

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

CWP No.2511 of 2016 (O&M)

Reserved on:22.09.2016

Date of decision: 29.09.2016

Vijay Kumar

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. S.S. Mor, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

The petitioner who was duly selected for the post of Constable (General Duty) in the Ex-Servicemen Category in Haryana Police has assailed the validity of the order dated 26.05.2015 at Annexure P-5, whereby offer of appointment to the post has been declined.

Facts of the case are in a very narrow compass. The respondents issued an advertisement No.1/2013 advertising 1347 posts for recruitment of General Duty Constables in the Haryana Police Department. Petitioner applied for the Male Constable reserved for Ex-servicemen Category. Petitioner was permitted to participate in the selection process comprising of an entrance test as also an interview held on 16.05.2014. The result of the selection process was declared on 12.06.2014 and the name of the petitioner concededly figured in the list of selected candidates under the Ex-servicemen Category. It so transpires that after the petitioner had submitted his application for the post of Constable, FIR No.104 dated 12.02.2014 came to the registered under Sections 148, 149, 379, 435 and

506 IPC at Police Station Bhiwani Sadar on the complaint of one Baljit Singh. Petitioner faced trial in this case along with other co-accused and vide judgment dated 17.12.2014 passed by the Additional Chief Judicial Magistrate, Bhiwani, he was acquitted.

Vide impugned order dated 26.05.2015 issued by the Commandant 3rd Battalion, HAP, Hisar, offer of appointment and regimental number has been declined to the petitioner stating that it would not be in public interest to do so. It is against such brief factual backdrop that the instant petition has been filed.

Learned counsel for the petitioner would argue that in pursuance to a regular selection process, the petitioner was duly selected and as such, merely on the basis that the petitioner stood trial in a criminal case, he cannot be deprived of his vested right of appointment to the post. Another limb of the argument raised is that at the stage of submitting application for the post, there was no FIR/case pending against the petitioner and as such, there is no question of any concealment of facts. Denial of appointment to the petitioner under such circumstances is contended to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. It has further been argued that the petitioner's acquittal by the trial Court on the ground that the witnesses did not support the prosecution version cannot be held against the petitioner so as to deny him appointment to the post of Constable in spite of having been declared successful in a regular selection process.

Per contra, learned State counsel would state that even though name of the petitioner was placed in the list of selected candidates but such selection was subject to verification of character/antecedents. Learned State

counsel would refer to the joint written statement filed on behalf of respondents No.1 to 5 and would state that the case of the petitioner was examined in the light of Instructions dated 17.03.1975 issued by the Chief Secretary to Government of Haryana and since the offences for which he had been charged and tried would come in the purview of offence involving moral turpitude, he could not be issued an appointment letter and assigned the regimental number. It is further stated that since the petitioner was involved in a case of moral turpitude and he has been acquitted only on the ground of the witnesses having turned hostile, the petitioner is not to be granted benefit of acquittal as the same was only on technical grounds and the same cannot be construed as '**honourable acquittal**'. Learned State counsel further justifies the passing of the impugned order at Annexure P-5 on the strength of the judgment of the Hon'ble Supreme Court in **Delhi Administration Versus Sushil Kumar decided on 04.10.1996** at Annexure R-1 along with the reply.

Counsel for the parties have been heard at length.

In the first instance, it would be appropriate to examine the scope of Instructions dated 17.03.1975 and which had been applied by the respondents to deny appointment to the petitioner. Such instructions have been appended and placed on record at Annexure P-6. Perusal of the same would reveal that the same have been issued by the Chief Secretary to Government of Haryana and on the subject of "**rehabilitation of ex-convicts released from jail – question of making them eligible for appointment under Government.**" Such Instructions had been issued towards modification and clarification of the Instructions dated 02.02.1973 that had been issued earlier in point of time. The Instructions clearly

envisage that ex-convicts convicted of offences involving moral turpitude should neither be taken nor retained in Government service. A list of offences which involve moral turpitude also stands enclosed along with the Instructions.

The Instructions dated 17.03.1975 are very clear and there is no ambiguity in the same. Such Instructions are towards the rehabilitation of ex-convicts and who are released from jail. The same have been issued with the objective of furtherance of reformatory process and to rehabilitate such ex-convicts whose conduct has been above board after conviction. However, in the case of ex-convicts who have suffered conviction in relation to offences involving moral turpitude, there would be an embargo as regards their gaining entry in Government service. Even with regard to such category, there has to be an application of mind at the hands of the Competent Authority and a test would have to be applied as to whether the act/charge leading to conviction was such that would shock the conscience of the society or such act having been committed, the perpetrator could be considered to be of depraved character or a person who would be looked down upon by the society. The scope and ambit of the Instructions dated 17.03.1975 are only in relation to ex-convicts. The petitioner herein has not suffered conviction. He was only an accused and had faced trial having been so nominated. In the trial that had ensued, the petitioner has earned acquittal. Under no stretch of imagination, can the Instructions dated 17.03.1975 be made to operate in the facts of the present case and to the detriment and prejudice of the petitioner.

The next question that would arise is in relation to the submissions and stand taken on behalf of the State that the petitioner has

been acquitted only on the ground that the witnesses turned hostile and as such, benefit of doubt was granted to him and it is not a case of ***“honourable acquittal”***.

The judgment of acquittal has been placed on record along with the petition at Annexure P-4. The complainant was Baljit Singh and who alleged that he was having a country made liquor vend in the village and on 12.02.2014, 5-6 persons had came to the vend and demanded liquor. Upon being asked to pay money, they had refused to do so and had threatened that they were influential people of the locality. In the next morning, complainant alleged that when he opened the vend, 5-6 persons including the present petitioner entered the shop and started fighting with him. Co-accused, Sachin and Madu took money out of the safe. Accused also tried to take away the boxes of liquor. Ultimately, it was alleged that co-accused, Sachin and Madu set the liquor vend on fire by pouring petrol. Present petitioner faced trial in such criminal prosecution having been nominated as one of the accused. It cannot be disputed that the offence for which the petitioner was tried, was such as involving moral turpitude. While pronouncing the judgment of acquittal dated 17.12.2014, learned Additional Chief Judicial Magistrate has observed as follows:

“The allegations against the accused are for commission of offences under Sections 148, 379, 435 and 506 read with Section 149 of IPC. In order to prove its version, the prosecution has examined three witnesses in all, out of which, PW1 is the complainant and PW2 and PW3 are the eye-witness. However, all the aforesaid material witnesses have not supported the prosecution case at all. They have specifically denied the version of the prosecution and have reiterated that the accused present in Court have not caused any alleged offence. They have been cross-examined at length

by learned APP for the State but learned APP for the State has failed to find out anything favourable to prosecution in their cross-examination as well.

It is settled principle of criminal law jurisprudence that the prosecution is bound to prove the guilt of the accused beyond shadow of reasonable doubt, however, in the present case, material witnesses of the prosecution have not supported the prosecution at all. Thus, the prosecution has miserably failed to prove the case against the accused. Accused are accordingly acquitted of the charges framed against them.”

Would acquittal of the petitioner be seen as an **“honourable acquittal”** or an acquittal on technical grounds so as to deny him appointment to the post of Constable would be the core issue to be dealt with in the present case?

A Division Bench of this Court in ***Bhag Singh Versus Punjab and Sind Bank, 2006 (1) SCT 175*** interpreted the term **“benefit of doubt in criminal proceedings.”** It was noticed that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of **“benefit of doubt”** by the Criminal Court is superfluous and baseless. The Court, as such termed such acquittal as an **“honourable acquittal.”**

In ***Shashi Kumar Versus Uttar Haryana Bijli Vitran Nigam & another, 2005 (1) RSJ 718***, a Division Bench of this Court was again dealing with the term **“honourable acquittal”**. It was observed that the moment a criminal charge fails in a Court of law, the person would be deemed to be acquitted of the blame.

Adverting back to the facts of the present case, the trial Court has acquitted the petitioner on account of lack of evidence. Once the allegation which was against the petitioner could not be established by evidence, it cannot be said that the acquittal was on some technical grounds.

Acquittal in a criminal case for want of evidence is an acquittal on merit. There is no provision for “***honourable acquittal***” in criminal trial as per criminal jurisprudence. Petitioner, as such, cannot be denied his right of appointment to the post in question as a duly selected candidate by merely stating that the acquittal was on the ground of witnesses having turned hostile.

The claim of the petitioner seeking appointment to the post of Constable would also be covered in his favour in the light of a very recent judgment of the Hon'ble Supreme Court of India in ***Joginder Singh Versus Union Territory of Chandigarh and others, 2015(1) SCT 87***. The facts in ***Joginder Singh's case (supra)*** were that appellant Joginder Singh had applied for the post of Constable in pursuance to an advertisement issued by the Union Territory of Chandigarh. In the selection process, he was declared as a successful candidate. However, on verification of his antecedents, it was found that he was involved in case FIR No.200 dated 14.04.1998, under Sections 148, 149, 323, 325, 307 of Indian Penal Code, registered at Police Station Sadar Bhiwani. Joginder Singh faced trial but was acquitted vide judgment dated 04.10.1999 passed by the Additional Sessions Judge, Bhiwani. Joginder Singh having been denied appointment inspite of due selection filed Original Application before the Central Administrative Tribunal, Chandigarh, whereby order dated 12.03.2003 was passed directing the respondents to appoint him to the post of Constable. Aggrieved by the order of CAT Chandigarh, the respondent – Union Territory, Chandigarh filed Civil Writ Petition before this Court and vide judgment dated 24.03.2008, the order of CAT was set aside. This Court while setting aside the order of CAT had even placed reliance on the case of ***Delhi***

Administration's case (supra). The matter having been taken up to the Hon'ble Supreme Court, it was argued on behalf of Union Territory, Chandigarh that Joginder Singh was not honourably acquitted of the offence as the eye witnesses of the occurrence had declined to support the prosecution version and were declared hostile by the Sessions Judge and as a consequence of which judgment of acquittal had been rendered. It was contended that the same cannot be construed as acquittal of the appellant on merits.

While rejecting the contention of respondent-Union Territory, Chandigarh and setting aside the judgment and order passed by this Court, the Hon'ble Supreme Court observed as follows:

“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.”

Applying the dictum laid down in **Joginder Singh's case (supra)**, the impugned order dated 26.05.2015 (Annexure P-5) cannot sustain.

Even the judgment in **Delhi Administration's case (supra)** would have no applicability to the facts of the present case as in that case, there was a concealment of being involved in criminal proceedings whereas in the present case there is no concealment whatsoever as on the date of submission of application for the post by the petitioner to the FIR had not

even been registered.

For the reasons recorded above, the present petition is allowed. Impugned order dated 26.05.2015 at Annexure P-5 is set aside. Respondents are directed to issue appointment letter and regimental number to the petitioner on the post of Constable (General Duty) within a period of 30 days from the date of receipt of a certified copy of this order. Such appointment shall relate back and take effect from the date when other candidates similarly situated and selected in the same very process of selection along with the petitioner were appointed along with all consequential benefits except actual arrears of salary for the period in question.

Petition is allowed in the aforesaid terms.

29.09.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |