

(2014) 11 SC CK 0013

In the Supreme Court Of India

Case No : Civil Appeal No. 2325 of 2009 and Civil Appeal No. 10126 of 2014
(Arising Out of SLP (C) No. 30798 of 2008)

Joginder Singh

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 307, 323, 325
Punjab Police Rules, 1934 — Rule 12.12, 12.14, 12.18

Citation : (2015) 4 ALLMR 952 : (2014) 4 ESC 622 : (2015) 144 FLR 183 :
(2015) 2 SCC 377 : (2015) 1 SCC(L&S) 490 : (2015) 1 SCT 87

Hon'ble Judges : V. Gopala Gowda, J;Dipak Misra, J

Bench : Division Bench

Advocate : Mukesh K. Giri and S.K. Sabharwal, Advocates for the Appellant;
Sangram S. Saron and Abhishek Atrey, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—Leave granted in SLP (C) No. 30798 of 2008.

2. These appeals have been filed by the Appellants against the common judgment and order dated 24.03.2008 passed in Civil Writ Petition No. 5909 CAT of 2003 and Civil Writ Petition No. 7754 CAT of 2004, by the High Court of Punjab and Haryana at Chandigarh, whereby the High Court set aside the common order dated 12.3.2003 passed by the Central Administrative Tribunal (in short "CAT"), Chandigarh, urging various grounds in support of the same.

3. As both the matters are identical, for the sake of brevity and convenience, we would deal with the facts of Civil Appeal No. 2325 of 2009, which are stated hereunder.

The Respondent-Union Territory of Chandigarh, had invited applications from eligible persons for recruitment to the post of Constables in the year 1997. The said selection was quashed by the High Court of Punjab and Haryana. However,

in the year 2001, A fresh selection process was started by the Respondents, as per the decision of the Administration of the first Respondent wherein it has stated that the candidates who had applied in response to the previous advertisement (in 1997), were exempted from applying afresh.

The Appellant, Joginder Singh, who had also applied in the year 1997, was also called in 2001 and was among the 40 candidates who had applied were declared as successful candidates. The Appellant was medically examined and was called for an interview as he was found fit for selection to the post of Constable. However, after verification of his antecedents and character from his native village, it was found that he was involved in a case with FIR No. 200 dated 14.04.1998, under the provisions of Sections 148/149/323/325/307 Indian Penal Code a criminal case was registered at Police Station Sadar Bhiwani. After the trial was conducted by the Additional Sessions Judge, Bhiwani, the Appellant was acquitted from the charges levelled against him on 04.10.1999. The Appellant filed Original Application before the CAT, Chandigarh, for issuing a direction to the Respondent for issuance of an appointment order in view of his selection to the post in the selection process.

4. The Central Administrative Tribunal, Chandigarh after hearing the parties passed an order dated 12.3.2003, allowing the Original Application of the Appellant and directed the Respondents to appoint the Appellant to the post of Constable within a period of 30 days from the date of receipt of the certified copy of the order.

5. Aggrieved by the order of the CAT, the Respondent-Union Territory filed C.W.P. No. 5909 CAT of 2003 before the High Court of Punjab & Haryana at Chandigarh questioning the correctness of the same. The High Court vide its common order dated 24.03.2008 has set aside the order of the CAT and allowed the writ petition.

6. The High Court has opined that the order of the CAT passed in favour of the Appellant, suffers from illegality, which cannot be sustained in law and accordingly set aside the same. Hence, this appeal has been preferred by the Appellant urging various legal grounds.

7. It is the contention of Mr. Mukesh K. Giri, learned Counsel on behalf of the Appellant that the Appellant was honourably acquitted from the charges in the criminal proceedings initiated against him by the State of Punjab and undisputedly, there is no allegation of concealment of the relevant information to be furnished by the Appellant in his application to the Respondents.

8. It has been further contended by the learned Counsel that a perusal of Rule 12.18 of the Punjab Police Rules, 1934, Vol. II (hereinafter referred to as, "the Rules"), shows that the emphasis is on his freedom or otherwise from conviction, meaning thereby, that the acquittal in criminal case will qualify him for appointment to the post of Constable since he was selected and found fit for the post after due selection process was conducted by the Respondents.

9. It has been further contended by the learned Counsel that the High Court has erroneously placed reliance in the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, , which is distinguishable from the present case because the Respondent in the above mentioned case had concealed the relevant fact to be furnished to the Respondents. However, in the present case, there is no allegation of concealment of fact from the Respondents against the Appellant.

10. It has been further contended that there is no material on record to justify the conclusion of the Appointing Authority that the antecedents of the Appellant were not up to the mark. Further, there is also no allegation of grave moral turpitude against the Appellant for not appointing him as a Constable even though he was selected to the post.

11. On the other hand, it has been contended by Mr. Sangram S. Saron, learned Counsel on behalf of the Respondents, that the Appellant was not honourably acquitted of the offences arising out of the case registered in FIR No. 200 of 14.04.1998, as the eye witnesses of the occurrence had declined to support the prosecution version and they were declared hostile by the Sessions Judge, therefore, the proceedings against the accused-Appellant resulted in an acquittal, which cannot be construed as acquittal of the Appellant on merit.

12. It has been further contended by the learned Counsel on behalf of the Respondents that the Senior Superintendent of Police, Chandigarh had observed in the order dated 29.07.2003, that since the post of the Constable is extremely sensitive in nature, considering the fact that the interaction and dealing a Constable with the general public is more than any other member of the force, therefore, utmost care and caution is required to be exercised by the Respondents in making appointments to the post of Constables.

13. Further, Rules 12.12, 12.14 and 12.18 of the Rules, have laid down the criteria to be followed by the Respondents before making appointments to the post of Constable. The above Rules unequivocally state that clean antecedents and good moral character of a selected candidate is the sine qua non. He/she must fall within the zone of consideration.

14. On the basis of the aforesaid rival legal contentions urged on behalf of both the parties, the following points would arise for our consideration:

1) Whether the denial of the benefit of appointment to the Appellant by the High Court is legal and valid in the light of the fact that the Appellant was acquitted from the criminal case pending against him.

2) What order?

15. To answer the point No. 1, we must first consider whether the acquittal of the Appellant from the criminal case was an honourable acquittal. It is the contention of the Respondent that even though the Appellant was acquitted in the criminal case, the appointment of the Appellant by the appointing authority to the post of

Constable in Chandigarh Police, which is a disciplined force was not desirable. The High Court has held that what would be relevant is the conduct and character of the candidate to be appointed in the service of state police and not the actual result thereof in the criminal case as claimed by the Appellant. Further, the relevant consideration to the case is the antecedents of the candidate for appointing him to the post of Constable.

16. However, adverting to the criminal proceeding initiated against the Appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of the Section 161 of Code of Criminal Procedure statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the Investigation Officer. Further, Sajjan Singh, who was an eye-witness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution. The learned Additional Sessions Judge, Bhiwani held that the prosecution case has not been able to prove in any way the allegations against the Appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges leveled against the Appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal. Learned Counsel has rightly placed reliance upon the decision of this Court in *The Deputy Inspector General of Police and Another Vs. S. Samuthiram*, , which relevant para is extracted as under:

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal*. 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.

(Emphasis supplied)

17. Further, an acquittal of the Appellant is an "honourable" acquittal in every sense and purpose. Therefore, the Appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

18. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the Appellant. Thus, the Appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable. Reliance has been placed on the decision of this Court in Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, , which states herein:

9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a Court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate Court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a Court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the Respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the Respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned Counsel for the Appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the Respondent cannot be found guilty of any suppression.

(Emphasis laid by this Court)

Further, reliance has been placed by this Court in Commissioner of Police, Delhi and Another Vs. Dhaval Singh, , wherein it is stated as under:

6. Learned Counsel for the Appellants has drawn our attention to a judgment rendered by a Bench of this Court on 4-10-1996 in Delhi Admn. v. Sushil Kumar. On the first blush, that judgment seems to support the case of the Appellants but there is a material difference between the two cases. Whereas in the instant case, the Respondent has conveyed to the Appellant that an inadvertent mistake had been committed in not giving the information against the relevant column in the Form much before the cancellation of his candidature, in Sushil Kumar case no such correction was made at any stage by the Respondent. That judgment is, therefore, clearly distinguishable on facts.

19. Further, a bare perusal of Rules 12.12, 12.14 and 12.18 of the Rules, which

would indicate that the recruit should be of a good character and suitability. The said Rules are extracted hereunder:

Rule 12.12: Supervision of recruitments.

The standard of performance and the reputation of the whole police force depend above all upon the quality of its Constables. Standards for recruits are laid down in the rules which follow, but, over and above these, constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enroll themselves. Efforts shall be made to enroll a proportion of men belonging to communities or classes, whose representation in the force is desirable, but who appear reluctant to offer themselves. The examination and measuring of candidates for enrolment shall invariably be carried out by a gazetted officer, who shall concern himself specially to prevent the victimization of, or the taking of illegal gratification from, candidates by subordinate Government servants concerned in the conduct of their examination. Superintendents shall personally satisfy themselves that the arrangements for the reception of new recruits in the Lines, and for providing them with bedding and warm clothing, whether as a sanctioned Government issue or under a system whereby the cost is recovered later in instalments from pay, are adequate, and that recruitment is not discouraged by initial and avoidable hardships. Deputy Inspectors General, in addition to exercising a careful control over recruitment generally, and preventing the enrolment of undesirable types, shall, at their inspections, formal and informal, pay special attention to the observance of this rule.

Rule 12.14 Recruits-Status of.-

(1) Recruits shall be of good character and great care shall be taken in selection men of a type suitable for police service from candidates presenting themselves for enrolment.

XXX

12.18 Recruits verification of character of.

(1) The character and suitability for enrolment of every recruit shall be ascertained by a reference to the lambardar of the village or ward member of the town of which the recruit is a resident. A search slip shall also be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that effect which shall be verified and attested by the sub-inspector in charge of the local police station. The Sub-Inspector shall be complete the information required by form 12.18 (I).

20. It is the submission made on behalf of the Respondents that the above referred rules lay down the criteria that clean antecedents and good moral character is indispensable for a candidate to even fall within the zone of

consideration. However, in the present case, we have observed that the Appellant was involved in a family feud and the FIR came to be lodged against him on 14.04.1998, after he had applied for the post of Constable. Further, he had been acquitted on 04.10.1999, i.e. much before he was called for the interview/medical examination/written test. Further, as per Rule 12.18, emphasis has been laid on the freedom and otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the Appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the Trial Court that as the prosecution has failed to prove the charges against the Appellant by adducing cogent evidence, therefore, the Police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the Appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order passed by the High Court is vitiated in law and liable to be set aside.

21. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the Appellant was not up to the mark to appoint him to the post. The Appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in the case of Jagtar Singh Vs. Director, Central Bureau of Investigation and Others, , which states as under:

4...It is not necessary for us to go into the question as to whether the claim of privilege by the Respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the Appellant. We have carefully examined the material on the basis of which the Respondents have come to the conclusion that the Appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the Respondents are not justified in reaching a conclusion adverse to the Appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the Appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the Respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the Appellant is not a desirable person to be appointed to the Government service. We are of the view that the Appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission.

22. Thus, we are of the opinion that the alleged past conduct of the Appellant in relation to the criminal case will not debar or disqualify him for the post of the

Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the Respondents by the Appellant. The Respondents were thus not justified in denying the said post to the Appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

23. We therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of the CAT. For the foregoing reasons both the appeals succeed and are allowed.

24. Since we have upheld the judgment and order of the CAT, the Respondents are directed to comply with the same by issuing appointment letter to the Appellants within four weeks from the date of receipt of the copy of this order. There shall be no order as to costs.