

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.28230 of 2013 (O&M)
Judgement reserved on: 20.7.2017
Date of Decision: 18.08.2017

Sukhwinder Singh

--Petitioner

Versus

State of Punjab and another

--Respondents

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

Present:- Mr. Jatinder Kumar Puri, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

The instant petition is directed against the order dated 11.6.2010 (Annexure P-3), passed by the Director General of Police, Punjab and in terms of which the claim of the petitioner for absorption as a Constable, has been declined.

Counsel would submit that the petitioner was appointed as S.P.O (Special Police Officer) in the State of Punjab during the period of terrorism in the year 1992. Standing orders had been issued by the D.G.P, Punjab on 19.11.1991 that there will be no direct recruitment to the post of Constable and the appointments should first be made from amongst the S.P.Os and they should be absorbed as regular Constables in terms of seniority and by adjudging suitability. Counsel submits that the S.S.P., Fatehgarh Sahib as also Inspector General of Police, Zone-I, Punjab had forwarded the case of the petitioner for absorption as Constable on 5.2.2009 and 26.8.2009. Since case of the petitioner was not being considered for absorption, CWP No.3296 of 2010 was filed which was disposed of by this

Court in the light of the order dated 24.2.2010 directing the respondent

authorities to take a final decision upon the claim of the petitioner. However, vide impugned order dated 11.6.2010 (Annexure P-3) claim of the petitioner stands rejected.

It has been argued that even though, the petitioner was involved in FIR No.53 dated 17.4.1998 under sections 326, 324, 323, 34 I.P.C registered at Police Station, Bassi Pathana and had also been convicted by the Trial Court but subsequently a compromise was entered into between the parties and under such circumstances the conviction of the petitioner could not stand in his way of being absorbed on the post of Constable. Counsel further contends that other S.P.Os, who were lower in seniority have already been absorbed and have been allotted regular constabulary numbers. A plea of discrimination has been raised by citing the instance of one Anil Kumar, who was also serving as S.P.O but whose services were dispensed with on account of registration of FIR but subsequently who has been reinstated and has been absorbed as Constable. Counsel has also adverted to an order dated 10.1.2011 at Annexure P-8 to assert that a number of S.P.Os and against whom criminal proceedings were initiated have been absorbed as Constables. Precise argument raised is that the impugned order dated 11.6.2010 (Annexure P-3) cannot sustain as the same is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

Per contra, learned State counsel submits that under Rule 12.14 (1) of the Punjab Police Rules, 1934 a recruit has to be of 'Good Character' and great care has to be taken in selecting recruits. Rule 12.14 (1) is as under:-

“12.14 Recruits Status (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police services from candidates

presenting themselves for enrolment.”

It is contended that the petitioner herein is a convict and under Rule 12.14(1) was not found suitable for being absorbed as a Constable. That apart, State counsel submits that suitability test of S.P.Os was conducted but the petitioner could not qualify such suitability test and accordingly he was not absorbed as a Constable. Learned State counsel has very fairly brought to the notice of the Court that the instructions/policy dated 11.5.2009 that have been cited in the impugned order have been struck down vide judgement dated 13.1.2016, passed by a Coordinate Bench of this Court in ***CWP No.14975 of 2009 (Pawan Kumar Vs. State of Punjab and others)***.

Counsel for the parties have been heard at length.

The expressions “Good Character” and “suitable for police service” employed in Rule 12.14 (1) of the Punjab Police Rules, 1934 have not been defined. Accordingly, such terms would have to be construed and understood in the light of the peculiar facts of each case.

The petitioner herein was implicated in FIR No.53 dated 17.4.1998 on the basis of statement of Bhag Singh son of Dyal Singh. Allegations were against the present petitioner as also co-accused Balwinder Singh. The present petitioner is alleged to have given two *Gandasi* blows on the person of the complainant. As per version of the complainant it was not an occurrence that took place on a spur of the moment. The accused are alleged to have abused the complainant on previous occasions and the occurrence is stated to be premeditated. Trial Court convicted the petitioner and sentenced him to 2 years R.I and to pay a fine of Rs.1,000/-. During pendency of the appeal and the matter having been referred to the Mega Lok Adalat, a compromise effected between the

parties was taken note of and accordingly benefit of probation has been extended under section 4(1) of the Probation of Offenders Act. The benefit of probation was also extended to co-accused Balwinder Singh. Be that as it may, conviction of the present petitioner and Balwinder Singh was maintained and the order of sentence of the Trial Court was modified to the extent of grant of benefit of probation upon furnishing probation bond for a period of 6 months in the sum of Rs.5,000/- with one surety in the like amount before the Trial Court.

Petitioner may have been granted benefit of probation but his conviction is for offence under section 326 I.P.C i.e. of having caused grievous hurt. No exception can be taken to the opinion formed by the competent court as regards the petitioner not being “suitable for police service” under Rule 12.14(1) of the Punjab Police Rules, 1934. In ***State of M.P and another Vs. Parvez Khan, 2015(1) S.L.R, 489*** observations were made by the Hon'ble Supreme Court which would be relevant and apply even in the present case and were to the following effect:-

“From the above observations of this court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and should have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police force ought not to enter the police force.”

The instance of Anil Kumar, S.P.O would have no bearing in the facts of the present case. Anil Kumar having faced criminal prosecution was acquitted by the competent court of law. To the contrary petitioner

stands convicted, though, subsequently released on probation and the conviction having been maintained. Even the list of officials mentioned in the order dated 10.1.2011 (Annexure P-8) would reveal that certain S.P.Os had faced criminal prosecution but such officials were acquitted either by the Trial Court or in appeal. In certain cases the investigating agency had filed a cancellation report and which was also approved by the competent authority. The facts of the present case are entirely different. The argument of discrimination and violation of Articles 14 and 16 of Constitution of India as raised on behalf of the petitioner proceeds on a fallacious premise that the petitioner was vested with a right to be absorbed as a Constable inspite of conviction. It is well settled that the doctrine of equality enshrined in Article 14 of the Constitution of India does not envisage negative equality. A reference in this regard may be made to the judgement of the Hon'ble Supreme Court in ***Fuljit Kaur Vs. State of Punjab, 2010(3) R.C.R (Civil), 322.*** Even if it was to be assumed that certain S.P.Os have been granted constabulary numbers inspite of not being of “Good Character” it cannot mean that the doctrine of equality under Article 14 of the Constitution of India would be invoked to perpetuate an illegality.

The impugned order dated 11.6.2010 (Annexure P-3) further reveals that certain S.P.Os who could not pass the suitability test in the years 1997 and 2000 filed various writ petitions demanding constabulary numbers without passing the suitability test. This Court disposed of the writ petitions on 28.11.2002 and in pursuance to the directions given by this Court a fresh Central Recruitment Board was constituted in the year 2003. The parameters and physical standards of adjudging the suitability of S.P.Os for absorption were relaxed so as to cover maximum number of S.P.Os, who

had served during the period of terrorism. It has been recited in the impugned order that even by applying relaxed standards of suitability, petitioner could not qualify the suitability test for the post of Constable. Such factual matrix has not been rebutted at the hands of the petitioner.

In view of the above, this Court does not find any patent infirmity or illegality in the order passed by the D.G.P., Punjab dated 11.6.2010 (Annexure P-3) denying to the petitioner a constabulary number.

No interference in the matter is warranted.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

18.08.2017
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No