

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

LPA-1332-2018 (O&M)

Date of Decision: 13.01.2023.

ASHOK KUMAR

..... Appellant

V/s.

STATE OF PUJAB AND OTHERS

....Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.**
 HON'BLE MRS. SUKHVINDER KAUR.

Present Mr. Baltej Singh Sidhu, Senior Advocate, assisted by
 Mr. Himmat Singh Sidhu, Mr. Divij Datt and
 Mr. Chandan Singh, Advocates,
 for the appellant.

Mr. D.K. Singal, Addl. A.G., Punjab.

M.S. RAMACHANDRA RAO, J. (Oral)

This appeal is preferred against the order dt.04.05.2018 passed by the Learned Single Judge in CWP No.17529 of 2015.

In the said Writ Petition, the petitioner had sought quashing of the order dt.07.01.2015 passed by respondent No.2 rejecting the petitioner's representation for appointing him as a Constable.

The background facts are that pursuant to the advertisements dt. 11.09.2010 and 16.09.2010, the petitioner had applied for the post of Constable and had appeared in a Test and also faced interview and qualified. He was medically examined on 13.10.2011.

He was to join on 23.10.2011, but on the very day, an FIR No.190 dt.23.10.2011 was registered under Section 306 IPC at Police Station Guru Har Sahai, and on the said ground, he was not allowed to join his duties.

The petitioner then faced trial and got acquitted of the said charge vide judgment rendered on 09.04.2013.

Subsequently, the petitioner made representation to the respondents to permit him to join his duties. Since there was no response thereto, petitioner then filed CWP No.24206 of 2014 which was disposed of with a direction to the respondents to consider his claim within 6 weeks.

Thereafter, respondent No.2 passed order dt.07.01.2015 (Annexure P-11) rejecting the claim of the petitioner.

In the said order, respondent No.2 referred to a General Policy said to have been approved in a Committee consisting of the DIG/Admn., AIG/Pers-1 and Legal Advisor to appoint persons who have been acquitted *before* completion of the recruitment process (declaration of result + six months validity of the waiting list). Respondent No.2 went on to hold that the petitioner had appeared in the recruitment test in 2011, that merit list was finalized on 23.09.2011, but since the petitioner was acquitted in the criminal case on 09.04.2013, he is not suitable/ eligible for the post of Constable because at that time criminal case was pending against him.

This was challenged by the petitioner in CWP No.17529 of 2015.

Before the Learned Single Judge, the petitioner contended that the said order dt.07.01.2015 of respondent no.2 is unsustainable.

He placed reliance on the decision rendered in the case of **Pradeep Singh Vs. State of Haryana** in CWP No.1761 of 2011 dt.15.03.2013 and contended that he was falsely implicated in the criminal case, but he has been honorably acquitted by the Criminal Court, that there

was no appeal filed against the said order and judgment of acquittal, and so he should be allowed to join his duties. He also quoted the cases of other constables who had been allowed to join their duties after a long period or on the acquittal of the criminal cases.

Written Statement was filed by the State in the said Writ Petition supporting the order dt.07.01.2015 passed by respondent No.2 and placing reliance on the General Policy said to have been framed by the Committee consisting of the DIG/Admn., AIG/Pers-1 and Legal Advisor, that only persons acquitted *before* completion of the recruitment process (declaration of the result + 6 months validity of the waiting list) may be appointed.

It was contended that since the merit list was finalized on 23.09.2011, and since the petitioner was acquitted on 09.04.2013 in a criminal case after more than 1 ½ years, his case was not covered under the said Policy.

It was contended that it was not a case of the honorable acquittal of the petitioner in a criminal case because the complainant turned hostile.

It was also contended that there was no discrimination caused to the petitioner since the cases quoted by the petitioner of persons allowed to join were fully covered under the Policy adopted by the Department and that the petitioner's case did not come under it.

The Learned Single Judge noted the respective contentions and held that the acquittal of the petitioner in FIR No.190 dt.23.10.2011 was not an honorable acquittal, that he had got registered false FIR No.120 dt.

01.07.2011 against one Simarjit Kaur, and so he did not deserve to be appointed in the disciplined force.

Assailing the same, this Appeal is filed.

Counsel for the appellant firstly contended that the Learned Single Judge erred in holding that the petitioner was not honorably acquitted by the Criminal Court because that was not the ground on which the respondents had rejected his representation on 07.01.2015; and the respondents cannot be allowed to take the said plea in the Written statement in the Writ Petition when it was not a ground for rejection in the order dt.07.01.2015.

He contended that the order passed by the authority should be supported on the basis of its contents and cannot be supported by new grounds raised subsequently in pleadings as held in the decision of the Supreme Court in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner¹**.

He further contended that the so called General Policy was framed by the DIG/Admn., AIG/Pers-1 and Legal Advisor while considering the case of the candidates who are involved in a criminal case *in the process of the recruitment of 2010 and 2011*, and that it is not supported by the Punjab Police Rules, 1934 which only require persons to be recruited as Constables having good character.

Reliance is placed on Rule 12.14 of the Punjab Police Rules, 1934 which states as under :-

¹ AIR 1978 SC 851

12.14 Recruits-Status of (1) Recruits shall be of “good character” and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrollment.”

He contended that respondents cannot frame any Policy contrary to the said Rules, and in any event such a Policy cannot prevail over the statutory Rules since it is inconsistent with it. He placed reliance on the following decisions:-

- 1) Joginder Singh Vs. Union of Territory and others²;**
- 2) Ravinder Kaur Vs. State of Punjab and others³;**
- 3) Lakhwinder Singh Vs. State of Punjab and others⁴ and**
- 4) Nirmal Singh Vs. State of Punjab⁵.**

Learned State Counsel refuted the said contentions and supported the order passed by the Learned Single Judge and also the order dt.07.01.2015 passed by respondent No.2, but he could not explain how the plea that the appellant was not honorably acquitted could have been raised by the respondents in their written statement in the Writ Petition when that was not the basis for passing the impugned order dt.07.01.2015 by respondent No.2.

In our opinion, the order dt. 07.01.2015 has to be sustained only on its contents and fresh reasons cannot be given by way of a statement to support the same as held in the case of **Mohinder Singh Gill** (1 Supra).

² 2015(2) SCC 377

³ CWP No.15574 of 2013

⁴ CWP No.6191 of 2013

⁵ CWP No.25945 of 2014

We are also of the view that the impugned order dt.07.01.2015 refers to the General Policy but is obvious from the contents of the said order that such a Policy was enunciated by the Committee consisting of DIG/Admn., AIG/Pers-1 and Legal Advisor and not by the Home Department as such.

In any event, these 3 individuals forming the Committee cannot frame a General Policy for the Home Department or frame any policy which is not in conformity with the statutory Rules contained in the Punjab Police Rules, 1934.

The said Rules merely require the recruit to be of a 'good character' and make no reference to persons involved in a criminal cases and the date of their acquittal, whether it is before the completion of the recruitment process or thereafter.

In **Joginder Singh** (2 Supra), the Supreme Court held that where there is an acquittal on the basis of witnesses turning hostile, such an acquittal would be an honorable acquittal in every sense and purpose; and a party cannot be deprived of his right to be appointed to a post, in public employment, by declaring him as unsuitable to the post even though he was honorably acquitted in a criminal case registered against him.

The reliance by the learned State counsel on the period of waiting list is also not apposite because admittedly, the petitioner's name was not in the waiting list, but his name has figured in the select list.

Therefore, we are of the opinion that the order dt.07.01.2015 passed by the respondent No.2 and the order dt. 04.05.2018 passed in CWP No.17529 of 2015 cannot be sustained.

They are accordingly set aside; CWP No.17529 of 2015 is allowed; and the respondents are directed to permit the petitioner to join to the post of Constable in the District Police Cadre to which post he was recruited vide advt. dt.11.09.2010 and 16.09.2010 within two months from the date of receipt of certified copy of this order; we direct that he be allotted constabulary number within the aforesaid period as well. The petitioner shall also be entitled to all benefits from the date any junior person to him in the merit for the same zone is appointed i.e. notional pay, fixation of pay, seniority etc.

No costs.

Pending application(s), if any, shall stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

January 13, 2023
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>