

with a fine of ₹1000/- and in default of payment of fine the defaulter shall further undergo rigorous imprisonment for 6 months.

(10) Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

Arihant Jain

Before Tejinder Singh Dhindsa, J.

PAWAN KUMAR — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 4568 of 2013

April 8, 2015

Constitution of India, 1950—Art. 226 —Indian Penal Code, 1860—Ss.34, 201, 302 & 364—Appointment—Acquittal from criminal charge—Petitioner applied for post of General Duty Constables—His name figured in list of provisionally selected candidates —After submission of an application by petitioner for said post, FIR was registered under Sections 364/302/201/34 of IPC against him—On trial, petitioner was acquitted—Instruction dated 2-7-2007 and 13-11-2007 issued by Director General of Police provided that such candidates who have faced charges for offences involving moral turpitude but got acquitted on technical ground or on account of giving benefit of doubt may not be considered for appointment as Constable—Offer of appointment was declined—Held, that since trial acquitted petitioner on account of lack of evidence, it could not be said that acquittal was on some technical ground—Acquittal in a criminal case for want of evidence is an acquittal on merit—Instructions in question could not operate to deny him his right of appointment to post as a duly selected candidate.

Held, that instructions further provide that such candidates who have faced charges for offences involving moral turpitude but got acquitted on technical ground or on account of giving benefit of doubt may not be considered for appointment as Constable. In the later part of instructions, it has been provided that cases of acquittal in charges of moral turpitude should be minutely examined after careful appraisal of the judgments and such candidates who have been acquitted may be

considered for appointment as Constables. In the instructions, there is no complete bar for appointment of such persons.

(Para 6)

Further held, that adverting back to the facts of the present case, the trial Court has acquitted the petitioner on account of lack of evidence. Once the allegation which was against the petitioner could not be established by evidence, it cannot be said that the acquittal was on some technical ground. Acquittal in a criminal case for want of evidence is an acquittal on merit. There is no provision for 'honourable acquittal' in criminal trial as per criminal jurisprudence. As such, the acquittal of the petitioner has to be viewed as an honourable acquittal and the instructions dated 2.7.2007 and 13.11.2007 at Annexures R3 and R4 along with the reply cannot operate so as to deny to him his right of appointment to the post as a duly selected candidate.

(Para 13)

Further held, that for the reasons recorded above, the present petition is allowed. Impugned order dated 14.2.2012, Annexure P5, is set aside. Respondents are directed to issue appointment letter to the petitioner on the post of Constable within a period of 30 days from the date of receipt of a certified copy of this order. Such appointment would relate back and take effect from the date when other candidates similarly situated and selected in the same very process of selection along with the petitioner have been appointed, along with all consequential benefits except actual arrears of salary for the period in question.

(Para 20)

Sushil Jain, Advocate *for the petitioner*.

Ravi Pratap Singh, Assistant Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.

(1) The petitioner, who was duly selected for the post of Constable in the Haryana Police Department, has questioned the validity of order dated 14.2.2012 at Annexure P5 whereby offer of appointment to the post has been declined.

(2) Facts of the case are in a very narrow compass. The respondents issued advertisement dated 20.7.2008 advertising 5456 posts for recruitment of General Duty Constables in Haryana Police Department. The petitioner applied for the post of male constables

reserved for BC-A category. The petitioner was permitted to participate in the selection process comprising of a Physical Measurement Test, Physical Efficiency Test and thereafter was called for interview by the Recruitment Selection Board, Jind. Concededly, the name of the petitioner figured in the list of provisionally selected candidates. It so transpires that after the petitioner had submitted his application for the post of Constable, FIR No.361 dated 6.12.2010 came to be registered under Sections 364/302/201/34 of Indian Penal Code at Police Station Safidon on the complaint of one Mobin Kuraishi. The petitioner faced trial in this case and vide judgment dated 24.12.2011 passed by the learned Additional Sessions Judge, Jind he was acquitted. The result of the Selection Board for the post of Constable in which the petitioner had participated was declared after the judgment of acquittal. Vide order dated 14.2.2012 passed by the Commandant 3rd Btn. Haryana Armed Police, Hisar, Annexure P5, offer of appointment has been declined to the petitioner stating that it would not be in public interest to do so. It is against such brief factual backdrop that the instant petition has been filed.

(3) Learned counsel for the petitioner would argue that in pursuance to a regular selection process the petitioner was duly selected and as such, merely on the basis that the petitioner stood trial in a criminal case he cannot be deprived of his vested right of appointment to the post. Another limb of the argument raised is that at the stage of submitting application for the post, there was no FIR/case pending against the petitioner and, in any case, prior to declaration of the final result of the selection process the petitioner already stood acquitted by the trial Court vide judgment dated 24.12.2011. Denial of appointment to the petitioner under such circumstances is contended to be arbitrary and violative of Articles 14 and 16 of the Constitution of India. It has also been contended that the petitioner was not guilty of any concealment of facts. Furthermore, the petitioner's acquittal by the trial Court on the ground that the witnesses did not support the prosecution version cannot be held against the petitioner so as to deny him appointment to the post of Constable inspite of having been declared successful in a regular selection process.

(4) Per contra, learned State counsel would state that even though the name of the petitioner was placed in the list of provisionally selected candidates but such selection was subject to verification of character/antecedents. State counsel would refer to the joint written statement filed on behalf of respondents 2 to 4 and would state that the

case of the petitioner was examined in the light of instructions issued by the Director General of Police dated 2.7.2007, Annexure R3, and dated 13.11.2007, Annexure R4, as well as in the light of the judgment of the Hon'ble Supreme Court in *Delhi Administration versus Sushil Kumar*, decided on 4.10.1996, Annexure R1, and, accordingly, a decision has been taken to decline appointment. Passing of the impugned order is sought to be justified by submitting that the purpose and objective of the issuance of the instructions dated 2.7.2007 and 13.11.2007 by the Director General of Police was to restrict the entry of persons of criminal background involved in heinous crimes and offences of moral turpitude. Appointment to the petitioner has been declined on the basis that he was involved in criminal prosecution wherein offence under Section 302 of the Indian Penal Code had been cited. Reliance has also been placed by the learned State counsel upon the judgment dated 1.8.2013 rendered by a Co-ordinate Bench of this Court in *Pritam Singh versus State of Haryana and others*, (Civil Writ Petition No.12693 of 2012) wherein under identical circumstances and by referring to the instructions dated 2.7.2007 and 13.11.2007, the action of the State Government in declining appointment to the petitioner therein i.e. Pritam Singh had been upheld.

(5) Learned counsel for the parties have been heard.

(6) It would be appropriate in the first instance to examine the scope of instructions dated 2.7.2007 and 13.11.2007 appended as Annexures R3 and R4 along with the written statement filed on behalf of the State. A conjoint reading of the said instructions would reveal that the Director General had clarified that the candidates, who were involved in criminal cases and stood acquitted at the time of declaration of selection, may be considered for appointment as Constable even if they had not disclosed the fact of their having faced trial or having been acquitted in the relevant column. Instructions further provide that such candidates who have faced charges for offences involving moral turpitude but got acquitted on technical ground or on account of giving benefit of doubt may not be considered for appointment as Constable. In the later part of instructions, it has been provided that cases of acquittal in charges of moral turpitude should be minutely examined after careful appraisal of the judgments and such candidates who have been acquitted may be considered for appointment as Constables. In the instructions, there is no complete bar for appointment of such persons.

(7) As such, it would require to be analysed if the acquittal of the petitioner is such that he can be reasonably denied appointment after

his acquittal in terms of the instructions at Annexures R3 and R4 or not?

(8) The judgment of acquittal has been placed on record and appended along with the writ petition at Annexure P3. The complainant was Mobin who had alleged that his brother Imran had been murdered by one Major and his accomplices. Present petitioner had faced trial in such criminal prosecution having been nominated as one of the accused. It cannot be disputed that the offence for which the petitioner was tried, was such as involving moral turpitude. While pronouncing the judgment of acquittal dated 24.12.2011, the learned Additional Sessions Judge, Jind has observed as follows:

“The prosecution has examined complainant Mobin as PW1, witness of disclosure statements Dabbu as PW2, witness of last seen and recovery Pappu as PW3, recovery witness Nafis as PW4 and witness of disclosure statement Rashid as PW5. They are star witnesses of the prosecution case. They have not supported the prosecution version and resiled from their previous version and prosecution has failed to extract anything favourable from their mouths by way of cross-examination.”

(9) The trial Court further held that:

“Prosecution has examined complainant as well as injured/eye witness but on the request of learned Public Prosecutor, all the witnesses were declared hostile and the version put forth by these witnesses is intrinsically inadequate and inherently improbable for proving the allegations levelled in the charge sheet against the accused.”

(10) Would acquittal of the petitioner be seen as an honourable acquittal or an acquittal on technical grounds so as to deny him appointment to the post of Constables under the instructions dated 2.7.2007 and 13.11.2007 at Annexures R3 and R4?

(11) A Division Bench of this Court in *Bhag Singh versus Punjab and Sind Bank*¹, interpreted the term “benefit of doubt in criminal proceedings”. It was noticed that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of “benefit of doubt” by the criminal Court is superfluous and baseless. The Court, as such, termed such acquittal an honourable acquittal.

¹ 2006(1) SCT 175

(12) In *Shashi Kumar versus Uttar Haryana Bijli Vitran Nigam and another*² a Division Bench of this Court was again dealing with a term “an honourable acquittal”. It was observed that the moment a criminal charge fails in a Court of law, the person would be deemed to be acquitted of the blame.

(13) Adverting back to the facts of the present case, the trial Court has acquitted the petitioner on account of lack of evidence. Once the allegation which was against the petitioner could not be established by evidence, it cannot be said that the acquittal was on some technical ground. Acquittal in a criminal case for want of evidence is an acquittal on merit. There is no provision for “honourable acquittal” in criminal trial as per criminal jurisprudence. As such, the acquittal of the petitioner has to be viewed as an honourable acquittal and the instructions dated 2.7.2007 and 13.11.2007 at Annexures R3 and R4 along with the reply cannot operate so as to deny to him his right of appointment to the post as a duly selected candidate.

(14) The same very instructions came up for consideration before this Court in Civil Writ Petition No.15109 of 2008 titled as *Tarun Kumar versus State of Haryana and others*, decided on 2.9.2009 and it was observed as under:

“A perusal of instructions dated 2.7.2007 provides that cases of acquittal and charges of moral turpitude are to be minutely examined and after careful appraisal of the judgment those who are acquitted honourably are to be considered for appointment as constables. If the instructions are allowed to operate in this manner, as pleaded by the respondents, the difference between acquittal and conviction will lose significance. What good would be this acquittal to the petitioner if the allegations are still to be held against him. Once a person earned an acquittal after trial, it would not be fair to deny him appointment on the ground that he was accused of having committed an offence involving moral turpitude. He may be alleged to have committed this offence but it is proved that he has not been guilty of commission of any such offence. Upon acquittal, an honour of such a person accused of offence would stand vindicated. Can he still be put to disadvantage and the infirmity. Unfair operation of this approach and that of the instructions can

² 2005(1) RSJ 718

easily be demonstrated by noticing that if such a person had been in the service, his conviction may have led to his dismissal and after acquittal, he was entitled to seek reinstatement, as per the Government instructions.”

(15) The claim of the petitioner seeking appointment to the post of Constable would also be covered in his favour in the light of a very recent judgment of the Hon'ble Supreme Court of India in **Joginder Singh versus Union Territory of Chandigarh and others**³ The facts in **Joginder Singh's** case (*supra*) were that appellant Joginder Singh had applied for the post of Constable in pursuance to an advertisement issued by the Union Territory of Chandigarh. In the selection process, he was declared as a successful candidate. However, on verification of his antecedents, it was found that he was involved in case FIR No.200 dated 14.4.1998, under Sections 148, 149, 323, 325, 307 of Indian Penal Code, registered at Police Station Sadar Bhiwani. Joginder Singh faced trial but was acquitted vide judgment dated 4.10.1999 passed by the Additional Sessions Judge, Bhiwani. Joginder Singh having been denied appointment inspite of due selection filed original Application before the central Administrative Tribunal, Chandigarh, whereby order dated 12.3.2003 was passed directing the respondents to appoint him to the post of Constable. Aggrieved by the order of CAT Chandigarh, the respondent – Union Territory, Chandigarh filed Civil Writ Petition before this Court and vide judgment dated 24.3.2008, the order of CAT was set aside. This Court while setting aside the order of CAT had even placed reliance on the case of *Delhi Administration's* case (*supra*). The matter having been taken up to the Hon'ble Supreme Court, it was argued on behalf of Union Territory, Chandigarh that Joginder Singh was not honourably acquitted of the offence as the eye witnesses of the occurrence had declined to support the prosecution version and were declared hostile by the Sessions Judge and as a consequence of which judgment of acquittal had been rendered. It was contended that the same cannot be construed as acquittal of the appellant on merits.

(16) While rejecting the contention of respondent-Union Territory, Chandigarh and setting aside the judgment and order passed by this Court, the Hon'ble Supreme Court observed as follows:

“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

³ 2015(1) SCT 87.

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.”

(17) Applying the dictum laid down in *Joginder Singh's case (supra)*, the impugned order dated 14.5.2012 at Annexure P5 cannot sustain.

(18) Even the judgment in *Delhi Administration's case (supra)* would have no application to the facts of the present case as in that case, there was a concealment of being involved in criminal proceedings, whereas in the present case, there is no concealment whatsoever as on the date of submission of application for the post by the petitioner, the FIR had not even been registered.

(19) Still further, the judgment rendered by the Co-ordinate Bench in *Pritam Singh's case (supra)* and upon which reliance has been placed by the State cannot stand in the way of the petitioner as the scope and ambit of instructions dated 2.7.2007 and 13.11.2007 had not been examined and neither was the import of expression “honourable acquittal” of an accused gone into.

(20) For the reasons recorded above, the present petition is allowed. Impugned order dated 14.2.2012, Annexure P5, is set aside. Respondents are directed to issue appointment letter to the petitioner on the post of Constable within a period of 30 days from the date of receipt of a certified copy of this order. Such appointment would relate back and take effect from the date when other candidates similarly situated and selected in the same very process of selection along with the petitioner have been appointed, along with all consequential benefits except actual arrears of salary for the period in question.

(21) Petition allowed in the aforesaid terms.

S. Gupta