

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP No.19494 of 2012
Date of decision: 31.08.2018

Angrej Singh

...Petitioner

Vs.

State of Punjab and Ors.

...Respondents

CORAM:HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Sidhu, Advocate for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

JITENDRA CHAUHAN, J.(ORAL)

By filing this writ petition under Articles 226 and 227 of Constitution of India, the petitioner seeks quashing of Instructions dated 12.05.2010 (Annexure P-1); orders of dismissal dated 09.07.2012(Annexures P-4 and P-5). The petitioner seeks further relief of mandamus seeking to direct the respondents to re-instate the petitioner from the date of his dismissal with all consequential benefits.

It is contended that the petitioner along with other co-accused was falsely implicated in FIR No. 53, dated 09.02.1996, registered under Sections 366, 376(2)(g), 466, 468 and 506 of the Indian Penal Code (for short, 'the IPC') at P.S. Kotwali, Barnala. The petitioner was convicted under Section 376(2)(g) and 366 IPC and sentenced to undergo rigorous imprisonment for a period of ten years vide judgment of conviction and order of sentence dated 16.05.1998. The appeal preferred by the petitioner

was dismissed qua conviction, however, the order of sentence was reduced to the period already undergone, subject to payment of enhanced fine of ₹50,000/-. It is contended that the conduct of the petitioner which is basis of the registration of the FIR and subsequent conviction, does not render his retention in service undesirable. A show-cause notice ought to have been served upon the petitioner before passing the order of dismissal. The punishment of dismissal is to be awarded only on account of gravest misconduct. In support of his assertions, learned counsel has placed reliance on the judgment passed by this Court in CWP No. 19578 of 2011 titled as "H.C. Arora vs. State of Punjab and Others decided on 28.02.2013; Jagbir Singh Vs. State of Haryana & Another 2014 (4) SLR 510; Om Parkash Postman vs. The Director, Postal Services, (Post & Telegraphs Department), Punjab Circle, Ambala and Others 1971 (1) SLR Vol. 5 648; and Parkash Nath Saidha, Naib Tehsildar Vs. The Financial Commissioner (Revenue) Punjab, Chandigarh and Others LPA 209-1971, decided on 18.01.1972.

On the other hand, learned State counsel submits that the petitioner indulged in a heinous crime as reflected in FIR No.53 (*ibid*). Even the appeal preferred by the petitioner against the judgment of conviction and order of sentence stands dismissed by this Court vide judgment dated 26.08.2010. The conduct of the petitioner clearly falls under the category of moral turpitude and such a person does not deserve to be retained in the disciplined force.

Heard.

The petitioner, a Head Constable in the Police Department, is a member of the disciplined force. The conviction of the petitioner under

Sections 376(2)(g) and 366 IPC renders him ineligible to be retained in the department. Even otherwise, had the petitioner been able to earn acquittal, his retention in job is a matter to be decided by the employer. The petitioner cannot claim retention in job as a matter of right. A reference can be made in this regard to the ratio of law laid by Hon'ble the Supreme Court in ***Commissioner of Police New Delhi & Ors. Vs. Mehar Singh (2013) 7 SCC 685***, wherein, it was held as under:-

"23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the

Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In R.P. Kapur v. Union of India AIR 1964 SC 787 this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. *The expression "honourable acquittal" was considered by this Court in S. Samuthiram (2013) 1 SCC 598. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that*

in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

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33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

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35. *The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."*

In the instant case, the petitioner is a convict and the

judgment of conviction passed by the trial Court stands maintained by this Court for the offences punishable under Sections 366 and 376(2) (g) IPC which is a heinous crime involving 'moral turpitude'. The Court feels that such a person does not deserve to be retained on the establishment of the police force. The ratio of law laid down in the authorities cited by learned counsel for the petitioner is clearly distinguishable on facts of the instant case.

In view of above the orders of dismissal (Annexure P-4 & P-5) do not call for any interference. Consequently, the same are upheld and the present writ petition being devoid of merit is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

August 31, 2018
Poonam (II)/atulsethi

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether reportable:</i>	<i>Yes/No</i>