

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

**CWP No.13577 of 2020 (O&M)
Judgment Reserved on:17.02.21
Pronounced on:-27.05.2021**

Sonu Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Rana, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

TEJINDER SINGH DHINDSA J.

Petitioner who was duly selected for the post of Constable, (General Duty) in the Haryana Police Department, has questioned the validity of order dated 29.08.2020 (Annexure P-9) whereby offer of appointment to the post has been declined.

Facts of the case are in a very narrow compass. Respondents issued advertisement dated 16.04.2018 advertising 5000 posts of Male Constables (General Duty). Out of these 900 posts were reserved for the SC Category. Petitioner who belongs to the SC Category applied for the post and subjected himself to a process of selection which also included a written examination. Final merit was determined and result was declared on 28.02.2019. Petitioner secured 52.02 marks whereas the last candidate pertaining to SC Category who has been duly

selected and appointed obtained a lower merit position i.e. 51.40 marks. It so transpires that at the stage of submitting his application for the post, petitioner had disclosed that he was involved in FIR No.150 dated 30.03.2015 under Sections 323, 452, 506 read with Section 34 of the Indian Penal Code, registered at Police Station, Sector 55, Faridabad. Petitioner having faced trial was acquitted by the Criminal Court vide judgment dated 06.09.2019 (Annexure P-7). Claim of the petitioner seeking appointment was rejected earlier in point of time vide order dated 01.07.2020. At that stage petitioner filed CWP No.11548 of 2020 assailing the order of rejection on the ground that the same had been passed only for two reasons i.e. a criminal case against the petitioner was still pending and that the petitioner had concealed the fact as regards his arrest. Alongwith such petition, petitioner had attached the judgment of acquittal as also copy of order dated 26.05.2015 vide which petitioner had been granted concession of pre-arrest bail and as such had never been arrested. CWP No. 11548 of 2020 was allowed by this Court vide order dated 10.08.2020 (Annexure P-8). The order of rejection dated 01.07.2020 was set aside and directions were issued to the respondent authorities to re-consider the claim of the petitioner. It is thereafter that the order dated 29.08.2020 (Annexure P-9) has been passed and which has led to the filing of the instant petition.

Learned Senior counsel representing the petitioner would argue that in pursuance to a regular selection process, the petitioner was duly selected and as such merely on the basis that the petitioner stood trial in a criminal case, he cannot be deprived of his vested right of appointment to the post. Another limb of the argument raised is that at

the stage of submitting application for the post, the criminal case was pending against the petitioner and the trial has culminated in his acquittal. Denial of appointment to the petitioner under such circumstances is contended to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. Heavy reliance has been placed upon judgment of the Apex Court in ***Joginder Singh Vs. Union Territory of Chandigarh and others 2015 (1) SCT 87***. Reliance has also been placed upon judgment of this Court in CWP No.4568 of 2013 titled as ***Pawan Kumar versus State of Haryana and anothers*** decided on 08.04.2015 and such judgment having been affirmed by the Letters Patent Bench vide judgment dated 26.05.2016 in ***LPA No.1059 of 2015 (State of Haryana and others Vs. Pawan Kumar)***. It has also been contended that the petitioner was not guilty of any concealment of facts. Petitioner's acquittal by extending benefit of doubt cannot be held against the petitioner so as to deny him appointment to the post of Constable inspite of having been declared successful in a regular selection process.

Per contra learned State counsel would submit that even though name of the petitioner figured in the list of provisionally selected candidates but such selection was subjected to verification of character/antecedents. Case of the petitioner was sent to the Commissioner of Police, Faridabad for verification of his antecedents and it was intimated vide office letter dated 24.06.2019 that FIR No.150 dated 30.03.2015 under Sections 323, 452, 506 and 34 IPC registered at Police Station Sector 55, District Faridabad, stands registered against him and he is facing trial in the matter. Passing of the impugned order is justified by submitting that the matter would be covered against the

petitioner in the light of Rule 12.18 (3) (b) of the Punjab Police Rules 1934 (as amended from time to time) as petitioner was facing trial in a matter where charges had been framed in relation to an offence which entailed punishment of 7 years i.e. more than 3 years.

Counsel for the parties have been heard and pleadings on record have been perused.

Operative part of the impugned order dated 29.08.2020 (Annexure P-9) declining the claim of the petitioner for appointment to the post of Constable reads as follows:-

“Therefore, the present case is covered under Rule 12.18 (3) (b) of the Punjab Police Rules (Amended-2015). The relevant extract of the same as under “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.

In view of the said provisions of Rules, it is worthwhile to mention here that the petitioner was involved under Section 452 of IPC, which entails punishment of 7 years i.e. more than 3 years and at the time of verification, when the case of the petitioner was considered by the department, his case was under trial before the Hon'ble Court. Moreover his subsequent acquittal was not an Honourable acquittal.

Thus, keeping in view of the aforementioned rules and circumstances of the case, I am of the considered view that

the claim of the petitioner namely Sonu Kumar (Regn. No.9031138149/SC) S/o Sh. Laxman Singh is not tenable and liable to be rejected.

I, pass an order accordingly.

**(Surinder Pal Singh) IPS
Commandant
5th Bn. HAP, Madhuban”**

Undoubtedly it has weighed with the competent authority that the acquittal of the petitioner in the criminal proceedings was not an honourable acquittal and he had been given benefit of doubt.

A Division Bench of this Court in ***Bhag Singh Versus Punjab and Sind Bank, 2006 (1) SCT 175*** interpreted the term “***benefit of doubt in Criminal proceedings***”. It was noticed that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of “***benefit of doubt***” by the criminal Court is superfluous and baseless. The Court, as such, termed such acquittal an honourable acquittal. In ***Shashi Kumar versus Uttar Haryana Bijli Vitran Nigam Limited and another 2005 (1) RSJ 718***, a Division Bench of this court was again dealing with the term “an honourable acquittal”. It was observed that the moment a criminal charge fails in a Court of law, the person would be deemed to be acquitted of the blame.

In view of such dictum laid down I find sufficient merit in the contention raised by the learned Senior Counsel that the petitioner's acquittal by extending benefit of doubt cannot be held against him so as to deny him appointment. Be that as it may, as would be discernible from the discussion in the following paragraphs, such aspect would not

be of any consequence.

Essentially claim of the petitioner has been declined on the strength of Rule 12.18 (3) (b) of the Punjab Police Rules (as amended in 2015)

Relevant extract of Rule 12.18 reads as under:-

“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; he 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.”

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Perusal of the statutory rule reveals that once a candidate is recommended for appointment, thereafter shall commence a process of verification of character and antecedents. In a situation where the process of verification of character and antecedents reveals that such candidate is facing trial in criminal proceedings and the charges have been framed in relation to offence (s) involving moral turpitude or which is punishable with imprisonment of three years or more, such candidate shall not be considered for appointment. Such is the mandate of the rule. It would also be crucial to point out as to what would be the stage of consideration for appointment as envisaged in the afore-reproduced rule. Needless to observe that after culmination of the recruitment/selection process and a candidate having been recommended for appointment, the stage of consideration would coincide with the process of verification of character and antecedents.

The undisputed facts of the present case are that petitioner had applied for the post of Male Constable (General Duty) pursuant to advertisement dated 16.04.2018. Having subjected himself to a process of selection including a written examination, the final merit was determined and result was declared on 28.02.2019. Having been recommended for appointment in the light of the merit position secured, the process of verification of character and antecedents commenced soon

thereafter. Insofar as the present petitioner is concerned, the case was sent to the Commissioner of Police, Faridabad, for verification of his character and antecedents and it was intimated vide office letter No.38786 dated 24.06.2019 that FIR No.150 dated 30.03.2015 under Sections 323, 452, 506 and 34 IPC, Police Station Faridabad, was registered against him and matter was under trial. It is also not in dispute that charges had been framed against the petitioner apart from other offences also under Section 452 of the Indian Penal Code which entails a punishment of more than 3 years i.e. upto 7 years imprisonment. In other words at the stage of consideration, petitioner was facing trial and charges had been framed against him for an offence which was punishable with imprisonment of three years or more. Rule 12.18 (3) (b) specifically and categorically contains a bar as regards the petitioner to be considered for appointment. It may be taken note of that the judgment of acquittal in the criminal proceedings came later in point of time i.e. on 06.09.2019 at Annexure P-3.

Where the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. The uncontroverted legal position is that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. A reference in this regard may be made to the judgments of the Honourable Supreme Court of India in *State of Uttar Pradesh Vs. Singhara Singh and others*, AIR, 1964, Supreme Court, 358; *Haresh Dayaram thakur v. State Maharashtra and others* (2000) 6 SCC 179 and *Dhanajaya Reddy v.*

State of Karnataka etc.etc. (2001) 4 SCC 9.

Acceptance of the prayer of the petitioner for being appointed to the post in question on the basis of judgment of acquittal dated 06.09.2019 (Annexure P-3) would tantamount to incorporating in rule 12.18 (3) (b) an additional situation i.e. where a candidate has been recommended for appointment and in the process of verification of character and antecedents it is found that such candidate is facing trial and has been charged for an offence which is punishable with imprisonment of three years or more then such stage of consideration be deferred to await the outcome of the criminal trial and to thereafter issue appointment letter only upon such candidate having earned acquittal. Creation of such a situation and adoption of such course of action would be alien to the rule and is not permissible. As per dictum noticed hereinabove the procedure envisaged under the rule has to be followed and the unambiguous language of the rule mandates that if at the stage of consideration the candidate is facing trial and has been charged for an offence punishable with imprisonment of three years or more he is not to be considered for appointment. Claim of the petitioner falls squarely within the mischief of the rule and this Court would have no hesitation in recording that the impugned order dated 29.08.2020 (Annexure P-9) rejecting the claim of the petitioner for appointment is as per mandate of Rule 12.18 (3) (b) of the Punjab Police Service Rules 1934 (as amended from time to time).

In such view of the matter petitioner cannot draw any mileage from the fact that at the stage of submitting his application for the post in question he had disclosed his involvement in FIR No.150

dated 30.03.2015.

The judgment of the Apex Court in **Joginder Singh's case (supra)** upon which reliance has been placed is wholly misconceived. In such matter Joginder Singh had applied for the post of Constable under Union Territory of Chandigarh and his name was amongst 40 candidates who were declared successful in the year 2001. A view had been taken that his claim for appointment cannot be denied only on the basis that he was involved in FIR No.200 dated 14.04.1998 under the provisions of Sections 148, 149, 323, 325 and 307 IPC which had been registered at Police Station Sadar Bhiwani as Joginder Singh having faced trial having earned acquittal vide judgment dated 04.10.1999 passed by the Trial Court.

The material distinguishing factor is that Joginder Singh had earned acquittal in the criminal case much prior to the stage of consideration. His name had been declared as successful in the recruitment process in the year 2001 whereas the judgment of acquittal had already been rendered in the year 1999.

Similar would be the position even in the case of **Pawan Kumar (supra)** that had been relied upon on behalf of the petitioner. In such matter Pawan Kumar had applied for the post of Male Constable pursuant to advertisement dated 20.7.2008 issued by the Haryana Police Department. Pawan Kumar was involved in FIR No.361 dated 06.12.2010, under Sections 364/302/201 and 34 IPC, registered at Police Station Safidon. He had faced trial and vide judgment dated 24.12.2011 rendered by the Trial Court he had been acquitted. The result of the selection Board for the post of Constable in which Pawan Kumar had

participated was declared after the judgment of acquittal.

In the present case at the vital stage of consideration, the petitioner was still facing trial and has earned acquittal at a later point of time.

The judgments relied upon on behalf of the petitioner in **Joginder Singh's case (supra)** and **Pawan Kumar's case (supra)** would have no applicability to the facts of the present case.

For the reasons recorded above, this Court does not find any infirmity in the impugned order dated 29.08.2020 (Annexure P-9).

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

27.05.2021
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No