

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

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2024:PHHC:057337-DB

LPA-1046-2024 (O & M)
Date of Decision: 26.04.2024

Union of India and others

.....Petitioner(s)

Versus

Deepak Kumar

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Indresh Goel, Sr. Panel Counsel,
for the appellant.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

CM-2544-LPA-2024

1. Application for condonation of delay of 68 days in filing the appeal is allowed, in view of averments made in the application supported by affidavit.
2. Delay condoned.
3. CM stands disposed of.

LPA-1046-2024 (O & M)

4. Consideration in the present letters patent appeal is to the order dated 09.01.2024 passed by the learned Single Judge in CWP-6830-2022, Deepak Kumar vs. UOI and others. The learned Single Judge allowed the writ petition and set aside the order dated 26.03.2022 (Annexure P-7) whereby, the appointment order of the writ petitioner had been cancelled by the present appellants. The cancellation was on the ground that the writ petitioner was involved in FIR No.93 dated 24.04.2018 under Sections 328, 363, 366A, 376, 506 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act'), P.S. Cheeka and had earned an acquittal from the Additional Sessions Judge, Kaithal on 24.07.2019 by giving him the benefit of

P-4) issued by the Ministry of Home Affairs duly corrected on 16.07.2020 (Annexure P-5), it was declared that the writ petitioner was unfit to be appointed in the ITBP Force and the offer of appointment dated 06.01.2022 (Annexure P-1) was cancelled.

5. It is pertinent to notice that the offer as such was on compassionate recruitment basis, which would be clear from Annexure P-1. The writ petitioner had been candid enough as such to disclose to the appellants the fact that he was involved in the above said case vide letter dated 27.01.2022 (Annexure R-7). Resultantly, a show cause notice dated 22.02.2022 (Annexure P-3) had been served upon him as to why his appointment should not be cancelled. While placing reliance upon the policy as such and on the fact that the benefit of doubt had been given, impugned order came to be passed, which was subject matter of challenge.

6. The learned Single Judge discussed the law in detail on the subject and placed reliance upon a three-Judge Bench judgment in ***Avtar Singh vs. Union of India, (2016) 8 SCC 471***. Further reliance was placed upon judgments of the Apex Court rendered in ***Satish Chandra Yadav vs. Union of India and others, (2023) 7 SCC 536***; ***The State of Madhya Pradesh and others vs. Bhupendra Yadav, 2023 AIR (SC) 4553*** and also the instructions dated 01.02.2012 (Annexure P-4) issued by the Ministry of Home Affairs. Reliance was also placed upon another judgment of the Apex Court in ***Ram Lal vs. State of Rajasthan, 2023 SCC Online SC 1618*** and Division Bench judgment of this Court in ***Bhag Singh vs. Punjab & Sind Bank, (2005) 6 SLR 464*** to bring out the niceties of the concepts of “Hon’ble Acquittal”, “fully exonerated” or “acquitted of blame” and the “benefit of doubt” or “not proved beyond reasonable doubt”. Resultantly, the judgment of acquittal was carefully examined by the learned Single Judge to

invoked if the prosecutrix was less than 18 years of age. It was noticed that the prosecution had failed to prove the said fact that she was below the age of 18 years. Further, it was also noticed that both the mother and the daughter did not support the allegations and that the FIR was lodged in April, 2018 at the time when the writ petitioner was only 23 years of age. The fact that the instructions dated 01.02.2012 provided the expression 'generally' was also kept in mind that there was no absolute bar in appointment where acquittal was on the ground of benefit of doubt and where the witnesses have turned hostile. Resultantly, a finding was recorded that the respondent had not examined the antecedents of the writ petitioner and his appointment letter had been cancelled only on the sole ground that he was acquitted on the benefit of doubt. Various factors i.e. nature of alleged offence, age of the petitioner, age of the prosecutrix and the non-involvement in any other case had not been kept in mind. The factum of disclosure of his credentials at the outset when being offered the appointment and, thus, not being a case of concealment of facts, was also kept in mind and also while placing reliance upon the judgment cited above, conclusion arrived at was that the appointment letter could not have been mechanically cancelled and, therefore, the same was not tenable and the said order dated 26.03.2022 (Annexure P-7) was quashed.

7. We have also gone through the paper book in detail. Mr. Goel has vehemently submitted while placing reliance upon the judgment of the Apex Court in *The State of Madhya Pradesh and others vs. Bhupendra Yadav's case (supra)* wherein, in similar circumstances, a person involved in POCSO offence who had been acquitted had been granted the benefit by the learned Single Judge, which was duly upheld by the Division Bench and the matter had been remanded for consideration for passing a fresh order. A perusal of the said judgment which

reversed the view would go on to show that apparently, the complainant

there was a minor and there were allegations of outraging of her modesty. She had turned hostile and an order had been passed by the respondents and a compromise had also been arrived at. The charges which were compoundable had been accordingly compounded but on merits as such, there was an acquittal. It was in such circumstances keeping in view the fact that the consideration was for the post of a Constable, the Apex Court has come to the conclusion, in the peculiar facts, that the acquittal as such was based on the prosecution witnesses turning hostile and the case falling in the exceptions as laid down in *Avtar Singh's (case) supra*, the appeal was allowed.

8. In the present case, as noticed, firstly the allegations under POCSO Act have fallen flat since apparently the prosecution failed to make out a case that the victim as such was a minor. Nothing could be brought on record regarding this aspect and relevant portion had already been reproduced by the learned Single Judge from the judgment of acquittal. It was categorically held that the migration certificate and the admission withdrawal were not sufficient to prove the age of the victim at the time of alleged incident. The name of the prosecutrix also differed from what was mentioned in Ex.PW-11/A and the date of birth was also different which was given in the migration certificate and it is in such circumstances the finding was recorded that the child victim could not be held to be below 18 years of age. The fact also remains that the victim also did not support the prosecution case. Rather, she has stated that while going to school, she on her own, had gone to Kurukshetra and returned at 8:00 p.m. and the mother had already made a complaint to the police regarding her missing from the school. She had denied the fact that the writ petitioner, who was present in Court, had allured her and took her on his motor cycle to the said village and neither he had committed any wrong act. Similar is the statement of her mother that she had gone to school at 8:30 a.m. And only came back at 8.00 p.m. and already a

complaint had been lodged. It is in such circumstances, the learned Single Judge has carefully examined the judgment of acquittal to come to the conclusion that the nuances of the “hon’ble acquittal” and “the benefit of doubt” are legal terminologies and resultantly, the prosecution having failed to prove its case, has led to the benefit of doubt being given.

9. In such circumstances, we find that the learned Single Judge is well justified in keeping in mind the law on the subject while relying upon the three-Judge Bench judgment also which has higher precedential value and Mr. Goel could not bring the facts of the present case in the exceptions provided therein. Mr. Goel could not dispute the fact that the impugned order passed by the Deputy Director, General never got into the niceties of examining the judgment of the trial Court, which it was duty bound to do. The sole reason was the last paragraph of the “benefit of doubt” which prevailed upon the authority while passing the order. The order, thus, can be held to be a non-speaking order which never contained reasons and only fell back mechanically on the instructions of the Government and cannot be sustained in any manner.

10. In such circumstances, we are of the considered opinion that the discretion exercised by the learned Single Judge is well justified and there seem to be no valid reasons for this Court to interfere in the order passed.

11. Accordingly, the present appeal stands dismissed *in limine*. Pending applications also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

26.04.2024

(LAPITA BANERJI)

shivani

JUDGE