

**2023 STPL(Web) 21 HP
HIGH COURT OF HIMACHAL PRADESH**

(MS. JUSTICE JYOTSNA REWAL DUA J.)

MANISH KUMAR

Petitioner

VERSUS

STATE OF H.P. AND OTHERS

Respondents

CWP No. 4398 of 2021-Decided on 7-7-2023

Service Law

Service Law – Re instatement – Acquittal in Criminal case – Acquittal by trial court but appeal against acquittal pending in High Court – Held: Mere pendency of the appeal cannot be taken as a ruse for not considering the prayer of the petitioner for taking him back in service. Acquittal does not get annihilated by the mere pendency of appeal. - Writ petition is allowed to the limited extent that respondent No.3/competent authority is directed to consider and decide the case of the petitioner for his re-instatement/re-engagement in accordance with law within a period of three weeks from today.

(Para 5, 6)

Advocate(s): For the Petitioner: Mr. Arun Raj and Mr. Tanuj Thakur, Advocates.

For the Respondents: Mr. Y.P.S. Dhaulta, Additional Advocate General with Ms. Seema Sharma, Deputy Advocate General.

JUDGMENT

Jyotsna Rewal Dua, Judge-The grievance of the petitioner is that though he has been acquitted by the learned Trial Court in the criminal case, yet, the respondents have not re-instated him in service.

2. Facts:-

2(i). The petitioner was appointed as Panchayat Veterinary Sahayak on 01.01.2012 at Veterinary Dispensary Sangooti under Veterinary Hospital Koti, District Chamba. FIR No.66 of 2013, dated 10.12.2013, under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act'), was registered against the petitioner, wherein he was arrested on 10.12.2013. Learned Trial Court vide its judgment dated 20.01.2015 in Sessions Trial No.34/2014, acquitted the petitioner. This judgment has been assailed by the respondents-State in Criminal Appeal No.445 of 2015, which is pending adjudication in this Court.

2(ii). Based upon his acquittal in the criminal case, petitioner made a request to the respondents to re-instate him. Respondent No.3-the Director Animal Husbandry, Himachal Pradesh vide office letter dated 26.06.2015 (Annexure P-2), declined to consider petitioner's case till the final outcome of the appeal instituted by the respondents against the judgment of acquittal. Relevant para of this office letter reads as under:-

“Subject:- Regarding judgment dated 20.01.2015 passed by the Session Trial 34/2014 (Regd. No.11/2014) State of H.P. vs Manish Kumar. Memo; Reference to your letter No.AHY-CHM/F(7)- 334/2013-13 dated 1.4.2015 on the subject cited above. In this connection, it is submitted that Under Secretary (Home) to the Government of H.P. has informed this office vide his letter No.Home-E(5)-2- 583/2015 dated 15.6.2015 that the Government has decided to go in appeal in this case. The Advocate General H.P. Shimla-1 has been requested to file an appeal in the matter before the Hon'ble High Court, H.P. and the case is still pending for decision in the Hon'ble High Court of H.P. (copy enclosed). Hence, this case can't be considered at this point of time till the final outcome of the appeal. Encl.1. Sd/- Director, Animal Husbandry, Himachal Pradesh.”

2(iii). Feeling aggrieved, the petitioner has instituted this writ petition seeking quashing and setting aside of the aforesaid decision taken by respondent No.3 to not to consider petitioner's case for his reinstatement till the pendency of the appeal. The substantive reliefs prayed by the petitioner run as under:-

“i) Issue a writ, order or direction in the nature of Certiorari or any other writ for quashing and setting aside impugned communication letter dated 26.06.2021 (Annexure P-2).

ii) Issue a writ of mandamus directing the respondent no.2 to re-engage the services of the petitioner by giving him all the consequential benefits viz. continuity of service, fixation of pay alongwith arrears of pay till his joining.”

3. I have heard learned counsel on both sides and considered the case file.

4. Observations:-

4(i). In Special Leave Petition (C) No.678 of 2021 (Imtiyaz Ahmad Malla versus The State of Jammu and Kashmir and others), decided on 28.02.2023, Hon’ble Apex Court reiterated that if a person is acquitted or discharged, it cannot always be inferred that he was falsely involved. Unless it is an honourable acquittal, the candidates cannot claim the benefit of the same. What is honourable acquittal was considered in (2013) 1 SCC 598 (Inspector General of Police v. S. Samuthiram), wherein the Court held that the expressions ‘honourable acquittal’, ‘acquitted of blame’ and ‘fully exonerated’ are unknown to the Code of Criminal Procedure or Penal Code. These are coined by judicial pronouncements after full consideration of prosecution evidence and that when the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. The acquittal in a criminal case is not conclusive of the suitability of the candidates for the post concerned. Acquittal in a criminal case does not automatically entitle a person for appointment to the post. It is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. Relevant paras from the judgment read as under:-

“11. The expression “honourable acquittal” had also come up for consideration in other cases namely, Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal; and in R.P. Kapur Vs. Union of India and Another whereby it was held inter alia that the mere acquittal does not entitle an employee to the reinstatement in service. The acquittal, it was held, has to be honourable. As such, the expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, and it is difficult to define precisely what is meant by expressions “honourable acquittal”.

12. In Pradeep Kumar’s case (supra) also it was reiterated that if a person is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents. The precise observations made therein are re-produced hereunder:

“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566: (2013) 1 SCC (L&S) 229], in which this Court held as under: (SCC p. 609, para 24)

“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . 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.”

11.

12.

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still, it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7

SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.”

4(ii). In the background of above legal position, following aspects of the case are material for examining the prayer of the petitioner:-

4(ii)(a). Reply filed by the respondents does not indicate initiation of departmental proceedings against the petitioner. The case file shows that the petitioner was arrested on 10.12.2013 in FIR No.66/2013, registered under Section 20 of the NDPS Act at Police Station Dalhousie, District Chamba. According to learned counsel for the petitioner, the petitioner remained in custody till he was acquitted under judgment dated 20.01.2015. It is an admitted position that the judgment passed by the learned Trial Court, acquitting the petitioner, has been assailed by the respondents-State in Criminal Appeal No.445 of 2015, which is pending adjudication in this Court.

4(ii)(b). Learned Trial Court, i.e. learned Special Judge-II, Chamba, District Chamba, while acquitting the petitioner made following observations in paras 34 to 36 of the judgment:-

“34. Therefore, from the aforesaid discussion and meticulously scrutinizing the prosecution evidence the case of the prosecution is full of infirmities, exaggeration and major contradiction. The statements of the police officials do not inspire any confidence nor the independent witnesses have supported the prosecution story since they have turned hostile nor the accused person was apprised about his right to be searched before any Magistrate or Gazetted Officer.

35. Viewed from my angle, the entire evidence as brought by the prosecution is neither cogent nor satisfactory nor points out towards the guilt of the accused person inevitably and exclusively. The version of the witnesses are full of infirmities, contradictions and improvements. Material evidence has been withheld. Seals have not been produced for the perusal of the Court. Hence, an inference is inescapable that the prosecution has miserably failed to establish the guilt of the accused person at home beyond shadow of all reasonable doubts that he had been found in conscious and exclusive possession of cannabis/Charas in question. Accordingly, point No.1 is answered against the prosecution.

Final Order

36. In view of my above said discussion and findings, accused person is acquitted for an offence under section 20 of the NDPS Act. The case property be destroyed after the expiry of limitation period for appeal and in the event of an appeal, be dealt with as per orders of the Hon'ble Appellate Court. Since the accused is in judicial custody, hence he be set at liberty forthwith in this case if not required in any other case.”

In the instant case, the respondents have refused to consider the representation of the petitioner, praying for his re-engagement/re-instatement only on account of pendency of the appeal.

4(ii)(c). It will also be pertinent to quote relevant para from the reply filed by the respondents, wherein they have themselves stated that the petitioner is registered in H.P. Para Veterinary Council; he may appear in the counselling for recruitment of fresh Gram Panchayat Veterinary Assistants, as and when the same are advertised by the Department in due course of time and this will be treated as fresh appointment, in case he is selected. The para in verbatim is as follows:-

“5. That the services of the petitioner cannot be re-engaged, as he was appointed as Gram Panchayat Veterinary Assistant, governed by the policy issued under the Mukhya Mantri Arogya Pahsudhan Yojna (MMAPY) vide notification dated 19/09/2017. However, since, he was registered in the H.P. Para Veterinary Council, he may appear in the counselling for recruitment of fresh Gram Panchayat Veterinary Assistants, as and when the same are advertised by the Department in due course of time and this will be treated as fresh appointment, in case he is selected.”

5. The above quoted pleadings from the reply are an indication that the respondents are per se not against the petitioner's serving in the respondent department. They would accept the petitioner as a fresh candidate, but will not re-instate him in service at this stage due to pendency of appeal presently pending against the judgment of acquittal. This prima-facie appears to be a dichotomous stand, nonetheless

accepting the petitioner back in their fields is a call to be taken by the respondents in accordance with law keeping in view all attending factors. But mere pendency of the appeal cannot be taken as a ruse for not considering the prayer of the petitioner for taking him back in service. Acquittal does not get annihilated by the mere pendency of appeal. The facts as they come out, more particularly, when the petitioner was not allowed to work only on the strength of a criminal case registered against him; no departmental proceedings were ever conducted against him; the criminal case has ended in acquittal of the petitioner and; when the respondents per se are also not against considering the case of the petitioner as a fresh appointee; then the respondent is not precluded from considering the case of the petitioner for his re-instatement/re-engagement notwithstanding the pendency of the appeal instituted by the respondents-State. Ordered accordingly.

6. In view of the above, the writ petition is allowed to the limited extent that respondent No.3/competent authority is directed to consider and decide the case of the petitioner for his re-instatement/re-engagement in accordance with law within a period of three weeks from today. The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.
