

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.734 of 2017 (O&M) in
CWP No.2669 of 2009
Date of Decision : 18.01.2018

Ashok Kumar

.... Appellant

VERSUS

State of Haryana & ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Nishant Anand, Advocate and Ms. Gunjan Bansal, Advocate for
the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

B.S.WALIA, J.

1. Intra-court appeal is against the judgement of the learned Writ Court disposing of the writ petition vide order dated 27.03.2017 on challenge to orders dated 07.04.2005 and 05.9.2008 (Annexures P-7 & 11) respectively.

2. Brief facts of the case leading to filing of the instant appeal are that the appellant-petitioner's father died on 20.12.1991 while in service. The appellant-petitioner was appointed as Constable on compassionate basis on 29.12.2004. On verification of antecedents of the appellant-petitioner, it was found that he was facing criminal proceedings with effect from the year 1997, but had not disclosed the same.

3. In the aforementioned background, the official respondents proceeded to withdraw the order of appointment issued to the appellant-petitioner on

29.12.2004 vide order dated 7.4.2005 (Annexure P-7). The appellant-petitioner

was acquitted in the criminal case on 28.11.2007 whereupon his mother submitted an application to the competent authority to re-issue order of appointment to the appellant-petitioner. However, the said plea was rejected. Likewise representation dated 12.8.2008 submitted by the appellant-petitioner was also rejected vide order dated 5.9.2008 (Annexure P-11).

4. In the aforementioned background, prayer before the learned Writ Court was that on acquittal in criminal case, the appellant-petitioner was entitled to be re-appointed and in any case the appellant-petitioner had not been provided with financial assistance.

5. On the other hand, the stand was that the appellant-petitioner suppressed the fact that he was facing criminal proceedings as on the date of submission of application for compassionate appointment and it was detected only on verification of antecedents of the appellant-petitioner. Since he was facing criminal proceedings, order of appointment was withdrawn. Plea for re-appointment was opposed on the ground that even though he had been acquitted in the criminal case, he was not entitled for compassionate appointment as he had not approached the Department with clean hands as he had suppressed the fact of pending criminal proceedings against him on the date of submission of the application for compassionate appointment. As regards the prayer for financial assistance, stand of the respondents was that a sum of ₹2.5 lacs had been offered as financial assistance in the year 2004 but the appellant-petitioner had refused to accept it.

6. The learned Writ Court dismissed the writ petition while leaving it open to the appellant-petitioner to make application to the official respondents for financial assistance to be considered by the competent authority within three

months from the date of receipt of application.

7. Before this Court in the preliminary hearing on 8.8.2017, the only argument raised was that at no point of time any information was solicited from the appellant-petitioner regarding his antecedents while giving him employment on compassionate basis therefore, there was no occasion for him to disclose his involvement in the criminal matter. In fact it was the duty of the State to verify aforementioned aspect and the appellant-petitioner could not be held responsible for concealment.

8. We have perused the record produced by the learned Deputy Advocate General, Haryana and found that in the application submitted for appointment of the appellant-petitioner by his mother, the column "whether there was any other information relevant to the matter in issue" has been left blank. Although the application form does not contain any date yet the same was forwarded by the Superintendent of Police, Yamuna Nagar to the Inspector General of Police, Ambala Range, Ambala Cantt vide memo No.2389 dated 4.2.2000 whereas FIR No.73 under Sections 377/342/34 IPC stood registered at Police Station Naraingarh against the appellant-petitioner on 25.02.1997. The aforesaid fact came to the notice of the authorities when The Commandant, 3rd Battalion, HAP, Hisar wrote a letter vide endorsement No.3167-68 OI/dated Hisar 23.3.2005 in reference to office endorsement No.222-23/WI/29 dated 6.1.2005 with reference to the matter pertaining to appointment of the appellant-petitioner under ex-gratia scheme mentioning therein that verification of character and antecedents of the appellant-petitioner candidate was sent to the Superintendent of Police, Ambala vide office endorsement No.1311-12 dated 27.1.2005 who vide his office endorsement No.6719/SEC dated 14.3.2005 and TPM No.7252-53/SEC dated 21.3.2005 informed that FIR No.73 dated 25.2.1997 under Sections 377/342/34 IPC, Police Station, Naraingarh stood registered against the appellant-

petitioner and he was facing trial in the Court. No doubt, the appellant-petitioner was acquitted by the Principal Magistrate, Juvenile Justice Board-cum-Chief Judicial Magistrate, Ambala City, vide judgment dated 28.11.2007 but the point in issue is that the police force is a disciplined force and while seeking employment in the police force on compassionate basis, at no point of time, it was disclosed by the appellant-petitioner or for that matter by his mother that FIR No.73 dated 25.2.1997 under Sections 377/342/34 IPC stood registered against the appellant-petitioner at Police Station, Naraingarh. Thus, there was a deliberate concealment of facts having vital bearing on the appointment of the appellant-petitioner to a disciplined force.

9. In the circumstances, we are of the considered view that the order of the Writ Court rejecting the challenge to order dated 07.04.2005 (Annexure P-7) by the appellant-petitioner withdrawing his appointment in view of pendency of case FIR No.73 dated 25.2.1997 under Sections 377/342/34 IPC registered against him at Police Station Naraingarh, does not warrant any interference since it was the duty of the appellant-petitioner to disclose in the application form regarding pendency of any criminal case while applying for Government service on compassionate basis. Even otherwise the force to which the appellant-petitioner was seeking appointment being a disciplined force deployed for maintaining law and order, it was all the more incumbent on the applicant to have disclosed pendency of criminal case against him. Not having done so, we do not find any infirmity with the order dated 7.4.2005 or for that matter with the judgment passed by the learned Writ Court.

10. As regards the challenge to order dated 5.9.2008 (Annexure P-11) dealing with the prayer for providing benefit of ex-gratia scheme, it needs mention

appellant-petitioner's mother makes application for financial assistance, the same would be considered by the competent authority within three months from the date of receipt of such application. The Writ Petition was disposed of with the above said observations.

11. Accordingly, finding no merit in the plea to the challenge with regard to withdrawal of appointment of the appellant-petitioner on ground of concealment of FIR No.73 dated 25.2.1997 under Sections 377/342/34 IPC registered against him at Police Station Naraingarh as well as pendency of trial, the instant appeal is dismissed. Consequently, the application for condonation of delay in filing the appeal is also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

January 18, 2018

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No

