

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 222 of 2015 (O&M) in
CWP No. 4490 of 2013
Date of decision: 24.5.2016

Ranbir Singh

.. Appellant

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R. K. Malik, Senior Advocate with
Mr. S. K. Redhu, Advocate for the appellant.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.

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Rajesh Bindal J.

The writ petition filed by the appellant claiming appointment as Constable after his acquittal in a criminal case having been dismissed, the judgment has been impugned by filing the present intra-court appeal. The order dated 24.12.2014 dismissing the review application has also been impugned.

Learned counsel for the appellant submitted that vide advertisement dated 24.7.2008, the State invited applications for 500 posts of temporary Constables (Drivers) in Haryana Police. The appellant applied in response thereto. While the process of selection was still on, the appellant was falsely implicated in FIR No. 188 dated 20.8.2009, registered under

Section 394 IPC at Police Station Shivaji Colony, Rohtak. The appellant was selected in December, 2010, when the selections were finalised. He was at Sr. No. 39 in the merit. In the process of character verification, the appellant having been found to be involved in a criminal case, his appointment was withheld, whereas the appellant had been acquitted honourably vide judgment dated 21.1.2011, passed by Judicial Magistrate Ist Class, Rohtak. After that number of representations made by the appellant did not yield any result. Finally when legal notice was got issued, the same was replied to vide communication dated 28.1.2013, which was impugned in the writ petition.

While relying upon the judgments of Hon'ble the Supreme Court in Joginder Singh v. Union Territory of Chandigarh and others, 2015 (1) SCT 87 and of this Court in LPA No. 228 of 2015—Central Industrial Security Force and another v. Yogesh Kumar, decided on 21.7.2015 and CWP No. 3532 of 2013—Union Territory, Chandigarh and others v. Pardeep Kumar and others, decided on 24.2.2016, learned counsel for the appellant submitted that once the acquittal of the appellant was not by giving benefit of doubt, rather, honourable, in the absence of any material produced by the prosecution, he could not be debarred from entry into government service. The learned Single Bench has misdirected itself by not appreciating the law laid down on the subject.

On the other hand, learned counsel for the respondents submitted that after the appellant was involved in a criminal case, he never informed the department and continued participating in the process of selection. It was only during the process of character verification, it was found that the appellant was involved in a criminal case. Mere acquittal

therein will not absolve him of his conduct. The reason for acquittal was that all the prosecution witnesses turned hostile. They may have been won over. There is no place for a person in police force having antecedents of the kind, the appellant has.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that in pursuance to the advertisement issued on 24.7.2008 for the posts of temporary Constables (Drivers) by Haryana Police, the appellant applied and was even selected. When the process for selection was still on, he was involved in FIR No. 188 dated 20.8.2009, registered under Section 394 IPC. Finally, he was acquitted in the aforesaid FIR vide judgment dated 21.1.2011. His claim for appointment was rejected on the ground of his involvement in the criminal case. The judgment of Judicial Magistrate Ist Class, Rohtak in the criminal case registered against the appellant has been placed on record as Annexure P-2. A perusal thereof shows that the witnesses produced by the prosecution did not support its version. The appellant was acquitted as the prosecution failed to prove the case projected. The relevant paras of the judgment are extracted below:

“13. The two alleged eye witnesses, PW1 and PW2, have stated before the court that they did not know anything about the present case and the police had not recorded their statements. PW1 has denied in his cross examination having given the statement exhibit PW1/A to the police. He has also denied having named any of the accused who had allegedly been caught on the spot by them. He is also submitted that the police

had taken his signatures on blank papers. PW2 has also testified in terms of the statement of PW1 and has denied having given a statement Exhibit PW2/A to the police. He has also denied that two of the accused had been caught on the spot who were named as Karambir and Ranbir.

14. In view of the above, I am of the considered opinion that the prosecution has miserably failed to prove its case against the accused. Consequently, the accused Karambir and Ranbir are, hereby, acquitted of the charges levelled against them. Their bail bonds and surety bonds stand discharged. File be consigned to the record room, after due compliance.”

With similar facts, the issue came up before Hon'ble the Supreme Court in Joginder Singh's case (supra), wherein finding that acquittal of the accused, who was selected for government service was honourable, the court opined that he cannot be deprived from being appointed to the post in public employment. The relevant paras thereof are extracted below:

“16. However, adverting to the criminal proceeding initiated against the appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of the Section 161 of Cr. P. C. statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the Investigation Officer. Further, Sajjan Singh, who was an eye-witness of the case, who was also injured, had failed to identify the assailants. Both the witnesses

were declared hostile on the request of the prosecution. The learned Additional Sessions Judge, Bhiwani held that the prosecution 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 levelled 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 and another v. S. Samuthiram, 2013(1) SCT 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.”

The aforesaid judgment was followed by a Division Bench of this Court in Central Industrial Security Force and another's case (supra), whereby the judgment of the learned Single Judge directing appointment of a selected candidate, who was honourably acquitted of a charge in a criminal case was upheld. The same view was expressed by a Division Bench of this Court in Pardeep Kumar's case (supra).

As has already been referred to above, in the case in hand, the prosecution failed to prove its case against the appellant and his acquittal being honourable, he cannot be denied appointment as Constable, a post for which he was selected.

Accordingly, the present Letters Patent Appeal is allowed. The judgment of the learned Single Judge is set aside. The writ petition filed by him is allowed. The appellant is directed to be appointed as temporary

Constable (Driver) with effect from the date, the candidate lower in merit than the appellant, was appointed. He shall be entitled to all consequential service benefits except actual payment of salary for the period he did not work.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

24.5.2016
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