CWP No.19877 of 2011

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HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.19877 of 2011 Date of decision:18.11.2014

Labh Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

Present: Mr.Rajkapoor Malik, Advocate for the petitioner.

Mr. Sanjay Joshi, Advocate for Union of India.

RAMESHWAR SINGH MALIK, J. (Oral)

The present writ petition is directed against the order dated 22.6.2011 passed by respondent No.3 vide Annexure P-1, whereby service of the petitioner was terminated, solely on the ground that the petitioner furnished an alleged incorrect information in his attestation form, at the time of applying for the post of Constable in Central Industrial Security Force. Petitioner also seeks quashing of order dated 2.9.2011 (Annexure P-2), whereby representation of the petitioner against the above-said termination order, was dismissed.

Notice of motion was issued and pursuant thereto, reply has been filed on behalf of the respondents.

Learned counsel for the petitioner submits that while studying in the College, petitioner was falsely implicated in a criminal case bearing FIR No. 472 dated 7.9.2006 registered under Sections 148, 149, 323, 452,

427 and 160 IPC at Police Station, City Kaithal. There were 37 co-accused. Petitioner was studying in BA-I in RKSD College, Kaithal. There was a fight amongst two factions of the students and petitioner was falsely implicated at the instance of rival faction. He further submits that since it was a false case, prosecution has miserably failed to prove the same and finally all the accused including the petitioner were acquitted of the charges levelled against them, vide judgment of acquittal dated 17.7.2007 Annexure P-3 passed by the learned court of competent jurisdiction. He concluded by submitting that since petitioner was going to gain nothing, while not mentioning about his acquittal in a criminal case, at the time of filling up of his form for applying for the post of Constable in the respondentdepartment, respondent authorities ought to have appreciated this material aspect in favour of the petitioner. However, since the respondent authorities altogether ignored this factual aspect as well as the law laid down by the Hon'ble Supreme Court, Delhi High Court as well as this Court in numerous judgments, on the issue, the impugned orders were not sustainable. In support of his contentions, learned counsel for the petitioner places reliance on the judgments of the Hon'ble Supreme Court in Dinesh Chandra Gahtori v. Chief of Army Staff and another, 2001 (9) SCC 525, Commissioner of Police and others v. Sandep Kumar (Civil Appeal No. 1430 of 2007), Division Bench judgment of this Court in Arvind Kumar v. Kendriya Vidyalaya Sangthan and others, 2010 (4) SCT 718 and the Division Bench judgment of Delhi High Court in WP(C) 7333/2012 (Hari Om v. Union of India and others), decided on 26.11.2012. He further submits that in compliance of the order passed by Delhi High Court in Hari Om's case (supra), respondent authorities reinstated Hari Om in service vide order dated 15.3.2013. Finally, he prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that since the cause of action became available to the petitioner in the State of West Bengal, this Court will not have the territorial jurisdiction to decide the issue involved in the present case. On merits, he submits that since the petitioner has supplied incorrect information which would amount to concealment on his part, the impugned termination order was rightly passed against the petitioner. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the case in hand, the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the preliminary issue raised by learned counsel for the respondents regarding territorial jurisdiction of this Court is concerned, the controversy has been set at rest by the Hon'ble Supreme Court in **Dinesh Chandra Gahtori's case (supra).** In the said case, cause of action became available to the employee in the State of Punjab because proceedings were conducted against the employee in the State of Punjab. However, the petitioner challenged the punishment order by way of writ petition before Allahabad High Court. The writ petition was dismissed by the High Court of Allahabad on the ground of lack of territorial jurisdiction. However, the Hon'ble Supreme Court set aside the order and remanded the matter back to Allahabad High Court for fresh decision. On merits, it was held that Chief of Army Staff can be sued

anywhere in the country. Thus, following the law laid down by the Hon'ble Supreme Court in **Dinesh Chandra Gahtori's case (supra)**, the preliminary objection raised by learned counsel for the respondents is repelled, as the same has been found not only misconceived but also contrary to the law laid down by the Hon'ble Supreme Court.

Since the petitioner had been acquitted in a criminal case long back vide judgment of acquittal dated 17.7.2007 (Annexure P-3), this did not occur to the petitioner that it was still obligatory on his part to point out about his involvement in the above-said criminal case despite his acquittal. The primary object in such matters ought to be as to what could be the malafide intention on the part of an applicant, while not mentioning about his acquittal in a criminal case which had already taken place. Learned counsel for the petitioner has rightly contended that in the present case, petitioner was not going to gain anything while not pointing out about his acquittal, because disclosure of such fact was not going to cause any kind of harm to the petitioner including his eligibility, competence and entitlement for recruitment to the post of Constable in the respondent-department.

It is a matter of record that exactly similarly situated employee namely Shri Hari Om from the same unit, approached the High Court of Delhi against the similar termination order. His writ petition was allowed by the High Court of Delhi vide order dated 26.11.2012. High Court of Delhi has rightly followed the law laid by the Hon'ble Supreme Court, observing as under:-

"The facts of the instant case are identical to the ones which were considered by the Supreme Court in CA No.1430/2007 Commissioner of Police and Ors. v. Sandeep Kumar decided on March 17, 2011, where the Supreme Court

highlighted that young people often commit indiscretions because youth will always be youth and young people are not expected to behave in as mature a manner as older people do and hence the judicial approach should be to condone minor indiscretions made by young people rather than brand them as criminals for rest of their life; modern approach is to reform a person instead of branding the person as a criminal all his life. In said case Sandeep Kumar was invovled in a criminal case under Section 325/34 IPC.

For parity of reasoning we all the petition and quash the impugned order dated May 10, 2011, the appellate orders dated September 23, 2011 and May 29, 2012. The petitioner is reinstated in service with all consequential benefits except back wages which need not be paid. The petitioner would be entitled to his seniority and increments on notional basis as also the period in question to be counted towards active and pensionable service."

In compliance of the above-said order passed by High Court of Delhi, respondent-department has passed the order dated 15.3.2013, whereby above-said Shri Hari Om has been recommended in service. The relevant part of the order, reads as under:-

"Consequent upon implementation of judgment dated 26.11.2012, the CISF No.094490336 Constable/GD Hari Om S/o Nafe Singh is hereby re-instated in service with direction to report to CISF unit DSP Durgapur Post: Durgapur, Distt: Burdwan (WB) immediately on receipt of this order."

Similar view was taken by a Division Bench of this Court in **Arvind Kumar's** case (supra). The law laid down by Division Bench in this regard, in para 15 of the judgment, is as under:-

"Even otherwise, in cases where a person has been acquitted and the information has not been disclosed, the

Division Bench of this Court has taken the view that non-disclosure of such an information would not amount to concealment of facts. In a case where a Constable was acquitted of criminal charge and the information was not revealed in the Attestation Form, this Court regarded it a hyper technical requirement and set aside the order, which was based on the allegation of concealment of fact. In the case of Subhash v. State of Haryana, 1994(4) SLR 525, this Court has observed as under:-

"Having heard the learned counsel for the parties and after going through the necessary record I find that the plea taken by the respondents is highly hyper-technical and the writ petition deserves to be allowed. It is not a concealment of fact regarding his earlier conviction which can be taken into consideration against an employee and on the basis whereof his appointment can be set aside later on. In the present case, petitioner had only been prosecuted and was acquitted by a competent Criminal Court. It was not necessary for the petitioner to disclose this fact to the respondents at the time of his submitting application for recruitment to the police service. In any case, the fact stands that there is nothing against the petitioner on the basis whereof his appointment could be set aside having already been made by order dated 4.9.1989 Annexure P-1. Therefore, the non-disclosure of the information relating to his acquittal in the criminal case is no ground for withholding the appointment of the petitioner."

Finally, the Hon'ble Supreme Court in **Sandeep Kumar's** case (supra), has held as under:-

"We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

The modern approach should be to reform a person instead of branding him as a criminal all his life.

We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they

believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

[Vide: Morris v. Crown Office, (1970) 2 Q.B. 114]
In our opinion, we should display the same wisdom as displayed by Lord Denning.

As already observed above, youth often commit indiscretions, which are often condoned.

It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 Indian Penal Code. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

The Hon'ble Supreme Court has held that non-disclosure of such information regarding acquittal in a criminal case, which had already taken place, should not be taken seriously particularly when the offence was not a serious offence like the murder, dacoity and rape. In such matters, Hon'ble Supreme Court has held that a lenient view should be taken.

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that the order of termination from service was not warranted in the present case, the impugned order being contrary to the law laid down by the Hon'ble Supreme Court of India. Thus, the impugned order dated 22.6.2011 (Annexure P-1) cannot be sustained.

It is neither pleaded nor argued case on behalf of the respondents that minus the above-said alleged concealment on the part of petitioner, his work and conduct while serving with the respondent authorities, was not up to the mark. Once it is so and keeping in view the law laid down by the Hon'ble Supreme Court in Sandeep's case (supra), followed by High Court of Delhi in **Hari Om's case (supra)**, it can be safely concluded that petitioner is also entitled for the similar relief as has

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Natural consequences would follow.

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already been granted to his co-employee namely Hari Om of the same unit.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders Annexures P-1 and P-2 have been found to be patently illegal, being contrary to the law laid down by Delhi High Court, Division Bench of this Court as well as the Hon'ble Supreme Court and cannot be sustained, the same are hereby set aside.

Petitioner shall be reinstated in service with all consequential service benefits including seniority and increments on notional basis. The period during which petitioner remained out of service, shall be counted towards active and pensionable service. Consequently, respondents are directed to do the needful within a period of two months from the date of receipt of a certified copy of this order.

Resultantly, with the abovesaid observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

18.11.2014 mks

(RAMESHWAR SINGH MALIK)
JUDGE