

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

CWP No. 11605-2015

Date of Decision:-06.03.2020

Surender Singh

...Petitioner

vs.

State of Haryana and anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vivek Sharma, Advocate
for the petitioner

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI, J. (Oral)

Petitioner has filed the present writ petition seeking quashing of order dated 03.09.2013 (P-9), vide which his appeal has been rejected; order dated 28.01.2013 (P-7) and reply dated 18.12.2014 (P-11) vide which his services as Conductor, has been dismissed. Further prayer of the petitioner is for issuance of direction to the respondents to reinstate him on the post of Conductor along with all consequential benefits.

Brief facts of the case are that pursuant to advertisement, petitioner applied against the post of Conductor under S.C. Category. The petitioner was selected and was offered appointment letter, vide letter dated 04.04.2012 (P-1). The petitioner also gave attestation form with regard to character verification dated 10.04.2012 (P-2). F.I.R No. 506 dated 07.09.2010 was got registered by uncle of the petitioner against the neighbour Sunita with regard to demarcation of land. Thereafter, a cross

F.I.R No. 467 was registered under Sections 452/323/506/147/149 IPC at P.S. Jhajjar against petitioner and other family members (P-3).

Thereafter, Assistant Collector 2nd Grade Jhajjar, got the land demarcated to resolve the dispute by Tehsildar and ASI Incharge, who found that Sunita neighbourer has encroached upon the land of the petitioner, as per report (P-4). There were no specific allegations against the petitioner. However, the petitioner was issued letter dated 04.10.2012 by which he has been asked to show cause notice that as per clause 9 of the appointment letter, you have misstated the fact and not disclosed that F.I.R is pending against you (P-5). Petitioner submitted his reply stating therein that the F.I.R was a result of family dispute. Further petitioner was not at the spot at the time of occurrence stated in the F.I.R.

Petitioner was then called for personal hearing on 21.12.2012 by respondent No. 2 and he pointed out that he has not made any mis-statement as per clause 9 of the appointment letter, as it was only asked whether he bears a good moral character or not. But respondent No. 2 issued an order dated 28.01.2013 (P-7) dismissing the petitioner from service. Petitioner filed an appeal but the same was also dismissed on 03.09.2013 (P-9) by respondent No. 1. The petitioner gave legal notice dated 10.11.2014 for his reinstatement but respondent No. 2 denied the reinstatement vide reply dated 18.12.2014 (P-11). Hence the present writ petition.

Learned counsel for the petitioner submits that the services of the petitioner has been terminated on the pretext that he has made a false averments with regard to his character and the same was in violation of clause 9 of the appointment letter. The only ground for dismissing the petitioner from service is that he has not mentioned the fact that one F.I.R is

pending against him.

Learned counsel further submits that the impugned orders are liable to be set aside, as the department has not conducted any enquiry before dismissing the petitioner from service. The petitioner has not misstated any facts and F.I.R has been wrongly lodged against the petitioner. No allegations have been levelled against the petitioner in the F.I.R and the petitioner was also not present at the spot.

Learned counsel for the petitioner has further produced on record the photocopy of the application form of Haryana Staff Selection Commission wherein in para 14 a candidate has to declare that he has not been convicted by any Criminal Court.

On the other hand, learned State counsel has argued that the petitioner has rightly been dismissed from service, as per condition No. 9 of his appointment letter whereby the character and antecedents of the employee was to be verified after joining. Reference has been made to instructions dated 07.06.1994 (R-1). The respondents later on informed by the office of Supdt of Police Jhajjar, vide letter dated 28.08.2012 that F.I.R No. 467 was registered under Sections 452/323/506/147/149 IPC at P.S. Jhajjar against the petitioner and his family members (R-2). Reference has been made to affidavit of the petitioner (R-1) whereby the petitioner had undertaken to fulfill all the terms and conditions of the appointment of offer letter, but his character was not found good, as there was criminal case registered against him, as mentioned above.

Heard learned counsel for the parties at length.

Reference at the very outset can be made to Clause 9 of the appointment letter dated dated 04.04.2012 (P-1), which reads as under:-

“Your character and antecedents have not been got verified and in case subsequently any adverse facts came to the notice of the State Government regarding your character and antecedents, your services are liable to be terminated, in view of the instructions issued by the Chief Secretary to Government of Haryana vide letter No. 52/9/54-GS (1) dated 07.06.1994.”

Reference at this stage can further be made to application form of character verification given by the petitioner. In the said form there was clause 13 which was with regard to any conviction by the Court is there or not. Since there was no conviction, the petitioner did not mention it.

The question for consideration before this Court is that on account of non-supply of the information with regard to pending F.I.R against the petitioner, can the services of the petitioner be terminated.

It is not in dispute that the petitioner was convicted by the Judicial Magistrate Jhajjar, vide judgment dated 24.01.2017 but later on filing appeal, he was acquitted from the charges levelled against him, vide judgment dated 19.07.2018 (P-12).

A bare perusal of letter dated 07.06.1994 (R-1) shows that the same is with regard to verification of character and antecedents of a person. The said letter does not bar a candidate against whom F.I.R is being lodged.

Reference at this stage can be made to a judgment of this Court in a case of ***Shri Bhagwan vs. The Director General of Police, Haryana and another, passed in CWP No. 14462-2013, decided on 05.08.2015*** wherein also the petitioner was not considered for appointment to the post of General Duty Constable despite having been selected, on the ground that the petitioner was implicated in F.I.R No. 330 under Sections 323/324/34 and was not honorably acquitted. The writ petition was allowed and the

operative part of the judgment reads as under:-

“No doubt that on perusal of judgments dated 24.4.1995 and 15.9.2004 (Annexures P-3 and P-4) charges against the petitioner, have not been proved, as in one case the victim had compromised and in another case the witness turned hostile but the fact remains that the petitioner has not been convicted. The Haryana Government instructions dated 2.7.2007 (Annexure P-5) and clarification dated 13.11.2007 (Annexure P-6) wherein the Director General of Police in a similarly situated case, although not relating to the same selection, in response to the query to the Chairman Selection Board constituted for selecting the candidates, clarified that the candidates who were involved in criminal cases stand acquitted at the time of declaration of selection list can be considered for appointment, even if they had not disclosed the factum of facing trial or acquittal in the particular column of application form.

*The aforementioned instructions are still in vogue and have not been withdrawn as is evident from the averments in the written statement. The Hon'ble Supreme Court in Civil Appeal No. 1403 of 2007 titled as **Commissioner of Police and others Vs. Sandeep Kumar** wherein in similar circumstances the candidate was denied appointment because of non-disclosure of the information held that since the candidate had been acquitted and the instance was of 20 years back, therefore, non-disclosure would not be detriment in seeking appointment. There is another aspect of the matter a Division Bench of this Court in CWP No. 4452 of 2008 titled in **Amit Kumar Vs. State of Haryana and others** decided on 15.5.2008 on going through the order of acquittal passed by the trial Court, proceeded to direct the respondents to grant the*

appointment to the post of Constable when the petitioner was found to be honourably acquitted . Though, the present case is not of honourable acquittal, but the fact remains, that since the accused victim and the witnesses have compromised/ turned hostile the prosecution would not have been able to prove alleged charges and in such situation the petitioner would have been honourably acquitted, had the matter been tried on merits.”

Reference can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***U.T. Chandigarh and others v. Pardeep Kumar and others, 2018 (1) SCT 394*** wherein respondents were declared successful in the recruitment for the post of Constable (Executive) in Chandigarh Police after clearing the Physical Efficiency Test, Physical Measurement Test, written test and interview. They were denied employment on the ground that respondents have been prosecuted in a criminal trial for the offences under Section 323/506/34 IPC and were acquitted by the trial Court on 29.01.2010 giving them the benefit of doubt. The appeal was allowed and the cancellation of candidature of respondents was upheld. In para 13, 15 and 17, it has been observed as under:-

“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or

discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character.

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasoning for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post. As pointed out earlier, the Screening Committee examined each and every case and reasoning for their acquittal and took decision that the respondents are not suitable for the post of Constable in Chandigarh Police. The procedure followed is as per guideline 2(A) (b) and object of such screening is to ensure that only persons with impeccable character enters police force. While so, the court cannot substitute its views for the decision of the Screening Committee.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized.

As held in Mehar Singh case, the decision of the Screening

Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.

Reference at this stage can further be made to a judgment of Rajasthan High Court in a case of **Harsh Gupta vs. Rajasthan State Electricity Board, 1995 (1) SCT 485** wherein petitioner was appointed on 23.11.1991 for the post of Junior Engineer-I (Electrical) and one of his condition of the petitioner's appointment was that his character will be verified by the police and if the police finds the character to be doubtful or unsatisfactory, his appointment will be terminated without any notice and compensation. But one F.I.R under Section 498-A was pending against him and on coming to know about pending F.I.R against him, he was terminated from service. The writ petition filed against termination order was allowed and it was held that 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. Mere pendency of F.I.R cannot be made basis for denying relief to the petitioner.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of **Joginder Singh vs. U.T Chandigarh, 2015 (2) SCC 377** whereby respondents-U.T. Invited

applications for the post of Constables and the petitioner applied against the same. The petitioner was found fit for selection. However, after verification of his antecedents and character, it was found that he was involved in F.I.R No. 200 dated 14.04.1998 under Sections 148/149/323/325/307 IPC. But he was acquitted in this F.I.R on 04.10.1999. He filed O.A before the CAT in which respondents were directed to issue appointment letter to the petitioner. The Respondents filed writ before this Court which was allowed. But the Hon'ble Supreme Court allowed the appeal of Joginder Singh and held that appellant was only involved in family feud. F.I.R was lodged before applying for the post. He was also acquitted much before he was called for interview/medical examination. His acquittal will qualify him for the appointment. In para 21, it has been observed as under:-

21. *Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the Appellant was not up to the mark to appoint him to the post. The Appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in the case of Jagtar Singh v. Director, Central Bureau of Investigation : 1993 Supp (3) SCC 49, which states as under:*

4...It is not necessary for us to go into the question as to whether the claim of privilege by the Respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the Appellant. We have carefully examined the material on the basis of which the Respondents have come to the conclusion that the Appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of

the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the respondents. Only on the basis of surmise and conjectures arising out of a single incident which happened in the year 1983, it has been concluded that the applicant is not a desirable person to be appointed to the Government Service. We are of the view that the applicant has been unjustifiably denied his right to be appointed to the post on which he was selected and recommended by the U.P.S.C.”

Applying the ratio of the above mentioned judgments to the facts of the present case, in the facts of the present case, the petitioner was only required to mention that whether he was convicted or not by any criminal Court. The petitioner was offered appointment letter on 04.04.2012 and he gave application form of character verification on 10.04.2012 (P-2) which was with regard to any conviction by the Court is there or not. The petitioner was not convicted at that time. He was convicted, vide judgment dated 24.01.2017 but was acquitted on filing appeal, vide judgment dated 19.07.2018 (P-12). Further the F.I.R registered against the petitioner is a cross F.I.R as firstly his uncle has registered F.I.R against the neighbour Sunita later on Sunita lodged the cross F.I.R against the petitioner and family members. The F.I.R was only with regard to dispute of encroachment of land. Probably the petitioner did not mention about the registration of F.I.R out of fear that if he did so he would automatically be disqualified. But the fact is that it was not such serious offence like murder, dacoity or rape and thus, a more lenient view should be taken in the matter. Moreover,

after facing the trial, he has been acquitted.

In view of the above, the writ petition is allowed and order dated 03.09.2013 (P-9), order dated 28.01.2013 (P-7) and reply dated 18.12.2014 (P-11) is set aside. The petitioner be reinstated and is entitled to all consequential benefit.

06.03.2020

G Arora

(RITU BAHRI)

JUDGE