**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 8/2024**
**Decided on: 27.12.2024**

**Shyam Lal** **….Petitioner**

**Versus**

**State of H.P. & Ors.** **……Respondents**

***Coram***
***Ms. Justice Jyotsna Rewal Dua, Judge.***

**Whether approved for reporting?**[1]

**For the petitioner** : **Mr. A.K. Gupta, Advocate.**

**For the respondents** : **Mr. Amandeep Sharma, Additional Advocate General.**

***Jyotsna Rewal Dua, J***

Respondents have rejected the representation of the petitioner seeking re-engagement in service as daily waged beldar. Petitioner's contention is that after his acquittal from the criminal case, he was required to be re-engaged.

**2**. Petitioner was appointed as daily waged beldar on compassionate ground on 23.01.2007. On 16.10.2013, he was arrested on account of a criminal case registered against him under Section 15(b) & 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (The NDPS Act in short). Petitioner remained in

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

police custody for about three days.The respondents, therefore, vide office order dated 19.10.2013 terminated his services.

**3.** Heard learned counsel for the parties and considered the case file.

Learned counsel for the petitioner admitted that the petitioner though did not agitate against the termination of his service; He did not raise any dispute whatsoever before the respondents, but submitted that the criminal trial in FIR No.62/2013 that was registered against the petitioner on 16.10.2013 proceeded. Learned Special Judge Ghumarwin, District Bilaspur vide judgment dated 19.03.2020 acquitted the petitioner in Sessions Trial No. 3-3 of 2014 arising out of the aforesaid FIR. The petitioner was acquitted of the charges under Section 15(b) and 29 of the NDPS Act, concerning his alleged possession of 9 Kg 960 grams of Poppy Straw; After the aforesaid decision, the petitioner preferred a representation on 26.04.2021 for his re-engagement on ground of acquittal in the aforesaid criminal case. The respondents rejected the same on 29.04.2021. According to learned counsel, acquittal in criminal case has necessary to result in petitioner's re-engagement.

Learned Additional Advocate General defended the impugned order & contended that acquittal in criminal case does not automatically entitle the petitioner to be re-instated in service.

**4.** Consideration

**4(i)** In ***Imtiyaz Ahmad Malla versus The State of Jammu and Kashmir and others***[2], the Hon'ble Apex Court reiterated that if a person is acquitted or discharged, it cannot always be inferred that he was falsely involved. Unless it is an honourable acquittal, the candidates cannot claim the benefit of the same. What is honourable acquittal was considered in ***Inspector General of Police v. S. Samuthiram***[3]***,*** wherein the Court held that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Code of Criminal Procedure or Penal Code. These are coined by judicial pronouncements after full consideration of prosecution evidence and that when the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. The acquittal in a criminal case is not conclusive of the suitability of the candidates for the post concerned. Acquittal in a criminal case does not entitle an employee to re-instatement in service. It is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. Relevant paras from the judgment read as under:-

> *"5. Though the matter was argued at length by the learned counsels for the parties, the precise question that falls for consideration before this Court is whether the Director General of Police, Jammu &*

[2]AIR 2023 SC 1308

[3](2013) 1 SCC 598

*Kashmir, Srinagar, who after examining the record of the petitioner had come to the conclusion that the petitioner was not a fit person to hold the post into the police force in view of his criminal background, could be compelled to reinstate the petitioner on his acquittal in the criminal case.*

*6. It was sought to be submitted by the learned counsel for the petitioner that in the criminal trial proceeded against the petitioner, the prosecution had failed to examine the investigating officer and also failed to bring home the charges levelled against him, and therefore his acquittal in the said case was required to be treated as an honorable acquittal. He further submitted that the very basis for presuming that the petitioner had a criminal background was no more available to the respondents, on his having been acquitted by the competent criminal court.*

*8. Apart from the fact that the phrase "honourable acquittal" has not been defined anywhere in the Criminal Procedure Code, as transpiring from the afore-stated order passed in the criminal case for which the petitioner was tried, the petitioner was afforded a benefit of doubt in view of the contradictory evidence which had come on record, also as the investigating officer was not examined by the prosecution."*

*"11. The expression "honourable acquittal" had also come up for consideration in other cases namely, Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal; and in R.P. Kapur Vs. Union of India and Another whereby it was held inter alia that the mere acquittal does not entitle an employee to the reinstatement in service. The acquittal, it was held, has to be honourable. As such, the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, and it is difficult to define precisely what is meant by expressions "honourable acquittal".*

*12. In Pradeep Kumar's case (supra) also it was reiterated that if a person is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents. The precise observations made therein are re-produced hereunder:*

*"10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566: (2013) 1 SCC (L&S) 229], in which this Court held as under: (SCC p. 609, para 24).*

*"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."*

*11. …….*

*12. …….*

*13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still, it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013)*

*7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character."*

**4(ii).** In the background of above legal position, following aspects of the case are material for examining the prayer of the petitioner:-

**4(ii)(a)** Petitioner was appointed on compassionate ground on daily wage basis on 23.01.2007. He was arrested on 16.10.2013 on account of criminal case registered against him under Sections 15(b) & 29 of the Act. Since the petitioner remained in police custody for three days, respondents terminated his service on 19.10.2013.

**4(ii)(b)** Admittedly, the petitioner w.e.f. 2013 till date did not raise any dispute whatsoever regarding his termination. He represented to the respondents only on 26.04.2021 seeking re-engagement. This was possibly for the reason as by that time learned Special Judge Ghumarwin, District Bilaspur acquitted him from the charges framed against him under Section 15(b) and 29 of the Act. The judgment was passed by the learned Trial Court on 19.03.2020,

however, the acquittal of the petitioner is on the ground that 'prosecution was not able to prove the case against him beyond shadow of reasonable doubt.' Operative part of the judgment reads as under:-

> *"37. This leads to an inference, that the proceedings of the police as it claimed to be of the spot through recovery memo Ext. PW-1/A are not established. A reasonable doubt as to the correctness of the case as set up, has arisen.*
>
> *38. As the prosecution has not been able to prove the case against the accused beyond the shadow of reasonable doubt, accused is entitled for its benefit and is acquitted.*
>
> *39. The point is answered against the prosecution.*
>
> *40. In the result, accused Shyam Lal is acquitted of the charge under Section 15(b) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.*
>
> *41. The alleged contraband I.e. alleged 9 kg 960 grams of poppy straw be destroyed after expiry of time limitation to assail this judgment and in case of appeal be dealt with as per the directions of Hon'ble High Court of Himachal Pradesh. File after due completion be consigned to the record room."*

Though in the instant case, benefit of doubt has been given to the petitioner by the learned Trial Court for acquitting him from the charges under the NDPS Act, it is, however otherwise, well settled that even acquittal in criminal case will not lead to a definite conclusion about suitability of the petitioner for the post. It is the prerogative of the employer. Hence, in view of law laid down in ***Imtiyag Ahmad Malla Vs. State of Jammu and Kashmir and Others***[2], prayer of the petitioner for re-engagement only on the ground of acquittal from

criminal case cannot be accepted. Petitioner's acquittal was based upon benefit of doubt given to him. Accordingly, the petition fails and is dismissed. Pending miscellaneous application, if any, shall also stand disposed of.

**Jyotsna Rewal Dua**
**Judge**

27th December, 2024 **(Rohit)**