

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

CWP No.13287 of 2017

Reserved on 09.08.2022

Pronounced on: **05.09.2022**

Palwinder Singh (deceased, now represented by LR.s.) Petitioner

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Alka Chatrath, Advocate, for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

JAISHREE THAKUR.J

1. The petitioner herein seeks to challenge the order dated 01.12.2007, Annexure P-1, whereby he was discharged from service as SPO on the basis of registration of an FIR. However, on acquittal, he seeks reinstatement and also seeks directions to consider his case for appointment as Constable and to issue him constabulary number.

2. The perusal of the paper book would go on to show that the petitioner, after completing initial training in the year 1988, was appointed as Special Police Officer in the State of Punjab. However, in the year 2002, the respondent department took a decision for absorption of SPOs as Constables in the Police Department and accordingly, a test was conducted by the Central Recruitment Board. The petitioner participated in the test. However, since he was nominated as accused in FIR No.113, dated 27.11.2007, under Sections 409, 217, 120-B IPC and Section 15 of NDPS Act registered at

Police Station Harike, he was discharged from service vide order dated 01.12.2007. In the said FIR, the petitioner as well as the co-accused Surinder Kumar, Head Constable, were acquitted of the charges leveled against them vide judgment dated 25.09.2012, Annexure P-2. On being acquitted, the petitioner approached the respondents and submitted representation dated 13.05.2013, however, no action was taken on his representation. On his repeated requests, he was informed that since he was a SPO and not working as regular Constable, his case for reinstatement cannot be considered. Thereafter, he came to know that his name was not included in the list for absorption as Constable. He sought information under RTI Act where he found his name figured in the list of candidates to be absorbed for Constables.

3. As regards Surinder Kumar, co-accused in the FIR, who was placed under suspension like the petitioner, and was awarded punishment of stoppage of two annual increments, in appeal, his punishment order was set aside and he was reinstated in service with all consequential benefits. But the petitioner was treated differently. He was not taken back in service. He sent a legal notice dated 22.03.2017, but it was not replied. Hence, the present petition.

4. Learned counsel appearing on behalf of the petitioner would argue that the FIR against the petitioner was registered on 27.11.2007 and after three days, without following due procedure, he was discharged from service vide order dated 01.12.2007. He along with co-accused Surinder Kumar faced trial and ultimately, vide judgment dated 25.09.2012; both were acquitted of the charge by giving the benefit of doubt. It is argued that

it has been held by the Supreme Court in ***Joginder Singh Versus Union Territory of Chandigarh and others 2015 (2) SCC 377*** that once the Government servant/alleged accused is acquitted, he has the right to hold public office on being absolved from such charges. He has, therefore, prayed to consider the case of the petitioner for appointment as Constable and to issue him constabulary number as he had been included in the list (Annexure P-5). Counsel would rely on similar cases where the constables who had been dismissed from service on account of FIR pending were reinstated in service, namely ***Gurmeet Singh (deceased) through his wife Kirpal Kaur Versus State of Punjab and others, 2014 (11) R.C.R.(Civil) 198***; CWP No. ***14975 of 2009*** titled as ***Pawan Kumar (Constable) Versus State of Punjab and others***, decided on 13.01.2016 and CWP No. ***9848 of 2013*** titled as ***Baljit Singh Versus Director General of Police, Punjab and others***, decided on 06.05.2016.

5. On the other hand, learned State counsel would argue that since the work and conduct of the petitioner was not found satisfactory and he was arrested in FIR No.113, he was discharged from his services. The order of discharge was passed keeping in view Rule 12.14 of Punjab Police Rules, 1934 and **policy dated 11.05.2009** which specified that the department should decline enlistment into police those Special Police officers if their acquittal is on technical grounds, there is benefit of doubt or where the witnesses have resiled or there is a compromise between the complainant and the accused. It is submitted that though the petitioner had participated in the test for absorption as Constable, but due to his involvement in the FIR, he was discharged from the post of SPO. Moreover, the instant petition is

not maintainable as he was acquitted in the year 2012 and he filed the instant petition on 01.06.2017, which is time barred. The petitioner was acquitted on the basis of benefit of doubt, therefore, he is not entitled for reinstatement.

6. I have heard learned counsel for the petitioner as well as learned State counsel and have also perused the paper book.

7. The question that would arise for consideration is whether the petitioner, who was enlisted as a SPO and also being considered for appointment as Constable, can be offered appointment after he has been acquitted in the FIR he was arrested under?

8. The facts are not in dispute. The petitioner, who was initially appointed as SPO and was considered for absorption as Constable, was discharged from service of SPO from his district w.e.f. 27.11.2007 on the ground of his arrest under FIR No.113, dated 27.11.2007, under Sections 409, 217, 120-B IPC and Section 15 of NDPS Act registered at Police Station Harike. He now seeks appointment as a Constable on the ground that he stands acquitted in the said FIR vide judgment dated 25.09.2012. Immediately after his acquittal, he approached the authorities for reinstatement vide his request dated 13.05.2013, however received no response. He then approached the authorities seeking information as to whether his name was on the list prepared for absorption from SPO to the rank of Constable and reply was furnished on 28.05.2016. The petitioner also came to know that the Head Constable, who was named in the FIR along with him and who had been dismissed from service, had been reinstated.

9. Policy dated 11.05.2009 which has been relied upon by the respondent State to deny reinstatement, specified that the department should decline enlistment into police those Special Police Officers if their acquittal is on technical grounds, there is benefit of doubt or where the witnesses have resiled or there is a compromise between the complainant and the accused, has already been quashed in **Pawan Kumar (Constable)'s case (supra)**. In the instant case, the discharge order is simpliciter on the basis of a FIR being registered against him, in which proceedings he stands acquitted. The reading of the judgment as passed by the trial Court would reveal that the petitioner was acquitted. The trial Judge, on appreciation of the evidence, concluded that there was no question that the accused had misappropriated the poppy husk which was the charge levelled against the petitioner.

10. The petitioner was discharged from service only on account of the registration of FIR. In similar circumstances, in the matter of ***Gurmeet Singh (deceased) through his wife Kirpal Kaur's case (supra)***, the learned Single Judge allowed the writ petition where the claim of a dismissed SPO for reinstatement after being acquitted was allowed. The said judgment noted instructions dated 14.05.2008 issued by the Director General of Police, Punjab wherein it was decided to treat SPO's at par with Punjab Police personnel. On the basis of said letter, the case of the deceased petitioner was considered under Rule 16.3(1) of the Punjab Police Rules, 1934 and he was ordered to be reinstated.

11. In a similar matter in ***Baljit Singh's case (supra)***, the petitioner who was working as SPO was discharged, being a daily wager, on account of the FIR that was registered against him. On acquittal, he approached the

department to be taken back in service and his request was rejected, as was the appeal filed. The writ petition was allowed by relying on Rule 16.2 (2) of the Punjab Police Rules, 1934 where an enrolled police officer who has been dismissed and then acquitted, is liable to have his order of dismissal reviewed. The said judgment also relied upon a decision of the Division Bench of this Court and observed :

*“In similar circumstances, a Division Bench of this Court in **CWP No.3196 of 1997 Raman Kumar Vs. State of Punjab and others decided on 09.09.1998** has also set aside the order of discharge on the ground that once the sole reason for discharge was lodging of the FIR, then on account of acquittal the S.P.O. was liable to be taken back in service. The relevant part of the judgment reads as under:-*

“The solitary ground on which the petitioner was discharged from service vide dated 29.1.1996 (Annexure P-1) is that he was involved in a case under the Prevention of Corruption Act. The petitioner was acquitted by the Special Judge, Patiala, vide judgment dated 7.9.1996 Annexure P-2 by observing that there was not even an iota of evidence against him to connect him with the crime and that the prosecution had failed to prove its case against him. As such, he was acquitted honorably. Infact, the order Annexure P-1 is bad in law inasmuch as it indicted the petitioner before he could be tried by a court of competent jurisdiction. After his acquittal in the case, the petitioner cannot be denied reinstatement in service. In other words, the State is bound to take him back in service. The stand of the State that the petitioner was appointed on daily wages when he was discharged from

service, is not supported by any document on the record. Moreover, the services off the petitioner were not dispensed with as no longer required, as is usually done in the cases of ad hoc/daily wage basis appointments. In this case, it may be stated, at the pain of repetition, that the only ground on which the petitioner was discharged from service was registration of a case against him under the Prevention of Corruption Act, in which he stands acquitted.

For the afore-mentioned reasons, this petition deserves to be allowed. Accordingly, the same is allowed and the order Annexure P-1 whereby the petitioner was discharged from service is hereby quashed with a direction to the respondents to reinstate him as S.P.O. on the same terms and conditions on which he was serving from service. However, the petitioner shall not get back wages between the date of his discharge from service i.e. 24.1.1996 and the date of this order.”

12. The plea of the respondent State that the writ petition ought to be dismissed on the ground of limitation is liable to be rejected since the petitioner had approached the department for reinstatement after his acquittal in 2013 itself, and then proceeded to get information under the RTI Act regarding the fact whether his name had been approved for absorption as Constable. He had filed two RTI applications and then on receiving a positive confirmation, sent a legal notice through his advocate. Therefore, it cannot be said that he has been lax in approaching the courts for redressal of his grievance.

13. Consequently, this Court is of the opinion that the writ petition deserves to be allowed. Ordered accordingly. Resultantly, the order dated 01.12.2007, Annexure P-1, whereby the petitioner was discharged from the service of SPO is hereby quashed. The respondent shall take back the petitioner and enlist him as SPO subject to the verification of his character. If it is found that the persons along with the petitioner on the recommended list have been absorbed as Constables, then he would also be entitled to absorption as Constable. However, it is made clear that the petitioner will not be entitled for any financial benefits for the period he remained out of service on the principle of “no work, no pay” and is only entitled for the notional benefits. Since the petitioner has since expired and his legal heirs are brought on record, the legal heirs would be released all the consequential benefits in accordance with rules.

(JAISHREE THAKUR)
JUDGE

05.09.2022

sanjeev	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No