

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-10367-2021 (O&M)
Date of Decision: 02.08.2021

Ombir

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

Ms. Safia Gupta, A.A.G. Haryana.

GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video conferencing on account of restrictions due to outbreak of COVID-19 pandemic.

Petitioner-Ombir stated to be aged 25 years has filed the present writ petition *inter alia* with a prayer for setting aside the order dated 09.04.2021 (Annexure P-13) passed by respondent No.2, along with further relief as mentioned in the petition.

Learned counsel for the petitioner has briefly given the facts involved in the present case as under. He submits that vide advertisement dated 17.07.2015 (Annexure P-3), 5,000 posts of Male Constables were advertised and petitioner belonged to BC-'B' category. In the year 2017, a waiting list was also drawn in which petitioner figured.

The positive case put up by learned counsel for the petitioner is that firstly he was falsely implicated in FIR No.245 of 2017. The said FIR is dated 05.08.2017. He secondly, submits that the sting out of the FIR was taken out by the fact that Section 379-B IPC was deleted during investigation.

He thirdly, submits that strictly speaking the provisions of the Arms Act would not have been attracted against him because there was allegedly only a knife which was not found in possession of the petitioner. He then submits that the punishment prescribed under Section 323 IPC is only one year and under Section 324 IPC, it is 3 years.

It is fourthly submitted that the trial proceeded and it had reached at its conclusion by the middle of the year 2019.

Learned counsel then submits that in the meantime, around dated 09.09.2019, the department decided to fill up the unfilled posts from the waiting list. Accordingly, the petitioner was also asked to get himself medically examined as a candidate before appointing him. This letter dated 11.09.2019 is appended as Annexure P-10. In this medical test, he was declared fit.

It is then the specific case submitted by the petitioner that the petitioner had in fact disclosed at the time of joining that he was involved in FIR No.245 of 2017 and the trial is about to conclude. This submission came true, as on 14.10.2019 he was acquitted by the trial Court and the judgment has become final as no further appeal was filed against the said judgment. He secondly submits that two verifications were got conducted by the authorities and in both the verifications, it was found that petitioner has been acquitted. The grievance therefore of the petitioner is that inspite this, vide the impugned order dated 09.04.2021, the authorities have proceeded under Rule 12.18 (3) (b) of Punjab Police Rules (Amendment 2015) and his candidature has been cancelled. He secondly submits that it would not be appropriate to consider the acquittal as on this issue, he supported by the ratio of the judgment laid down by the Hon'ble Supreme Court of India in the case titled as "***Civil Appeal No.2325 of 2009***

decided on 11.11.2014, titled as Joginder Singh Versus Union Territory of Chandigarh and Others".

Reply has been filed on behalf of respondents No.1 and 2.

Learned counsel appearing for the respondents submits that the impugned order dated 09.04.2021 deserves to be upheld as it has relied upon the earlier judgment of the Hon'ble Supreme Court of India dated 02.07.2013.

She further submits that the authorities have taken into consideration all the facts and then passed the impugned order.

After hearing counsel for the parties, this Court is of the view that there is force in the submission made by the counsel for the petitioner that in fact the authorities ought to have considered his case under Rule 12.18 (3) (c) of the Rules also. This Court would refrain itself from observing any further on the merits of the case as at this stage, it is deemed appropriate to remand the matter to the Competent Authority i.e. Commandant 5th Battalion, Madhuban, to examine the matter under Rule 12.18 (3) (c) of the Punjab Police Rules (Amendment 2015) and also consider the submission made on behalf of the petitioner, wherein, reliance has been placed upon the *Joginder Singh's case (supra)*.

It is directed that the Competent Authority would pass a fresh order *de hors* the order passed earlier dated 09.04.2021. It is further made clear that in case, the petitioner is found entitled to continue in job, necessary order regarding consequential benefits, be also passed by the Competent Authority, within a period of 3 months from the date of receipt of the certified copy of this order.

Ordered accordingly.

02.08.2021
Shruti

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No