

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

**CWP No.2671 of 2015 (O&M)
Case reserved on 03.10.2016
Date of pronouncement 21.10.2016**

Lakshmi Narain

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present:- Mr. J.S.Maani, Advocate,
for the petitioner.

Mr. Ravi Pratap Singh, AAG, Haryana,
for respondent No.1.

Mr. Padamkant Dwivedi, Advocate,
for respondent No.2.

TEJINDER SINGH DHINDSA, J.

Challenge in the instant petition is to memo dated 12.08.2008 (Annexure P-3) whereby services of the petitioner who was serving on the post of Accounts Assistant have been dispensed with. Petitioner also seeks the setting aside of order dated 11.12.2014 (Annexure P-10) passed by the Chief Administrator, HUDA, Panchkula in terms of which the appeal preferred by the petitioner has been rejected.

Brief facts are that Haryana Staff Selection Commission issued advertisement No.03 of 2007 inviting applications for recruitment to the post of Accounts Assistant in Haryana Urban Development Authority ('HUDA' in short). Petitioner applied for the post in question and was subjected to a process of selection. His name was recommended for appointment by the Commission on 07.12.2007. HUDA issued a letter of

appointment dated 20.12.2007 for the post of Accounts Assistant. Petitioner submitted his joining in the office of Chief Town Planner, HUDA, Panchkula on 01.01.2008. Prior thereto petitioner had also furnished an affidavit dated 31.12.2007 deposing that a false criminal case i.e. FIR No.198 dated 28.05.2007, under Sections 409, 420, 467, 468, 471 and 120-B IPC and Sections 7, 13 and 49/88 of Prevention of Corruption Act had been registered at Police Station Nuh and in which he is facing trial. Apparently, the HUDA authorities on the basis of the petitioner being involved in the aforenoticed FIR and for offences involving moral turpitude passed the order dated 12.08.2008 at Annexure P-3 dispensing with the services of the petitioner and also stating therein that the appointment letter dated 20.12.2007 stands “**withdrawn**”. The appeal preferred by the petitioner stands declined vide impugned order dated 11.12.2014 (Annexure P-10) passed by the Chief Administrator, HUDA, Panchkula.

Counsel appearing for the petitioner would argue that in pursuance to a regular selection process, the petitioner was duly selected on the post of Accounts Assistant and on which he had joined on 01.01.2008. Merely on the basis that the petitioner stood trial in a criminal case, services of the petitioner cannot be terminated. It is also submitted that at the stage of submitting application for the post, there was no FIR/case pending against the petitioner and as such there was no question of any concealment of facts. Counsel submits that in the trial that had ensued after registration of FIR No.198 dated 28.05.2007, petitioner stands acquitted by the learned Additional Sessions Judge, Nuh vide judgment dated 29.11.2013 (Annexure P-5) and against which respondents had preferred not even to file an appeal.

It is argued that under such circumstances, the action of the respondent

authorities in having rejected his appeal and thereby having denied his claim for reinstatement back in service is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

Per contra, learned State counsel would state that even though the petitioner had been recommended for appointment by the Haryana Staff Selection Commission and in pursuance thereof appointment letter for the post of Accounts Assistant had been issued but joining of the petitioner on such post was subject to verification of his character/antecedents. State Counsel would place heavy reliance on Clause 12 of the appointment letter issued to the petitioner and which was in the following terms:

“Your verification of character and antecedents have not been got verified in light of Govt. instructions issued vide No.52/9/94-S(1) dated 07.06.94 and in case, subsequently any adverse facts come to the notice of the State Govt./ Authority regarding your character and antecedents, your services are liable to be terminated without notice and assigning any reason thereof.”

The action of the respondent authorities is sought to be justified by submitting that the petitioner had been accused of commission of a serious offence of cheating, forgery and corruption etc. and merely on account of the fact that he had subsequently been acquitted by granting benefit of doubt would not entitle him to seek reinstatement on the post of Accounts Assistant and which involves pecuniary trust. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in ***Delhi Administration Versus Sushil Kumar 1996 (2) SCC 605*** to contend that verification of the character and antecedents is an important parameter to test whether a selected candidate is suitable to a post under the State.

Counsel for the parties have been heard at length.

At the very outset, it may be noticed that in para 4 and para 14 (ii) of the writ petition, it has been specifically averred that the petitioner in pursuance to the appointment letter dated 20.12.2007 had furnished his joining report on 01.01.2008 and had worked on the post of Accounts Assistant till the passing of the impugned order dated 12.08.2008 (Annexure P-3) and had even been released salary for the period. In the written statement filed to the writ petition, there is no denial to such assertion. Rather Mr. Padam Kant Dwivedi, learned counsel appearing for respondent No.2 concedes to such factual position. Strangely, in the impugned order dated 11.12.2014 (Annexure P-10) passed by the Administrator, Panchkula rejecting the claim of the petitioner seeking reinstatement, it has been observed that the authorities concerned had rightfully taken a decision not to accept the joining report and as such had withdrawn the appointment letter issued to the petitioner on account of his involvement in a case for offences of cheating, corruption etc. Apparently, the Chief Administrator, HUDA has overlooked the factual aspect that the petitioner in pursuance to the appointment letter had joined the post in question on 01.01.2008 and had worked as such till 12.08.2008 and had even been paid the salary for such period. The respondent authorities have erroneously proceeded on the premise that it was a case of joining report on the post having not been accepted and as such the action of withdrawal of the appointment letter being justified.

To the contrary, the facts of the case would clearly indicate that the impugned order dated 12.08.2008 at Annexure P-3 is not that of an offer of appointment being withdrawn but virtually tantamount to termination of

service.

Undoubtedly, petitioner was involved in FIR No.198 and was tried for offences involving moral turpitude. The judgment of acquittal dated 29.11.2013 passed by the learned Additional Sessions Judge, Nuh has been placed on record and appended as Annexure P-5. The operative part of the judgment reads in the following terms:

“For the reasons recorded above, the prosecution has failed to bring home the guilt of the accused present in the Court beyond the shadow of reasonable doubt. It is settled law that benefit of doubt always goes to the accused. Hence, giving benefit of doubt all the accused are acquitted of the charges levelled against them. Their bail and surety bonds stand discharged. The case property including the currency notes, those have not been claimed by any of the accused during enquiry, investigation and trial, be disposed of/dealt with as per rules, after expiry of the period of appeal/revision. File be consigned to the record room after due compliance.

*Announced in open court
Dated 29.11.2013*

*Sd/- (Mahender Singh)
Additional Sessions Judge
Nuh, 29.11.2013”*

A question would arise as to whether acquittal of the petitioner would be seen as an “**honourable acquittal**” or an acquittal on technical grounds having been given benefit of doubt so as to deny him reinstatement on the post of Accounts Assistant?

A Division Bench of this Court in ***Bhag Singh Versus Punjab and Sindh 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 Limited and 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 reinstatement to the post of Accounts Assistant.

The claim of the petitioner seeking reinstatement to the post in question would also be covered in his favour in the light of a judgment of the Apex Court 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 in spite 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.”

In the considered view of this Court, the case of the present

petitioner is on a better footing. It is not a case where joining on a post in pursuance to an offer of appointment had been kept in abeyance. Rather, the petitioner in pursuance to the letter of appointment dated 20.12.2007 had submitted his joining report on 01.01.2008 and had working on such post till 12.08.2008. Since the very basis of dispensing with the services has become non-existent by virtue of his acquittal in the criminal case, he cannot be denied the relief of reinstatement.

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 proceeding whereas in the present case, there is no concealment whatsoever as on the date of submission of application for the post by the petitioner the FIR had not even been registered.

For the reasons recorded above, the present petition is allowed. Impugned orders dated 12.08.2008 (Annexure P-3) and 11.12.2014 (Annexure P-10) are set aside. Respondent authorities are directed to reinstate the petitioner on the post of Accounts Assistant within a period of 30 days from the date of receipt of a certified copy of this order. Petitioner is also held entitled to all consequential benefits except actual arrears of salary for the period in question.

Petition is allowed in the aforesaid terms.

21.10.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No