

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO. 38098 OF 2012

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari calling for the records pertaining to proceedings dated 24.11.2012 passed by respondent No.5 and quash the same by holding the same as illegal, arbitrary, against the principles of natural justice and unconstitutional and consequently to direct the respondents to issue posting orders to the petitioner by reinstating him into service.

2. Heard Sri K.Jagadishwar Reddy, learned counsel for the petitioner and Smt. S. Siva Kumari, learned Standing Counsel for Central Government.

3. It is the case of the petitioner that he was selected as a Constable (General Duty) in the Central Industrial Security Force vide proceedings dated 4.4.2012 after undergoing regular selection process. He was sent to training with effect from 16.4.2012 and after appointment, the petitioner was asked to fill up attestation form and to enclose character and antecedent certificates along with attestation form. In the said attestation form, the petitioner had disclosed that he was arrested by Police and was prosecuted in Cr.No.54 of 2009 dated 24.5.2009 by Khanapur Police Station under Section 324 read with 34 IPC. In view of the compromise arrived at between both sides, the said criminal case ended in acquittal vide orders dated 29.8.2009 of the competent criminal Court in Lok Adalat Case No.6489. It is the further case of the petitioner that he was acquitted even before he had responded to the notification issued by the respondents and after undergoing regular selection process he was appointed as a Constable during the year 2012. But the

respondents, without appreciating the said acquittal recorded by the competent Court in Lok Adalat Case No.6489 dated 29.8.2009, issued a show cause notice on 3.11.2012 directing the petitioner to submit explanation within three days. The petitioner has submitted an explanation clearly bringing to the notice of the respondents that he was acquitted by competent criminal Court in Lok Adalat. Without considering the said explanation submitted by the petitioner, the respondents have terminated the services of the petitioner vide orders dated 24.11.2012. Challenging the same, the present Writ Petition is filed.

4. Learned counsel for the petitioner submits that the involvement of the petitioner in a criminal case under Sections 324 and 325 read with 34 IPC does not constitute moral turpitude and in view of the acquittal of the petitioner by the competent Criminal Court on 29.8.2009, the respondents were not correct in terminating the services of the petitioner. Therefore, he contends that the impugned termination orders are liable to be set aside.

5. Learned counsel for the petitioner further contends that elaborate guidelines were set out by the Hon'ble Supreme Court in *AVTAR SINGH vs. UNION OF INDIA AND OTHERS*¹ wherein it has been held that a duty is cast upon the authorities to examine the involvement of a person in a criminal case and its consequences, and then only, the authorities have to take appropriate action. But, in the instant case, the respondents have mechanically passed the impugned termination orders without examining as to whether mere involvement of the petitioner in a criminal case disentitles him to be continued as a Constable. The respondents have also failed to notice that the petitioner was acquitted in

¹ (2016) 8 SCC 471

the criminal case even before the respondents have notified the post of Constable and prays that a direction should be given to the respondents to pass appropriate orders by examining the case of the petitioner duly taking into consideration, the guidelines set out by the Hon'ble Supreme Court in the case referred to supra.

6. Learned Standing Counsel for Central government contends that the petitioner had not disclosed about his involvement in the criminal case and his acquittal, in the original application. It is only at the time of filling up of the attestation form, he had disclosed that he was involved in a criminal case. The petitioner had wantonly suppressed about his involvement in a criminal case. The respondents have thoroughly examined the case of the petitioner and passed appropriate orders. Hence, there are no merits in the Writ Petition and the same is liable to be dismissed.

7. Having considered the rival contentions, this Writ Petition is disposed of directing the petitioner to submit a fresh representation to the respondents seeking reinstatement into service by duly setting aside the orders of termination and upon such submission the respondents shall consider the same by duly taking into account, the guidelines set out by the Hon'ble Supreme Court in the case of *AVATAR SINGH* (supra) and pass appropriate orders within four weeks from the date of receipt of such representation.

8. It is needless to observe that the respondents shall consider the case of the petitioner afresh uninfluenced by the impugned termination orders dated 24.11.2012.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI ,J

Date: 10.12.2018

KPM

