

(2025) 11 SHI CK 1842

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 127 Of 2022

State Of Himachal Pradesh And Others

APPELLANT

Vs

Sandeep Kumar

RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 160, 325

Citation : (2025) 11 SHI CK 1842

Hon'ble Judges : G.S. Sandhawalia, CJ; Jiya Lal Bhardwaj, J

Bench : Division Bench

Advocate : Sidharth Jalta, Sanjeev Bhushan, Rakesh Chauhan

Final Decision : Dismissed

Judgement

Jiya Lal Bhardwaj, J

1. Challenge in the present appeal is to the judgment dated 28.09.2021, passed by the learned Single Judge in Civil Writ Petition (Original Application) No. 664 of 2020 titled Sandeep Kumar vs. State of H.P and others, whereby the petition preferred by the petitioner/respondent herein has been allowed and the order(s) dated 07.01.2011 (Annexure A-4), 07.06.2012 (Annexure A-7), 05.05.2014 (Annexure A-9) and 17.06.2016 (Annexure A-10) have been quashed and set aside with a direction to the appellants-State to offer appointment to the respondent against the post of Constable in 6th IRBn. Sirmaur, District Shimla or other Battalions It has further been directed that in case the respondent has become over age, then he shall be offered appointment by exercising the power of relaxation. It has also been clarified that the appointment of the respondent for all intents and purposes shall be prospective as from the date of his appointment and further he shall be ranked at the bottom of the seniority list as on the date of appointment and he shall not claim any benefit whatsoever prior to the date of his appointment.

2. The grievance of the appellants against the judgment is to the effect that the

respondent, at the time of filling up the forms for the post of Constable had mentioned "No" against column No. 15, which is to the effect that "Have you ever been arrested/involved in criminal case", whereas the respondent was involved in two cases, qua which FIR Nos. 3 of 2006 dated 04.01.2006 under Section 160 of Indian Penal Code (for short "IPC") and 101/2006 dated 09.05.2006 under Section 325 read with Section 34 of IPC, were registered against him. Since the respondent had furnished the false declaration and suppressed the material facts, he was not offered the appointment for the post of Constable. It has further been asserted that since instructions dated 22.07 2016 issued by the Department of Personnel, Government of Himachal Pradesh stipulate that if the declaration submitted by the candidate is found incorrect, the appointing authority shall have a right for cancellation of appointment, thus the judgment passed by the learned Single Judge is unsustainable in law.

3. The learned Deputy Advocate General has referred to the judgment passed by the Hon'ble Supreme Court in Avtar Singh vs. Union of India and others reported in (2016) 8 SCC 471 and contended that since the respondent had misrepresented and concealed the material fact that he was not ever involved in any criminal case, while filling up the form, the competent authority had rightly not offered him the appointment and it is for the employer to see that the person is not fit to be offered appointment.

4. The learned Deputy Advocate General has also relied upon another judgment passed by the Hon'ble Supreme Court in Satish Chandra Yadav vs. Union of India and others reported in (2023) 7 SCC 536 to buttress his submission. He thus contended that the learned Single Judge has erred while allowing the petition preferred by the respondent.

5. On the other hand, the learned Senior Counsel representing the respondent duly assisted by Shri Rakesh Chauhan has supported the findings returned by the learned Single Judge and submitted that no interference is called for. He relied upon the judgment passed by the Hon'ble Supreme Court in State of West Bengal and others vs. Mitul Kumar Jana reported in (2023) 14 SCC 719 and contended that since the respondent was honorably acquitted by the learned Appellate court, there was no justification for the appellants to deny him appointment for the post of Constable.

6. We have heard the learned counsel for the parties and carefully perused the record.

7. It is not in dispute that the respondent in respect of an FIR No. 101 of 2006 was acquitted by the learned trial Court, however in FIR No. 3/2006, he was initially convicted and fined for Rs.100/- for commission of offence under Section 160 of IPC and sentenced till the rising of the Court. However, in an appeal filed by him, he was honorably acquitted as evident from the judgment dated 30.12.2011 passed by the Additional Sessions Judge, Fast Track Court, Shimla, Annexure A-5 with the petition, whereby the judgment passed by the learned

trial Court was set aside.

8. The learned Single Judge while considering the matter in detail has returned the findings that the respondent when convicted was hardly between 18-19 years and further the sentence imposed upon him was set aside by the learned Appellate Court and, the effect, in view of the law laid down by the Hon'ble Apex Court in Commissioner of Police and others vs. Sandeep Kumar reported in (2011) 4 SCC 644, the approach has to give an opportunity to such a person to reform instead of branding him as a criminal for the rest of his life.

9. It has further been observed by the learned Single Judge that at young age, people often commit indiscretions and such indiscretions can often be condoned as after all youth will be youth and in view of the said fact, the petition preferred by the respondent has been allowed.

10. The contention raised by the learned Deputy Advocate General that as per the dictum of the Hon'ble Supreme Court in Avtar Singh's case, the appellants had been right in not offering the appointment to the respondent since the respondent had misrepresented and concealed the fact that he was not ever involved in any criminal case, deserves rejection. The reason to be given is that if the judgment referred is perused in its entirety, it has been held that in a case of trivial nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse. In this regard, the relevant observations noticed in para 38.4.1 of the judgment in Avtar Singh's case (supra) are reproduced hereinbelow:

"38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse."

11. In the present case, the respondent who was initially convicted was honourably acquitted as stated above and, therefore, there was no justification on the part of the appellants to not offer him appointment for the post of constable.

12. So far another judgment relied upon by the learned Deputy Advocate General in Satish Chandra Yadav's case (supra) is concerned, the Hon'ble Supreme Court in Mitul Kumar Jana's case (supra), wherein the judgment rendered by the Hon'ble three-Judge Bench in Avtar Singh's case (supra) has also been considered has reiterated the principles laid down in Avtar Singh's case. The Hon'ble Supreme Court has held that considering the subsequent development of clean acquittal of the applicant for the commission of petty offences, it requires consideration objectively by the authority ignoring the issue of suppressing the information. Since in the case of the respondent, he was honourably acquitted by

the Appellate Court, the action of the appellants-State not to offer him appointment was not justified as rightly been held by the learned Single Judge. The relevant part reads as under:-

"In view of the discussion made herein above, we confirm the findings of the Tribunal and the High Court on the issue of suppression of material information. As the respondent was not involved in heinous/serious offence or any offence involving moral turpitude, and the fact that in the said criminal case he has been honourably acquitted, therefore, modifying the order of the High Court, we direct the appellant to consider the case of the respondent and issue order of appointment to the post of constable in West Bengal Police Force within a period of four weeks from the date of passing of this order "

13. The last plea raised by the learned Deputy Advocate General that since the notification dated 22.07.2016 provides that in case the declaration is found to be incorrect, the appointing authority shall cancel the appointment deserves to be rejected. The law laid down by the Hon'ble Supreme Court in cases referred supra, it has been held that the employer has to consider the subsequent development of clean acquittal and ignore the suppression of the information. Since in the case of the respondent, he has been honourably acquitted, the action of the appellants-State not to offer him the appointment as Constable is not justified.

14. No other points have been raised by the learned counsel for the parties.

15. The learned Single Judge has succinctly dealt with the issue and there is neither any infirmity in the findings nor perversity which requires interference.

16. Resultantly, there is no merit in the appeal and the same is accordingly dismissed. All pending applications stand disposed of accordingly.