

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

CWP No.6191 of 2013 (O&M)

Reserved on: 10.07.2017

Date of Decision: August 11, 2017

Lakhwinder Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. H.P.S. Ishar, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The petitioner who was duly selected for the post of Constable under the Punjab Police Department, has questioned the validity of the order dated 31.12.2012 at Annexure P-5, whereby offer of appointment to the post has been declined.

2. Brief facts of the case are that the petitioner had applied for the post of Constable in the Punjab Armed Police in the month of August, 2006 and having successfully negotiated the recruitment process, his name was approved for enlistment as constable vide order dated 27.04.2007 and was allotted constabulary No.13/640. It so transpires that after the petitioner had submitted his application for the post of Constable, FIR No.311 dated 19.11.2006,

under Sections 452, 323, 148, 149, 427 of the Indian Penal Code, Police Station City Faridkot, was registered on the complaint of Manjit Singh. The petitioner faced trial in the case and vide judgment dated 14.09.2007, passed by the Judicial Magistrate, 1st Class, Faridkot, he was acquitted. Vide impugned order dated 31.12.2012, passed by the Additional Director General of Police, Admn. Punjab, the petitioner has been declined appointment as Constable on the strength of Rule 12.14 of the Punjab Police Rules 1934 and in the light of the judgment of Hon'ble Supreme Court in **Delhi Administration vs. Sushil Kumar (1996)11 SCC 605**. Another reason cited in the impugned order is that the waiting list was operated for six months i.e. upto 04.06.2007 whereas he was acquitted in the criminal case on 14.09.2007 and as such, he has no right to claim appointment as Constable after expiry of the selection process. It is against such brief factual backdrop that the instant petition has been filed.

3. 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, it was not a case of concealment of facts. Counsel further contends that the

petitioner already stands acquitted by the trial Court vide judgment dated 14.09.2007 and as such, denial of appointment to the petitioner under such circumstances would be arbitrary and violative of Articles 14 & 16 of the Constitution of India.

4. Per contra, learned State counsel would submit that at the stage of approval of name of the petitioner for enlistment as constable, FIR No.311 dated 19.11.2006, already stood lodged and such material information was not available with the respondent-authorities, otherwise petitioner would not have been approved for enlistment. Reliance is placed upon Rule 12.14 Sub Clause(1) of the Punjab Police Rules, which provides that a recruit shall be of “**good character**” and therefore great care shall be taken in selecting the men from amongst the candidates. State counsel would justify the passing of the impugned order in the light of judgment of the Apex Court in **Sushil Kumar's case (supra)**.

5. Counsel for the parties have been heard.

6. The claim of the petitioner has been considered and rejected in the backdrop of Rule 12.14(1) of the Punjab Police Rules 1934 which guards against recruitment of Constables who are not of “**good character**”. The rule reads as follows:-

*“12.14. Recruits -status of--- (1) Recruits shall be of “**good character**” and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrollment”*

7. Any discussion on the subject would necessarily involve

the issue of moral turpitude in a uniformed service. Ordinarily, the tests to be applied in judging whether a certain offence involves moral turpitude or not, may be enumerated as follows:-

(i) Whether the act on the basis of which, criminal prosecution has been launched was such as would shock the moral conscience of society in general.

(ii) Whether the motive which led to the act was a base one; and

(iii) Whether the act committed by the accused shows depraved character and lack of ethical fibre which society looks down upon as repulsive.

8. It would be relevant to advert to the judgment of acquittal of the petitioner placed on record at Annexure P-7 and to examine the allegations levelled against him. FIR had been lodged at the instance of Manit Singh against the petitioner as also a number of other co-accused. Precise allegation against the petitioner was of having inflicted a hockey blow on the upper left arm of the complainant. Judgment of acquittal has been recorded by observing that the prosecution had relied upon two witnesses who were injured but none of them supported the prosecution version. Both the injured witnesses stated that some unknown persons had caused the injuries to them and they failed to identify the accused present in the Court. Trial Court recorded a finding that there is no incriminating evidence on the basis of which the accused could be convicted.

9. The word “**good character**” employed in Rule 12.14(1) has not been defined. It is settled proposition of law that judicial review is not directed against the decision but the decision making process. In the absence of a concrete definition and meaning of “**good character**” and “**suitable for police service**” it was imperative for the decision making process to include proper reasoning to be adopted by the authority to refuse an appointment on the basis of the allegation levelled against the petitioner and which in any case was not proved. The impugned order does not disclose any reasoning whatsoever so as to conclude that the petitioner was not of “**good character**” and for Rule 12.14(1) of the Punjab Police Rules to have brought into operation and to the detriment of the petitioner.

10. In *Commissioner of Police and others vs. Sandeep Kumar (2011) 4 SCC 644* which involved selection and appointment of a Head Constable (Ministrial) in Delhi Police and which was cancelled on the ground that the candidate had concealed the fact, while filling the application form, about his involvement in a criminal case though acquitted later on, the Apex Court examined the character of the offence involved in Sections 324/34 of the Indian Penal Code and whether it involved moral turpitude. The Delhi Police Department had cancelled the candidature of Sandeep Kumar and declined to offer him appointment as a Constable though selected on merit. The Central

Administrative Tribunal on an application having been filed by the aggrieved candidate agreed that the cancellation order was justified and dismissed the OA. The Delhi High Court did not agree with the view of the Tribunal and the order cancelling the candidature of Sandeep Kumar was quashed. The Supreme Court agreed with the view of the High Court but expressed its own opinion in the matter. The Court relied on the rationale in the decision rendered by Lord Denning in *Morris vs. Crown Office*, (1970) 2 Q.B. 114 observing in paragraphs 11 to 14-A of Sandeep Kumar judgment as follows:-

“11. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

12. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

13. The modern approach should be to reform a person instead of branding him as a criminal

all his life.

14. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the

roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down. But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should

permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]

13A. In our opinion, we should display the same wisdom as displayed by Lord Denning.

14A. As already observed above, youth often commit indiscretions, which are often condoned."

11. The observations of the Supreme Court reproduced hereinabove would come to the benefit of the petitioner. Rather case of the present petitioner would be on a higher pedestal inasmuch as there was no concealment as regards registration of FIR.

12. 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 v. 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 14.4.1998,

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 4.10.1999 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 12.3.2003 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 24.3.2008, 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 (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.

13. 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.”

14. Applying the dictum laid down in **Joginder Singh's case (supra)**, impugned order dated 31.12.2012 cannot sustain.

15. Even the judgment in Delhi Administration's case (supra) would have no application 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, the FIR had not even been registered.

16. This Court would be constrained to observe that the impugned order declining appointment to the petitioner on the post in question even suffers from non-application of mind. In the impugned order there is a reference to a waiting list and which was operative for six months that is up to 04.06.2007 and a reasoning has been adopted that the petitioner would have no legal right to

claim appointment as Constable after expiry of the selection process. While passing the impugned order, it has been completely overlooked that name of the petitioner was not a waiting list but rather his name figured in the select list and accordingly, his enlistment as constable was approved vide order dated 27.04.2007 and he was allotted Constabulary No.13/640.

17. For the reasons recorded above, the present petition is allowed. Impugned order dated 31.12.2012 (Annexure P-5) is set aside. Respondents are directed to issue appointment letter to the petitioner on the post of Constable within a period of 30 days from the date of receipt of a certified copy of this order. Such appointment would 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 have been appointed along with all consequential benefits except actual arrears of salary for the period in question.

18. Petition allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

August 11th, 2017
anju rani

***Whether speaking/reasoned* : Yes**
***Whether reportable* : Yes**