
(2016) 11 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25945 of 2014

Nirmal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16

Citation : (2017) 1 SCT 509

Hon'ble Judges : Daya Chaudhary, J.

Bench : Single Bench

Advocate : Veneet Sharma, Advocate, for the Petitioner; Rupam Aggarwal, D.A.G., Punjab, for the Respondent/State

Final Decision : Allowed

Judgement

Daya Chaudhary, J. - The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing the impugned order dated 26.02.2013 (Annexure P-20) passed by respondent No.3. A further prayer has also been made for issuance of a direction to the respondents to allow the petitioner to join as Constable in the Punjab Armed Police from the date of his selection along with all consequential benefits.

2. Briefly, the facts of the case, as made out in the petition, are that the petitioner applied for recruitment to the post of Constable in the Punjab Armed Police on 10.03.2010 and he cleared the physical efficiency test. Thereafter, he was called for interview and was selected. He was allotted Battalion No.7, Punjab Armed Police and Belt No.826 vide order dated 06.01.2011. Even he cleared the medical examination before the Medical Board after his recruitment. FIR No.36/07 was registered at Police Station Sadar Tarn Taran against the petitioner under Sections 457, 380, 420 and 341 IPC but he was found innocent in the said case in the inquiry dated 20.04.2011 conducted by the Superintendent of Police (Headquarters).

3. As per case of the petitioner, the FIR, in question, was registered at the instance of some relative because of property dispute. Various communications were there between the police authorities regarding the process of criminal proceedings. Ultimately, it came to the notice of the concerned authorities regarding discharge of the petitioner by the Court of Additional Chief Judicial Magistrate, Tarn Taran on 18.10.2012 as the report was submitted by the police before the Court. The local police was having no objection regarding appointment of the petitioner as Constable. No appeal against the aforesaid judgment of trial Court was filed. The petitioner was also asked to appear before the Medical Board PAP, Jalandhar and he was medically examined for recruitment. Without giving any opportunity of hearing and without issuing any Show Cause Notice, the approval for appointment of the petitioner granted on 06.01.2011 was withdrawn. An intimation to this effect was sent to the petitioner. Petitioner made a representation but no action was taken. The petitioner approached this Court by way of filing the present petition by challenging the impugned order dated 26.02.2013 (Annexure P-20) as the claim of the petitioner has been rejected only on the ground that period of six months, from the date of his recruitment, has passed and, therefore, the approval granted to him was withdrawn.

4. Learned counsel for the petitioner submits that the impugned order has been passed without any application of mind. The stand of the petitioner has not been considered while passing the impugned order as he was found innocent during investigation conducted by the police and thereafter, no appeal was filed. The petitioner was discharged by the trial Court on 18.10.2012 and the report filed by the police was accepted. The petitioner has been visiting the office of respondent No.2 by making representations regarding his innocence and for appointment but still he was not appointed in spite of character verification and medical examination. The dispute, if any, was a private dispute because of property between the relations and the allegations have no concern with the nature of duties. In the inquiry report, it was found that false FIR was got registered by one Jaswinder Kaur in order to get share in the property of her father-in-law Joginder Singh. The petitioner was minor at the time of incident and he was not having any knowledge about that dispute. Not only the petitioner but other accused were also discharged by the trial Court. Revision filed by the complainant against the order of discharge was also dismissed as withdrawn on 06.05.2013. At the end, learned counsel for the petitioner submits that even the respondent authority was having no objection in appointing the petitioner and no Show Cause Notice or an opportunity of hearing was granted to him. The delay was not on the part of the petitioner and his claim has been rejected only on the ground that the period of six months had expired.

5. In response to notice of motion, the reply has been filed by the respondents, which is on record.

6. Learned counsel for the respondent-State has not disputed the facts but opposes the submissions made by learned counsel for the petitioner on the

ground that the petitioner was not acquitted by the Court within a period of six months and he was not allowed to join duties. The reason of rejection of representation was conveyed to the petitioner and intimation to this effect was also sent to him vide order dated 17.04.2015.

7. Heard the arguments of learned counsel for the parties and have also perused the documents available on the file including the impugned order dated 26.02.2013 (Annexure P-20).

8. The facts relating to clearing the physical test, interview, selection and also the allotment of Belt no. are not disputed. It is also not disputed that the medical examination was conducted and the petitioner was found medically fit. Petitioner has not been appointed because of lodging of FIR No.36/07 at Police Station Sadar Tarn Taran under Sections 457, 380, 420 and 341 IPC. However, the petitioner was found innocent during investigation conducted by the police. Thereafter, the supplementary challan was filed and the report submitted by the police was accepted and the petitioner was discharged by the trial Court. No appeal against the order of discharge was filed. The claim of the petitioner has been rejected on the basis of order dated 26.02.2013 on the ground that period of more than six months had passed and the approval already granted had been withdrawn. Admittedly, the FIR was registered by the complainant, who is stated to be in relation of the petitioner. During investigation conducted by the police, the petitioner was not found to be involved and ultimately, he was discharged by the trial Court. Moreover, by considering the allegations, it is apparent that no moral turpitude is involved. Petitioner was minor at the time of incident and the allegations have nothing to do with the nature of duties.

9. The question for consideration before this Court is as to whether the pendency of criminal proceedings, which have already been withdrawn and the petitioner has been discharged, would be a ground to withdraw the approval of appointment or to deny entry into service.

10. In the present case, the petitioner has qualified the written test and was successful in interview. Even the medical examination was conducted and the approval for appointment was also given. It was found that one FIR was registered at the instance of some relative because of property dispute and the appointment was not made. During investigation, the petitioner was found innocent and he was subsequently discharged by the Court. Thereafter, the respondent-Department was also not having any objection in appointing the petitioner but subsequently, the approval already given was withdrawn. It is not a case that he concealed something or he was found to be involved in an offence whereas no moral turpitude was involved. It is also not the stand of the respondents that the allegations in the FIR relate to the nature of duties in any manner. The approval already granted had been withdrawn only on the ground that the period of more than six months had passed. The delay was there on the part of the respondent- Department as many representations were made but no action was taken. It is not disputed that the police plays an important role of

enforcement of law and without an efficient police force, a society would become anarchic. To ensure that the police force of a state is efficient, the state is to ensure that each individual recruited to the police force, at whatever level, must possess various attributes like the physical strength and fitness/free from medical diseases, emotional maturity and ability to remain calm in emotionally charged situations, ability to exercise initiative in their work, good moral character and integrity, the ability to carry a great deal of responsibility in handling difficult situations alone/dependability and good judgment.

11. Keeping in view the above said attributes, which are the minimum requirement of a person who becomes a member of the police force, it becomes the duty of the State to carefully screen the candidates with reference to the aforesaid attributes. Not only the physical test is conducted but the medical examination is also conducted. However, no evaluation pertaining to the emotional maturity, ability to remain calm in emotionally charged situations, ability to handle difficult situations and to be responsive and the ability of initiative in work is conducted. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. Although, it is not done in India but all these things are ascertained in other countries of the world. A man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Whether it would be a character of a person or disqualification for not inducting him in public service. The answer would be in the negative. In case, a person has committed murder or has broken into a departmental store and stolen cash, would this person be of a good character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative. Not to induct persons in public service with a criminal background, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. In such circumstances, it is the duty of the Court to interpret the law by harmonizing human sufferings and human wants. The need of the hour is to understand that criminals are not born. In case, a person is charged with the offence, which is not related to the nature of duties to be performed while in public employment and subsequently had been acquitted, would be a bar to appoint him or to seek employment, would be unjustified.

12. In the present case, the FIR registered relating to property dispute and the petitioner was minor. During investigation, he was found to be innocent. Now it is to be seen as to whether the petitioner should be denied employment in the public department because of registration of FIR, which has resulted into discharge by the trial Court. The claim of the petitioner has been rejected only on the ground that period of more than six months has passed. Nowhere, it has been mentioned that delay was there on the part of the petitioner. The trivial offence, due to which the petitioner was involved in the FIR, has not been proved by the Investigating Agency and ultimately, he was discharged. Accordingly, it cannot be a ground to deny public employment and that too to a person, who

has already been discharged. The approval already granted had been withdrawn without issuing any Show Cause Notice and without giving an opportunity of hearing to the petitioner, which is in violation of principles of natural justice.

13. Accordingly, keeping in view the facts and circumstances of the case, the present petition is allowed and the impugned order dated 26.02.2013 (Annexure P-20) passed by respondent No.3 is hereby set aside. The respondents are directed to reconsider the case of the petitioner for appointment within a period of two months from the date of receipt of certified copy of this order.