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 4th September, 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."

(9) In view of the above, we allow this writ petition and direct the respondents to take steps for issuance of appointment letter to the petitioner subject to fulfillment other conditions by him. It is made clear that the petitioner shall be deemed to have been appointed as Constable Driver with effect from the date persons lower in merit to him as per the merit determined by the Selection body is appointed. However, he shall not be entitled to any arrears of salary.

*R.N.R.*

*Before M.M. Kumar & M.M.S. Bedi, JJ.*

RAM SINGH,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

*C.W.P. NO. 7572 OF 2006*

8th August, 2006

*Constitution of India, 1950—Art. 226—Petitioner availed car loan from his department with interest @ 10% p.a.—In case of misutilisation of loan amount, penal interest @ 4% p.a. over & above normal rate of interest stipulated in sanction order—Petitioner misutilizing loan amount—Respondents charging penal interest @ 10% p.a. on the basis of modified instructions—Once a stipulation of penal interest of 4% made in sanction order then a binding obligation between parties came into force which could not be varied—Petition allowed directing respondents to calculate interest @ 10% + 4% p.a.*

*Held,* that once the sanction has been accorded on 26th September, 1995 and it was held out to the petitioner that penal rate of interest of 4% on the basis of instructions dated 30th November, 1983 was to be charged, then a binding obligation between the parties have come into force, which could not be varied to his disadvantage by citing modified instructions. The modified instructions, dated 23rd August, 1993 stipulating penal rate of interest at the rate of 10% per annum in case of misutilization of loan amount were available and could have been incorporated in the sanction letter dated 26th September, 1995. That was not done and as a result the petitioner stipulated to pay the penal interest at the rate of 4% per annum in case of misutilization of loan amount.

(Para 5)

S.S. Chandi, Advocate, *for the petitioner.*

Harish Rathee, Sr. D.A.G., Haryana, *for the respondents.*

**JUDGMENT**

**M.M. KUMAR, J. (ORAL)**

(1) The petitioner on 26th September, 1995 availed car loan, amounting to Rs. 1,25,000 from the respondent department where he was serving. According to sanction letter, dated 26th September, 1995 (P-1), the rate of interest stipulated was 10% per annum. However, it was made clear that if the loan amount was misutilised then penal interest at the rate of 4% per annum over and above normal rate of interest of 10% per annum was to be charged from the date of withdrawal of the loan till the principal amount would have been recovered. The aforementioned position is amply clear from Clause 6 of the sanction letter dated 26th September, 1995 (P-1) and the same reads as under :—

> "6. His attention is also invited to the instructions in the Punjab Government Finance Department letter No. FD-Loan-81 (136)/ 604, dated the 5th May, 1961 and 49/83-WM(5), dated 30th November, 1983 according to which in case of mis-utilization of the loan and penal interest at the rate of 4% per annum over and above normal rate of interest shall be charged from the date of drawal of the

loan for the purchase of car till the principle (principal ?) amount has been recovered as such as employee shall be debarred from all kinds of loans from Government in future."

(2) It is admitted position that the petitioner has misutilised the loan amount and therefore, has rendered himself liable to pay 4% more interest according to the stipulation made in the sanction letter, dated 26th September, 1995 (P-1).

(3) However, the grievance made by the petitioner is that the interest amount of Rs. 52,615 @ 10% per annum has been calculated and an equal amount of Rs. 52, 615 as penal interest at the rate of 10% per annum is also sought to be recovered. According to the learned counsel for the petitioner, the rate of penal interest could not exceed 4% per annum as stipulated in Clause 6 of the sanction letter dated 26th September, 1995 (P-1), which has already been reproduced in the foregoing para.

(4) The respondents have taken the stand that the instructions dated 30th November, 1983 (P-7), which stipulates penal rate of interest at the rate of 4% were modified,—*vide* instructions dated 23rd August, 1993 (P-6) and the penal rate of interest was raised to 10% in case of misutilisation of loan amount. Therefore, charge of penal rate of interest at the rate of 10% is sought to be justified. Reliance has also been placed on Rule 10.15 of the Punjab Financial Rules. Volume-I, Part-1, which reads as under :—

"10.15 The interest on advances shall be charged at such rate as may be fixed by the Government from time to time."

(5) Having heard the learned counsel for the parties, we are of the view that once the sanction has been accorded on 26th September, 1995 and it was held out to the petitioner that penal rate of interest of 4% on the basis of instructions dated 30th November, 1983 was to be charged, then a binding obligation between the parties have come into force, which could not be varied to his disadvantage by citing modified instructions. The modified instructions, dated 23rd August, 1993 (P-6) stipulating penal rate of interest at the rate of 10% per annum in case of misutilisation of loan amount were available and could have been incorporated in the sanction letter dated 26th

September 1995 (P-1). That was not done and as a result the petitioner stipulated to pay the penal interest at the rate of 4% per annum in case of mis-utilisation of loan amount.

(6) The contention that Rule 10.15 of the Punjab Financial Rules, Volume-I, Part-I, is applicable with regard to interest on advances, we are of the view that the same is not attracted to the facts of the present case because the rules does not deal with the question of penal interest. The aforementioned Rule only shows that the interest on advances is to be charged at such rates as may be fixed by the Government from time to time.

(7) For the aforementioned reasons the writ petition is allowed and order dated 6th January, 2006 (P-3) and 3rd March, 2006 (P-5) are quashed. The respondents are directed to calculate the penal interest at the rate of 4% per annum instead of 10% and raise the demand accordingly. In case the amount of penal interest in excess of 4% per annum has already been recovered from the petitioner and he is found entitled for refund, the same shall be refunded to him within a period of two months from today.

(8) The writ petition stands disposed of accordingly.

***R.N.R.***

*Before M. M. Kumar & M.M.S. Bedi, JJ.*

GURDEV SINGHS,—*Petitioner*

*versus*

STATE OF HARYANA & OTHERS,—*Respondents*

*C.W.P. NO. 7298 OF 2006*

3rd August, 2006

*Constitution of India, 1950—Haryana Civil Service (Punishment and Appeal) Rules, 1987—Rl.7—Wilful absence from duty—Inquiry Officer finding petitioner guilty of charge of remaining absent from duty from 10th September, 1997 to 21st December, 1997—No charge of absence in respect of period from 1st January, 1998 to 24th September, 1998 framed nor any opportunity in this regard was*