

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Letters Patent Appeal No.406 of 2013 (O&M)
Date of Decision: September 16, 2016

Devender KumarAppellant
versus
State of Haryana and othersRespondents

[2] Letters Patent Appeal No.1790 of 2015 (O&M)

Devender KumarAppellant
versus
Rajesh Kumar and othersRespondents

[3] C.O.C.P. No.2235 of 2015 (O&M)

Ex.Constable Devender KumarPetitioner
versus
Ram Kumar, IPS Commandant, 5th Btn. HAP, MadhubanRespondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE DARSHAN SINGH.**

Present: Mr.R.K.Malik, Senior Advocate with
Mr.Bhupinder Malik, Advocate, for the appellant/petitioner.
Mr.R.D.Sharma, Deputy Advocate General, Haryana.
Mr.Manoj Kumar Taya, Advocate,
for respondent No.1 in LPA No.1790 of 2015.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J.

This order shall dispose of LPA Nos.406 of 2013 & 1790 of 2015 and COCP No.2235 of 2015 as all the three cases have originated out of same set of facts and their fate is also inter-dependent.

[2] The appellant in both the appeals is Devender Kumar son of Ram Chander, resident of village Nijampur Majra, Tehsil Kharkhoda, District Sonapat.

[3] In LPA No.406 of 2013, the appellant-Devender Kumar has

challenged the order dated 11.12.2012 whereby learned Single Judge

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[2]

dismissed his writ petition and has upheld the decision of Police Department, Haryana in not issuing appointment letter or constabulary number to him. In LPA No.1790 of 2015, he has assailed the order dated 12.10.2015 of another learned Single Judge whereby writ petition of respondent No.1 (Rajesh Kumar son of Nafe Singh)-a wait-listed candidate has been allowed with a direction to the Police Department to appoint him as a Constable against the vacancy for which the appellant was selected.

[4] The facts may be briefly noticed.

[5] State of Haryana advertised 5456 posts of Constables on 21.07.2008. The appellant applied for the advertised posts for district Kaithal. The Selection Board for Kaithal district was shifted to Kurukshetra due to some law and order problem. The appellant was finally selected and was placed at Sr.No.291 in the order of merit. The name of appellant was forwarded to 5th Battalion of H.A.P., Madhuban for allotment of constabulary number. After medical examination, the character verification report was sought from the concerned Superintendent of Police/SHO of the police station and it transpired that a criminal case FIR No.770 dated 26.10.2005 under Sections 399, 406 IPC and 25/54/59 of the Arms Act was registered against the appellant at Police Station City, Gurgaon in which he was acquitted by giving the benefit of doubt.

[6] Consequently, the appellant was denied appointment and allotment of constabulary number was with-held for the reasons that (i) he had concealed the material fact of registration of criminal case in his Application Form while applying for recruitment as Constable; (ii) the offence under Section 399 IPC falls under the category of “moral turpitude”

clarification given by Director General of Police, Haryana, vide memo dated 13.11.2007, the appellant was not entitled to appointment as he was acquitted 'on technical grounds'.

[7] The aggrieved appellant filed CWP No.22875 of 2011 questioning the denial of appointment to him. His writ petition has been dismissed by the learned Single Judge on two counts, namely, that (i) there was concealment of facts and (ii) that the antecedents of the appellant, namely, his involvement in a case under Section 399 IPC and recovery of lethal weapons with ammunition, notwithstanding his acquittal by giving the benefit of doubt, was a sufficient material for the Competent Authority to hold him unsuitable for recruitment as Constable. Learned Single Judge drew support from a Division Bench decision of this Court in Krishana Kumari versus State of Haryana etc. 2005 3 SCT, 687 where denial of appointment for non-disclosure of correct information regarding involvement in a criminal case though resulting into acquittal, was approved. The decisions in (i) Delhi Administration versus Sushil Kumar, 1996 (11) SCC 605 and (ii) Union of India versus Kali Das Batish and another, 2006 (1) SCC 799, have been followed to support the second reasoning that mere discharge or acquittal in a criminal case cannot be the lone factor to adjudge the suitability of a candidate for his appointment as Constable. The afore-stated order of the learned Single Judge has given rise to the first intra-court appeal.

[8] It is pertinent to mention at this stage that despite dismissal of his writ petition, the appellant-Devender Kumar managed to secure appointment vide order dated 29.10.2014 on the basis of a fresh character

that “his character is good”. The Commandant 5th Battalion, HAP, Madhuban quoted some decisions of this Court/other Courts and held that there was no legal impediment against appointment of Devender Kumar-appellant after he stood acquitted of the criminal charge, be it be on a technical ground.

[9] The aforesaid appointment, however, did not last for a long and after issuing show-cause notice dated 13.04.2015, due to apparent intervention of the Director General of Police, Haryana, services of the appellant were dispensed with on 23.04.2015.

[10] Rajesh Kumar son of Nafe Singh (1st respondent) was also a candidate for recruitment to the post of Constables and he too competed before the Kurukshetra Selection Board for Kaithal district. Besides preparing the selection list of 308 candidates of General Category as per the available vacancies of that district, the Selection Board also drew a waiting list of 21 candidates in which said Rajesh Kumar was placed at Sr.No.6. He filed Civil Writ Petition No.26064 of 2014 impleading the appellant-Devender Kumar as respondent No.5, and sought a writ of mandamus for his appointment as Constable on the post for which Devender Kumar-appellant was selected. He averred in para No.7 of the writ petition that while three selected candidates did not join as Constables, two candidates were declared medically unfit and in this manner all the 5 candidates above him in the waiting list have got the appointment. He being the next candidate in queue was entitled to be appointed against the unfilled post for which Devender Kumar-appellant was selected.

[11] Learned Single Judge having taken notice of the fact that

and thus a resultant vacancy was available, allowed the writ petition with a direction to appoint Rajesh Kumar-respondent No.1. The said order of learned Single Judge is under challenge at the instance of Devender Kumar-appellant in the second appeal.

[12] In the accompanying Contempt Petition, Devender Kumar-appellant alleges willful and deliberate violation of the interim order passed by a Division Bench of this Court in the first appeal thereby directing that “if not relieved, the order of termination shall not be given effect to, till the next date of hearing...” The Contempt Petition has also ordered to be heard alongwith these appeals.

[13] We have heard learned counsel for the parties at a considerable length and have also gone through the original records produced by learned State counsel, comprising the Application Form as well as subsequent Forms filled by the appellant-Devender Kumar for character verification.

[14] The primary thrust of Sh.Malik, learned Senior counsel for the appellant-Devender Kumar is that denial of appointment only because he was involved in a false criminal case in which he had earned acquittal in the year 2005-06 much before the posts of Constable were advertised, is wholly arbitrary, irrational and illogical. He vehemently contended that the Instructions relied upon by learned Single Judge for rejecting his claim for appointment run contrary to the settled legal position as no distinction can be drawn between ‘honourable acquittal’ or ‘technical acquittal’ based upon benefit of doubt. He drew our attention to the decision of Hon’ble Supreme Court in Joginder Singh versus Union Territory of Chandigarh and others, (2015) 2 SCC 377, wherein also the issue that arose for consideration

who was involved in a criminal case under Sections 323, 325, 307, 148, 149 IPC and was denied appointment despite acquittal in that case. The Hon'ble Supreme Court upheld his claim laying down that:-

“....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.

18. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the appellant. Thus, the appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.....”

(emphasis applied)

[15] To counter the claim of appellant, learned State counsel as well counsel for private-respondent firstly referred to the Application Form submitted by the appellant. Column No.14 of the Application Form is captioned as “criminal proceedings’ detail, if any”. In sub-column (a) of

registered against you?” In the column of Yes/No, the appellant has unequivocally put mark “No”. Similarly, against sub-cause (b) “have you ever been arrested in any criminal case(s)?”, he has answered in negative, i.e., ‘No’.

[16] Column No.15 of the application form further requires that if your answer to column No.14 is in affirmative, i.e., ‘yes’, then you must give full particulars of the FIR etc. In that column also, the appellant has categorically stated ‘No’.

[17] After the selection, the appellant was required to fill-up the ‘attestation form’ for his antecedents verification and column No.13 thereof is to the following effect (relevant extract):

“13.

(a) Have you ever been arrested?	No
(b) Have you ever been prosecuted?	No
(c) Have you even been kept under detention	No
xx xx xx xx	xx”

[18] There also, the appellant has answered these questions in negative, i.e., ‘No’. Column No.14 of this form says that if you have been acquitted by any Court for any offence and if the answer is ‘Yes’, then full particulars of the conviction etc. be given. There, FIR No.770 dated 26.04.2004 under Section 399, 402 IPC and 25/54/59 of Arms Act is mentioned.

[19] It may thus be seen that the appellant is guilty of concealing a vital information regarding his involvement in the criminal case, hence we are of the considered view that the distinction drawn by the Supreme Court in para No.18 of its decision in Joginder Singh’s case (supra), applies in full force and the principle culled out in para No.17 cannot come to his rescue.

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Since the appellant can draw no advantage out of the decision in Joginder Singh's case (supra), it is not necessary to elaborate the other binding decisions, some of which are relied upon by the learned Single Judge or those rendered subsequently, including in (i) Deputy Commissioner General of Police and another versus S.Samuthiram (2013) 1 SCC 598; (ii) Commissioner of Police, New Delhi and another versus Mehar Singh (2013) 7 SCC 685, and (iii) State of Madhya Pradesh and others versus Parvez Khan (2015) 2 SCC 591.

[20] For the reasons afore-stated, the first appeal i.e., LPA No.406 of 2013 must fail and is accordingly dismissed.

[21] As regard to the second appeal, i.e., LPA No.1790 of 2015, the State of Haryana has not preferred any appeal against the order of learned Single Judge. Since the appellant has got no right to seek his own appointment, the instant appeal challenging the directions issued by learned Single Judge for appointment of the private-respondent must also fail and is thus dismissed. However, in view of the interim order dated 18.12.2015 directing the parties to maintain *status-quo*, it is directed that respondent No.1 shall be considered for appointment only on notional basis without extending any monetary benefits.

[22] In the light of the above discussion and conclusions, the COCP No.2235 of 2015 has become infructuous and is dismissed accordingly.

[23] No order as to costs.

[SURYA KANT]
JUDGE

September 16, 2016
mohinder

[DARSHAN SINGH]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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[9]

CM No.1078 of 2013 and
CM No.979 of 2015 in
LPA No.406 of 2013.

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Devinder Kumar versus State of Haryana and others

Present: Mr.R.K.Malik, Senior Advocate with
Mr.Bhupinder Malik, Advocate,
for the applicant-appellant.
Mr.R.D.Sharma, Deputy Advocate General, Haryana.
Mr.Manoj Kumar Taya, Advocate,
for the applicant in CM No.979 of 2015 .

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CM No.1078 of 2013

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and 02 days' delay in filing the appeal
is condoned.

CM stands disposed of.

CM No.979 of 2015

After hearing learned counsel for the parties and for the reasons
mentioned in the application, the same is allowed subject to all just
exceptions and the applicant-Rajesh Kumar son of Nafe Singh is ordered to
be impleaded as respondent No.4 in the arrays of respondents.

Amended memo of parties is taken on record.

CM stands disposed of.

**[SURYA KANT]
JUDGE**

September 16, 2016
mohinder

**[DARSHAN SINGH]
JUDGE**