respondent no.3 after issuing show cause notice dated 2.7.2004
(Annexure P/1) on which post he was appointed on 1.6.1992.

The ground for the said action was that the petitioner was
arrested on 5.4.2004 in FIR No.8 dated 8.2.2004 under Section 306 IPC,
registered at Police Station, Ganaur and on account of the said FIR, the said

action was taken.

It is not disputed that initially the petitioner was convicted on 26.4.2006 under Section 302/34 IPC on account of death of wife of the petitioner. The Criminal Appeal No.480-DB of 2006 filed by the petitioner was allowed by this Court on 10.3.2010 (Annexure P/4) by noticing that there were various dying declarations and the petitioner had only been named in the last dying declaration which was recorded 30 minutes before her death. Accordingly, judgment of conviction was held to be perverse and against law.

The petitioner thereafter represented on 26.4.2010 (Annexure P/6) to provide constabulary number on account of the fact that the SPOs had already been given constabulary number. The said representation was rejected on 13.5.2010 (Annexure P/7) on the ground that as per instructions issued by the Government any discharged SPO cannot be reinstated again.

The State in its reply took a plea that since the work and conduct of the petitioner was not found satisfactory, he was discharged. Due to involvement of SPOs in different criminal cases, directions have been issued by the Additional Director General of Police, Crime, Chandigarh that if any SPO was found involved in any looting or criminal case then necessary action be taken against him (Annexure R/5). The petitioner being a daily wages employee was not entitled to be put back in service.

The factual aspect remains that admittedly termination/discharge from the post of SPO was done on account of FIR being registered and the petitioner being taken into custody. However, as noticed, the acquittal had been recorded.

Reference can be made to a Division Bench judgment of this Court in **Civil Writ Petition No. 3196 of 1997 Raman Kumar Vs. State of Punjab and others decided on 09.09.1998**. In the said case order of discharge had been set aside on the ground that once the sole reason for discharge was lodging of the FIR, then on account of acquittal the S.P.O. was liable to be taken back in service. The relevant part of the judgment reads as under:-

“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. Infact, the order Annexure P-1 is bad in law inasmuch as it indicted the petitioner before he could be tried by a court of competent jurisdiction. After his acquittal in the case, the petitioner cannot 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 off 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.”

This issue has been discussed by this Court in **Civil Writ Petition No.9848 of 2013-Baljit Singh Vs. Director, General of Police, Punjab and others** decided on 6.5.2016 wherein reference was made to the judgment of the Apex Court in **Joginder Singh Vs. Union Territory of Chandigarh and others (2015) 2 SCC 377**. It has accordingly been 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 findings recorded by the Court and denying appointment would be like a vicarious punishment.

Resultantly, the present writ petition is allowed. The orders dated 01.12.2004 and 13.5.2010 (Annexures P/3 and P/7 respectively) stand quashed. The petitioner shall be taken back in service as SPO on the same terms and conditions on which he was serving earlier. However, it is made clear that the petitioner will not be entitled for any financial benefit for the period he remained out of service on the principle of no work, no pay and is only entitled for the notional benefits. Reference can be made to the judgment of the Apex Court in ***Union of India and others Vs. Jaipal Singh 2004 (1) SCC 121***, wherein it has been held that backwages can be denied

where the employee has been kept out from service on account of his own conduct, since the services could not be availed of by the employee.

May 17, 2016
Pka

(G.S.SANDHAWALIA)
Judge