

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

**CWP No.26398 of 2016 (O&M)
Date of Decision:-13.02.2020**

Amarjeet Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.K. Arora, Advocate for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA J.

CM-11044-CWP-2019

Application is allowed to the extent of taking on record the accompanying documents at Annexures P-12 and P-13.

Application disposed of.

Main case

The petitioner has filed the instant writ petition questioning the action of the State in denying him appointment to the post of Constable, inspite of being a selected candidate, only on account of registration of an FIR.

Brief facts leading to the filing of the petition are that Punjab Police issued an advertisement dated 31.05.2016 for recruitment of 7416 Constables (Male and Female) for District Police Cadre and Armed Police Cadre in the State of Punjab. The last date for submission of online application was 21.06.2016. Petitioner belongs to the SC (R&O) Category.

Being eligible as per terms and conditions of the advertisement he submitted his application and subjected himself to the process of selection. Petitioner was selected for the post of Constable in the District Police Cadre under the SC (R&O) Category and as per merit secured was allocated District Ludhiana. A provisional selection letter was also issued which was subject to document verification, medical examination and a character/antecedents check. Medical examination of the petitioner was conducted on 07.11.2016 and he was found medically fit for appointment to the post of Constable. Even though other candidates who were selected alongwith the petitioner and had secured a lower merit were permitted to join on the post, the appointment letter has been with-held insofar as the petitioner is concerned on the ground that he stands involved in FIR No.22 dated 11.07.2016 under Sections 406, 498-A IPC registered at Police Station Women Firozpur at the instance of the wife of his brother.

Learned counsel for the petitioner has argued that the appointment could have been denied only in the event of conviction in the criminal case. Mere pendency of an FIR is no ground to deny appointment to the petitioner till such time he is convicted for an offence involving moral turpitude.

Per contra learned State counsel would justify non-appointment of the petitioner by submitting that during character and antecedents verification of the petitioner it had come forth that the FIR in question was pending against the petitioner and as such he was not found entitled for appointment as Constable. In support of such contention reliance has been placed upon judgment of the Hon'ble Supreme Court in ***Delhi Administration Vs. Sushil Kumar (1996) 11 SCC 605***. State counsel has

even referred to Rule 12.14 (1) of the Punjab Police Rules 1934 wherein it has been provided that a recruit shall bear good character and great care is to be taken in selecting recruits. It is urged that even by virtue of Rule 12.14 (1) of the Punjab Police Rule, the petitioner is not entitled to appointment as a Constable.

Counsel for the parties have been heard at length

The issue that would arise in the present case is as to whether the State Government would be justified in denying the appointment to the petitioner merely on account of registration of an FIR inspite of having been selected for the post in question.

The uncontroverted factual premise is that on the date of advertisement and submission of application form there was no FIR against the petitioner. Name of the petitioner figures in FIR No.22 dated 11.07.2016 at Police Station Women Cell Ferozepur under Sections 406/498-A IPC at the instance of his sister-in-law. Challan was presented in the Court after completion of investigation on 22.12.2017 and name of the petitioner had been placed in column No.2. Petitioner is not facing trial inasmuch as no charges have been framed against him. Even an application moved by the complainant under Section 319 Cr.P.C. to summon the petitioner herein to face trial as an additional accused stands dismissed by the Trial Court vide order dated 04.06.2019 at Annexure P-12.

This Court is of the considered view that mere registration of an FIR cannot be made the basis and equated with a finding of guilt recorded by a competent Court. In other words registration of a case cannot lend the colour of conviction. The action of the respondent department in not

issuing an appointment letter to the petitioner for the post of Constable inspite of his selection and merit position would amount to holding the petitioner guilty of the offence. Such a course of action would be totally unwarranted. In taking such view this Court would draw support from the observations made by the learned Single Judge of the Rajasthan High Court in ***Harsh Gupta Vs. Rajasthan State Electricity Board 1995, (1) SCT 485*** and which are as under:-

“On the merits of the case, I would like, once again, to make it clear that at the time of selection, the petitioner had no blemish whatsoever against him. The only material which came into existence after his selection is in the form of registration of first information report against almost all the members of the family of the petitioner roping them in an offence under Section 498A IPC. The question is, whether mere registration of a case by the police can be made the basis for holding that the petitioner's character is doubtful or unsatisfactory. The answer of this question will depend on as to whether registration of a case by the police can be equated with a finding of guilt recorded by a competent Court or Tribunal. Registration of a case simpliciter does not automatically result in conviction of a person. It does not per se cause a stigma on character of a person. Therefore, the information which the police had forwarded to the authorities of the Board regarding the character of the petitioner was misleading. Apparently, the authorities of the Board have, without applying their mind, mechanically acted on the report sent by the police authority at Ajmer. Authorities of the Board never bothered to find out as to what is the nature of the allegation levelled against the petitioner; what is the stage of the case and as to whether the petitioner has been found guilty of an offence. I am of the considered opinion that action which the respondent-Board has taken is not in terms of para 6 of the order of appointment dated

23.11.1991. This view of mine is fully supported by D.B. Judgment of this Court in **Gopi Lal v. State of Rajasthan and another, [1989 (2) RLR 748]**. The Division Bench has observed as under:

We may, therefore, sum up that the service of a Government servant cannot be terminated or the Government servant cannot be discharged from service only on account of the pendency of a criminal case against him. The reason is obvious. Unless the guilt is proved, one is presumed to be innocent. Moreover, criminal case may be launched out of enmity etc. It is, therefore, the conviction and not the pendency of a criminal case which should be taken into account for disciplinary action.”

The judgement in Delhi Administration's case (supra) would have no applicability 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.

Rule 12.14 (1) of the Punjab Police Rules 1934 reads as under:-

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 enrolment.”*

As per mandate of the afore-reproduced rule the recruits are to be of good character and great care has to be taken while selecting recruits. There is no material whatsoever with the respondent authorities to conclude that the petitioner herein is not of good character. Mere registration of an FIR cannot be made the basis of invoking the Rule 12.14 (1) and particularly in a situation where pursuant to investigation having

been carried out, the petitioner has not even been challaned and no charges have been framed against him. Denial of appointment letter inspite of being a selected candidate on the strength of Rule 12.14 (1) of the Punjab Police Rules cannot sustain.

For the reasons recorded above, the present petition is allowed. Respondents are directed to issue an appointment letter to the petitioner for the post of Constable in the light of his merit position in the SC (R&O) category within a period of 8 weeks from the date of receipt of certified copy of this order. The petitioner is also held entitled to all the consequential benefits in the nature of seniority, pay fixation etc. w.e.f. the date a person lower in the merit to him had been so appointed to the post of Constable in the same very process of selection. It is, however, clarified that the petitioner shall not be paid the actual arrears of salary for the period in question.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

February 13, 2020
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No