

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

CWP No.30326 of 2019 (O&M)

Reserved on 05.10.2020

Date of Decision:9.10.2020

(Heard through VC)

Ramji

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner seeks to challenge the order whereby his services from the post of Constable stands terminated by the respondent-State by invoking Rule 12.18 of the Punjab Police (Haryana Amendment) Rules, 2015.

2. Facts in brief are that on 16.04.2018, Haryana Staff Selection Commission advertised 5000 posts of Male Constable (General Duty) along with several other posts. As per advertisement, the selection process consists of Physical Screening Test, Knowledge Test, and Physical Measurement Test. Thereafter, the interview and the personality test were to be held of the candidates and on the basis of their combined merit scores, appointments were to be made. Being fully eligible, the petitioner applied for the above said post under Category No.1 for the post of Male Constable (General Duty).

On the basis of interview-cum-personality test, Physical Screening Test, Knowledge Test & Physical Measurement Test, the petitioner was declared successful in the General Category and he was called for filling up the character verification form in which he duly mentioned that he was involved in FIR No. 299 Dated 01.06.2016 Under Section 12 Of The POSCO Act, 2012 which was registered at Police Station Samana, and he stood acquitted in the said FIR. His candidature was rejected during the process of character verification on the ground that he had been involved in a FIR involving moral turpitude and vide Rule 12.18 (3) (e) of the Punjab Police (Haryana Amendment) Rules, 2015 (Rule 2015 for short) he could not be considered for appointment. The rejection of the candidature of the petitioner is under challenge in this writ petition.

3. Mr. S.K Nehra, learned counsel appearing on behalf of the petitioner herein challenges the impugned order on the ground that he had disclosed his involvement in FIR No. 299 Dated 01.06.2016 under Section 12 of The POSCO Act, 2012. It is contended that there is no concealment on his behalf, while further contending that he stood acquitted by the Additional Sessions Judge, Panipat as far back as 17.3.2017 much prior to the issuance of the advertisement. It is further argued that he could not have been removed under Rule 12.18 (3) (e) of Rules 2015 as the petitioner was acquitted. Further reliance has been placed by the counsel for the petitioner on a judgement of Supreme Court in Avtar Singh versus Union of India 2016 (3) S.C.T. 672 to argue that mere involvement in some petty case would not render a person unsuitable for a job. Counsel also places reliance upon Rajesh vs Union Of India 2016(4) S.C.T. 364 to argue that High Court has held termination is

arbitrary even in those cases where there was non-disclosure/ concealment of criminal cases.

4. Per contra, Mr. S.S Pannu, DAG, Haryana would submit that there is no infirmity in the order terminating the services of petitioner by invoking Rule 12.18(3)(e) of the Rules of 2015, since the petitioner stood acquitted on 'technical grounds' and not honourably. It is submitted that he was provisionally appointed, without prior verification of his character and antecedents, in view of the office instructions dated 28.2.2019. These instructions specified that relaxation would not confer any right to a candidate to remain in job, if anything adverse is reported against him/her at a later stage. On verification, it was found he had been involved in FIR registered under Section 354D IPC and under the POCSO Act and therefore would be ineligible for appointment, as he had not been honourably acquitted. Counsel too relies upon the judgment rendered in **Avtar Singh case (supra)** to argue that even if the employee has made a declaration truthfully of a concluded criminal case, the employer still has a right to consider antecedents and cannot be compelled to appoint the candidate.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case as well as the case-law relied upon.

6. The facts are not in dispute to the extent that the petitioner was selected on the post of Constable pursuant to having applied to the advertisement issued by the Haryana State Selection Commission. It is also not in dispute that the petitioner had disclosed about his involvement in FIR No. 299 dated 01.06.2016 under Section 12 of the POSCO Act, 2012 and his

subsequent acquittal by the court. The controversy that needs to be resolved is whether the petitioner can be allowed to continue in service as a Constable of the police force in the State of Haryana .

7. Rule 12.18 of the Rules 1934 is reproduced below:-

"12.18: Verification of character and antecedents:-

(1) The appointing authority shall send the verification forms of candidates recommended for appointment by the Haryana Staff Selection Commission to the District Police and Criminal Investigation Department with a copy to the District Magistrate for the verification of character and antecedents, as per Form No. 12.18 and Government instructions issued from time to time on the subject.

2) The candidate shall disclose the fact regarding registration of FIR or criminal complaint against him for any offence under any law along-with the current status of such case in application form and verification cum attestation form irrespective of the final outcome of the case. Non-disclosure of such information shall lead to disqualification of the candidature outrightly, solely on this ground:

Provided that where a candidate, who as a juvenile had earlier come in conflict with law and was dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, shall not suffer any disqualification on account of non-disclosure of this fact either in application form or verification cum attestation form.

(3) Where the appointing authority upon verification of character and antecedents of the candidate recommended for appointment comes to know that criminal proceedings against a candidate is in progress and the status of the case is reported to be either under investigation or challaned or cancelled or sent untraced or withdrawn or under trial or has either been convicted or acquitted or the candidate has preferred appeal

against the order of the court; the appointing authority upon verification shall deal with the cases of candidates reported to have criminal cases registered against them and to the matters connected therewith as stated hereinafter;

(a) Where, a candidate is found to have been convicted for an offence involving moral turpitude or punishable with imprisonment for three years or more, shall not be considered for appointment.

(b) Where charges have been framed against a candidate for offence(s) involving moral turpitude or which is punishable with imprisonment of three years or more, shall also not be considered for appointment.

(c) Where, the candidate has disclosed the fact regarding registration of criminal case as described under sub-rule (2) above, and where the status of any case at the time of verification of antecedents of the candidate by local Police is found to be either as 'withdrawn by the State Government' or 'cancelled' or 'sent untraced' or 'acquitted' for any offence, under any law, such candidate shall be considered for appointment in Haryana Police:

(d) Where the 'cancellation report' or 'an untraced report' in a case against a candidate has been submitted by the investigating agency in the competent court of law, the appointment shall be offered only if approval/acceptance of such cancellation or untraced report has been accorded by the trial Court.

(e) Where the candidate has been acquitted in offences related to sovereignty of the State or national integrity i.e. spying against national interest/waging war against the State/act of terrorism/communal disturbance/smuggling of arms, ammunition or Narcotic Drugs & Psychotropic Substances or counterfeit currency etc. besides heinous crimes e.g. murder, rape, dacoity, robbery, kidnapping for ransom, acid attacks,

human trafficking, Protection of Child from Sexual Offences Act, 2012 or Prevention of Corruption Act, 1988 etc., 'on technical grounds' i.e. where, in the opinion of the Court the star/material prosecution witnesses have either been killed or have died or remained untraced or turned hostile or won over and the candidate has been acquitted on account of aforementioned circumstances; such candidates shall not be considered for appointment.

(4) If it is ever revealed that a candidate has got appointment either by concealment of facts or by furnishing false or wrong information or by submitting fake or forged document / certificate, he shall be discharged from the service by the appointing authority from the date of appointment, summarily i.e. without holding a regular disciplinary proceedings, treating him ineligible for service and salary paid to him may also ordered to be recovered.

8. The argument canvassed that the petitioner stands acquitted and should be appointed as a constable lacks force. The term as to what is 'honourable acquittal', was considered by Supreme Court in **Deputy Inspector General of Police and Another v. S. Samuthiram (2013) 1 SCC 598**, where it was held as under:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal

Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

9. The Supreme Court in the case of **Union Territory, Chandigarh Administration And Ors. Versus Pradeep Kumar And Another (2018) 1 SCC 797** while dealing with issue as to ‘*whether the candidature of the respondents who had disclosed their involvement in the criminal cases and also their acquittal could be cancelled by the Screening Committee on the ground that they are not suitable for the post of constable in Chandigarh Police and whether the court can substitute its views for the decision taken by the Screening Committee*’ upheld the importance of integrity and high standard of conduct in police force, while holding acquittal in criminal case is not conclusive of suitability of candidates in a concerned post. The Supreme Court held ‘*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.’ Based on the recommendation of the screening committee, the Supreme Court upheld the order of termination while setting aside the judgement of the High Court.

10. In the instant case, the petitioner had informed about his acquittal in FIR No.299 dated 01.06.2016 under Section 12 of the POSCO Act, 2012, so there is no question of concealment. However, the question whether he was honourably acquitted or not would be borne out from the judgement annexed along with the writ petition as Annexure P-4, wherein both the prosecutrix and her father turned hostile. The petitioner was acquitted ‘*while extending benefit of doubt to him*’ which acquittal cannot be equated with a clean acquittal after a full-fledged trial has taken place and the witnesses have not compromised or turned hostile. Rule 12.18 (3) (e) of the Rules of 2015 is explicit and clearly specifies that if a candidate has been acquitted in a murder case or in cases involving rape, dacoity, robbery, kidnapping for ransom, acid attacks, human trafficking, Protection of Child from Sexual Offences Act, 2012 or Prevention of Corruption Act, 1988 etc., on account of the material witnesses having turned hostile or won-over then such candidate cannot be considered for appointment. Therefore, in view of the aforesaid rule, the petitioner cannot be deemed eligible for appointment.

11. The judgement of **Avtar Singh (Supra)** would be of no help to the petitioner as Rule 12.18(3)(e) of the Rules of 2015 were not in question. As stated above the Rule does not permit a candidate to be appointed, who has been acquitted on technical grounds, as in the instant case. Even

otherwise, the aforesaid judgment also has specified that even in cases where there is a truthful disclosure about a concluded case, the employer would still have a right to consider the antecedents of the candidate and could not be compelled to appoint any such candidate, who is ineligible as per the Rules.

12. Therefore finding no merit in this petition, the same stands dismissed.

(JAISHREE THAKUR)
JUDGE

October 9, 2020
Pankaj*

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