

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

CWP No. 23904 of 2013 (O&M)

Date of decision: 30.08.2018

Mukhtiar Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sushil Gautam, Advocate for
Mr. Satbir Rathore, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, the petitioner seeks quashing of the impugned order dated 25.09.2013 (Annexure P-7) passed by respondent No.2 whereby the claim of the petitioner to restore the Constabulary Regtl. No.429/2-IRB allotted to him, vide office order/letter No.3049-86/CB-PC dated 16.02.2004 was rejected.

The sole contention raised on behalf of the petitioner is that the Constabulary number allotted to the petitioner was withdrawn illegally on account of matrimonial discord between brother of the petitioner and his wife leading to the registration of FIR No.20 dated 14.07.2002, registered under Sections 498-A, 506, 406, 149 of IPC against the petitioner and his brother. The dispute in question was

subsequently resolved and the FIR in question was quashed by this Court on 19.04.2012.

On the other hand, learned State counsel submits that initially the petitioner was appointed as Special Police Officer in District Jalandhar and subsequently, he was absorbed as Constable in India Reserve Battalion whereby the Constabulary No.2/429 was allotted to him. The said Constabulary number was rightly withdrawn on account of registration of FIR against the petitioner. However, she admits that the FIR in question stands quashed by this Court. She further submits that the petitioner moved an application (Annexure P-4) for restoration of constabulary number which was rightly rejected by respondent No.2, vide impugned order dated 25.09.2013 (Annexure P-7) in the light of instructions dated 11.05.2009 (Annexure P-8).

Heard, learned counsel for the parties and perused the record minutely.

The petitioner is seeking restoration of the Constabulary No. No.429/2-IRB allotted to him, vide office order/letter No.3049-86/CB-PC dated 16.02.2004 which was withdrawn due to registration of FIR FIR No.20 dated 14.07.2002, registered under Sections 498-A, 506, 406, 149 of IPC against him and his brother on account of matrimonial dispute between his brother and his brother's wife. The foundation of the impugned order dated 25.09.2013 (Annexure P-7) stands already quashed.

Instructions dated 11.05.2009 (Annexure P-8) reads as under:-

"The highest standards of character, rectitude and professional fitness and suitability is required to be maintained for requirement of the police force, so as to ensure and enhance its capacity to fight crime and terrorism and be equal to the challenge that the law enforcement situation in the country today poses.

The Supreme Court judgment in Delhi Administration versus Sushil Kumar (1996) 11 SCC 605, dispels all doubts as to whether a person discharged or acquitted of an offence or offences can be refused appointed in the police in view of his antecedents or character. The material of Judgment read as under:-

"The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/ acquitted of the offence punishable under Section 304 IPC under Section 321 read with Section 34 IPC and under Section 321 he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law ? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidates suitable to post under the State. Though he was found physical fit, passed the written test and interview and was provisionally selected on account of his antecedents record. The appointing authority found is not desirable to appoint a person of such record as a constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the directions for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What should be relevant is the conduct or character of the candidate to be appointed to the services and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of consequences, the consideration relevant to the case is of antecedents of the candidate. Appointing Authority, therefore, has rightly focused

this aspect and found it not desirable to appoint him to the service".

The views of the Supreme Court have been followed by the Division Bench of the Punjab & Haryana High Court, speaking through Justice Hemant Gupta, in its dated judgment in CWP No. 5908-CAT-2003, rendered on March 24, 2008 in the group of three cases related to UT, Chandigarh itself. All the three cases were cases of acquittal/discharge of the concerned candidates seeking appointment in the Chandigarh Police.

Having given the matter in depth consideration from all angles, it has been decided as a matter of policy that the department should decline enlistment into the police force to those Special Police Officers, if their acquittal is based on technical grounds, there is benefit of doubt or where witnesses have resiled or where there was a compromise between the complainant and the accused. However, exceptional cases not falling in the categories mentioned above may be referred to this office for decision.

In view of this, policy decision circulated by this office vide memo No.2047-71/E-3(4) dated 14.05.2008 would stand modified accordingly. If some special police officers have been enlisted under the provisions of policy dated 14.05.2008 whose acquittal was on parameters mentioned in para 4, their cases should be reviewed and if they are to be discharged they may be given show cause notices.

The pending cases may be decided under revised policy."

In the considered opinion of this Court, the instructions dated 11.05.2009 (Annexure P-8), reproduced above cannot be made basis for rejection of the claim of the petitioner. In Delhi Administration's case (supra), Hon'ble the Supreme Court has laid emphasis on verification of character and antecedents of the individual. In that case, the incumbent was prosecuted for the offences punishable under Sections 304-A, 394, 324 read with Section 34 IPC. However, in

the instant case, the offences for which the petitioner was tried are not of serious nature so as to categorize them as offences involving 'moral turpitude'. As such, the ratio of law laid down in Delhi Administration's case (supra) is distinguishable on facts of the instant case. Except the said FIR, there is nothing adverse against the petitioner. Since the FIR stands already quashed against the petitioner, therefore, this Court feels that the present petition deserves to be allowed.

In view of the above, the present petition is allowed. Consequently, the impugned order dated 25.09.2013 (Annexure P-7) passed by respondent No.2 is hereby set aside. The respondents are directed to restore the Constabulary No. No.429/2-IRB allotted to him, vide office order/letter No.3049-86/CB-PC dated 16.02.2004 within a period of three months from the date of receipt of certified copy of the order.

30.08.2018

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(JITENDRA CHAUHAN)
JUDGE

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