

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5928-2017

Date of decision : 02.02.2023

Navjeet Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present writ petition has been preferred by the petitioner impugning order dated 11.02.2017 (Annexure P-11) passed by respondent No.3 whereby the appointment of the petitioner to the post of Constable in District Police Cadre stands annulled.

2. The petitioner participated in the recruitment process for the post of Constable. He was declared successful. However, at the stage of verification of his character and antecedents, it was found that the petitioner had faced charges in FIR No.62 dated 25.09.2011, registered for the offences punishable under Sections 21/61/85 of NDPS Act and though earned acquittal vide judgment dated 02.04.2016 whereby benefit of doubt was extended. Apart from that another FIR No. 185 dated 17.11.2014 was registered against him for the offences punishable under Sections 414 and 441 IPC, wherein during investigation, he was declared innocent. The authorities while resorting to the conditions of the standing order relevant to the recruitment found that since the petitioner has faced the charges under

the NDPS Act, he was not entitled to be considered for appointment.

Relevant part of the impugned order reads as under:-

“So as per standing order No. 1/2016 of recruitment of Constable in Police Department Section 13 Sub Section (c) "where a candidate is found to have been acquitted in offences related to sovereignty of the State or National Integrity i.e. Spying against nation/interest/waging war against the State/Act of Terrorism/Communal Disturbance/Smuggling of Arms, Ammunition or Narcotic Drugs and Psychotropic Substances or counterfeit currency etc. besides heinous crime eg. Murder, Rape, dacoity etc. shall not be considered for appointment.

So, keeping in view the standing order no. 1/2016, Recruitment of Constable in Police Department and involvement in criminal cases registered against Candidate Navjeet Singh, I am of the opinion that he is not eligible for appointment in post of constable at this stage.”

3. Mr. Manaise has drawn attention of this Court to the standing order and the relevant provision thereof to contend that the authorities were wrong in annulling the candidature of the petitioner. He submits that the acquittal can be read against the candidature only when the same has been earned on technical ground and the same has been well defined in the standing order itself. The contention is that since the petitioner does not fall within the ambit of exception as carved out in Section 13(c) of Punjab Police Act 2007, the petitioner cannot be said to be unqualified in terms thereof.

4. Mr. Aulakh submits that apart from the fact on which the petitioner has been non-suited, the petitioner while submitting his

application form failed to disclose about the FIR No.185 dated 17.11.2014 and this itself is a ground to non-suit him. To this, Mr. Manaise submits that the subsequent FIR of 2014 was not in the knowledge of the petitioner and the same has been verified from the concerned authority as well. However, so far as the first FIR is concerned i.e. FIR No.62 dated 25.09.2011 since the petitioner had earned acquittal therein, he was under the impression that the same was inconsequential.

5. I have heard counsel for the parties and have gone through the records of the case.

6. The petitioner definitely has right to be considered, but has no absolute right in seeking appointment. The authorities have taken a conscious decision w.r.t. the persons facing charges and resolved not to appoint the persons who may have earned acquittal in the charges 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. As per standing order, such candidates shall not be considered for appointment.

7. A bare perusal of the order of acquittal passed in the criminal trial faced by the petitioner would reveal that the same is purely technical in

nature. The trial Court held that:-

“xx xx xx

17. Further, the contention of defence is that no independent witness was joined by the Investigating Officer at the time of recovery despite availability. It may be mentioned here that Investigating Officer ASI Sulakhan Singh (PW-2) in his cross-examination has deposed that place of recovery was residential colony. There were houses of people. Similar, DSP Garib Dass (PW4) in his evidence has deposed that place of recovery was thoroughfare. Further recovery witness HC Vaisno Dass (PW3) has deposed that there is village Nabipur near place of recovery, but Investigating Officer ASI Sulakhan Singh (PW2) had not joined any independent witness at the time of recovery. It is settled law that non joining of independent witness despite availability is fatal to the prosecution case. There is another lacuna in the present case that Investigating Officer had not given intimation to the person who was known to the accused, while Investigating Officer is supposed to give intimation regarding arrest of accused to his known person. Admittedly, Investigation Officer has proved arrest memo Ex.PG of accused which reflects that intimation of arrest of accused was given to Member Panchayat Harbans Singh, but the said memo Ex.PG does not bear signatures of Member Panchayat Harbans Singh. It is also pertinent to mention here that Investigating Officer in the said memo has left blank place of mobile number of Member Panchayat Harbans Singh meaning thereby Investigating Officer had not given any intimation regarding arrest of accused to Member Panchayat Harbans Singh. Thus, Investigating Officer has violated the provisions of Act.

18. There is another lacuna in the present case that PHC Pawan Kumar (PW5) has submitted his evidence by

way of affidavit Ex.PW5/A, but the said affidavit does not bear seal impression of the concerned court. The affidavits of of formal witnesses to complete the link evidence are defective in as much as these do not bear seal of Magistrate in case Jarnail Singh and another vs State of Punjab, 1982(9) CLT 426 held hat the affidavits of formal witnesses were not bearing seal of the Court before whom the affidavit was sworn. It is held that such being the position such affidavit is no affidavit in the eyes of law.”

8. The Apex Court in '*Union of India and others vs. Methu Meda*', reported as **2022 (1) SCC 1** in somewhat similar circumstances involving appointment to Central Industrial Security Force held as under:-

“xx xx xx

21. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In the case of Pradeep Kumar (supra), this Court has taken the same view, as reiterated in the case of Mehar Singh (supra). The same view has again been reiterated by this Court in the case of Raj Kumar (supra).

22. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not

automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate.”

7. Thus, this Court while exercising writ jurisdiction under Article 226 of the Constitution of India cannot impose a person on the authorities having background as stated hereinabove. Once the employer has taken a conscious decision not to recruit a person with criminal antecedents, the writ court need not interfere in the same.

8. Resultantly, no fault can be found with the impugned order and the present writ petition is hereby dismissed.

(PANKAJ JAIN)
JUDGE

02.02.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No