

(7) In view of the fact that the statutory Rules provide for the pay-scale of Rs. 5500—9000 to the post of Feed Analytics, the respondents cannot take a contrary stand and through executive instructions reduce the pay-scale of the said post to Rs. 5450—8000. The action of the respondents, thus, cannot be sustained and the impugned order dated 7th August, 2006 (Annexure P-5) passed by the Director General, Animal Husbandry and Dairying Department, Haryana-respondent No. 2, cannot be sustained.

(8) In view of the above, this writ petition is allowed and the order dated 7th August, 2006 (Annexure P-5) is hereby quashed.

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**R.N.R.**

*Before Mehtab S. Gill and Augustine George Masih, JJ.*

**RAMNIK KUMAR AND ANOTHER,—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

C.W.P. No. 13709 of 2007

31st October, 2008

*Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.18—Instructions dated 2nd July, 2007 and clarification dated 13th November, 2007 issued by State of Haryana—Registration of FIRs against petitioners—Non-consideration for appointment as Constable—Cl. 2(a) of instructions 13th November, 2007 provides that debarment for allotment of constabulary number would be applicable to those who are facing investigation/trial or have been acquitted in offences involving moral turpitude only—Case of the petitioners fully covered under Para 2(a) of instructions dated 13th November, 2007—Petitioners could not be debarred for allotment of constabulary number—Action of respondents in not allotting constabulary number to petitioners contrary to Rl. 12.18 as well as instructions dated 13th November, 2007—Petitioners held entitled to allotment of constabulary number.*

*Held*, that, *vide* instructions dated 13th November, 2007 Para 2 Clause (b) of the instructions dated 2nd July, 2007 stood clarified/modified as initially this clause totally barred the consideration for appointment as Constable of all candidates, who were facing trial for any criminal offence. The respondents have relied on this Para 2 Clause (b) of instructions dated 2nd July, 2007, which according to their own stand, stands clarified,—*vide* instructions dated 13th November, 2007. The respondents have wrongly applied the instructions dated 2nd July, 2007 to the case of the petitioners when instructions dated 13th November, 2007, which is the clarification of the instructions dated 2nd July, 2007 applies to the case of the peititioners wherein in para 2(a) the case of the petitioner is fully covered and, therefore, the petitioners could not be debarred for allotment of constabulary number as they were selected candidates for the posts of constables. The action of the respondents in not allotting the constabulary number to the petitioners is contrary to Rule 12.18 of the Punjab Police Rules as applicable to the State of Haryana as well as their own instructions dated 13th November, 2007 and, therefore, cannot be sustained. The petitioners are entitled to the allotment of the constabulary number in the light of the above mentioned Rules as applicable to the posts on which they have been appointed and also under the instructions issued by the Director General of Police itself.

(Para 13)

Vikram Singh, Advocate, *for the petitioners*.

Harish Rathee, *Sr. DAG, Haryana*.

***AUGUSTINE GEORGE MASIH, J.***

(1) Petitioners herein are selected candidates on the posts of Constables (GD) in the Police Department, Haryana and are alleging that despite their selection, they have not been deputed for training of Constables. It is their contention that the State of Haryana advertised 3700 posts of Constables (GD) on 2nd May, 2006. The last date for submission of applications, as per the advertisement, was 24th May, 2006 and in pursuance thereto, both the petitioners submitted their applications. They cleared the physical examination test and the interview

for the said test and their names found mentioned in the select list published in the month of April, 2007 in general category of District Karnal as Constables (GD). The registration number of the petitioner No. 1 was 1033 and that of petitioner No. 2 was 46. Thereafter, the petitioners were called for the medical examination where the petitioners were cleared and ultimately the names of the petitioners were sent for character verifications. Candidates selected along with the petitioners as Constables (GD), who were lower in merit to the petitioners, were conferred with the constabulary number and sent for training for nine months as prescribed in the rules. The petitioners were neither conferred with constabulary number nor were they sent for training. On enquiry, the petitioners were informed orally by the office of the Inspector General of Police that there are cases registered against them, which are pending trial, therefore, they cannot be allotted the constabulary number nor they can be deputed for the training.

(2) The petitioners contend that Rule 12.18 of the Punjab Police Rules, as applicable to the State of Haryana and amended by Notification dated 18th June, 2002, provides that a candidate, who has been convicted for any offence under any law, under moral turpitude, as specified in the Government Instructions from time to time, is only debarred for consideration for appointment as Constable under the Rules. As regards the petitioners, they are not considered for appointment as Constables only for FIRs pending against them and that too came into existence after all the tests and interviews, as prescribed under the Rules, have been completed. Petitioner No. 1 contends that FIR No. 606 dated 23rd November, 2006 under Sections 148, 149, 323, 324 and 506 IPC, Police Station City Thanesar was registered against him in which Section 307 was added later on. He further contends that it was a fight between college students and no where the name of the petitioner has been mentioned but he has been arrayed as an accused in the challan presented to the Court. Petitioner No. 2 contends that FIR No. 39 dated 23rd March, 2007 under Sections 148, 149, 323, 324, 452 IPC, Police Station Taraori was registered against him in which Section 307 was added later on. It is the contention of this petitioner that this FIR came into existence because of enmity between the villagers and he has been arrayed as an accused because of that. The case is totally false in which

the petitioner has been made a scapegoat. It is the further contention of both the petitioners that none of the offences alleged against the petitioners involves moral turpitude and, therefore, does not debar them from being appointed as per the Punjab Police Rules, as applicable to the State of Haryana. It is the contention of the petitioners that in any case, since the petitioners have not been convicted, what to say of offences involving moral turpitude, the respondents cannot deny the petitioners the appointment to the posts of Constables under the Rules.

(3) Upon notice having been issued, the respondents have filed their reply, therein the facts, as mentioned by the petitioners, are not in dispute. The only contention raised by the respondents in their reply is that at the time of verifications of character antecedents of the petitioners, it was found that the case registered against the petitioner No. 1 (Ramnik Kumar) was still pending in the court at Kurukshetra and the case registered against petitioner No. 2 (Arvind Rana) was still pending in the court at Karnal. It is stand of the respondents that in this regard, instructions dated 2nd July, 2007 issued by the Director General of Police, Haryana, are very clear as they state that “All those candidates, who are facing trial for any criminal offences, will not be considered for appointment as a Constable”, copy of these instructions has been appended as Annexure R-I. It has further been submitted that the above noted instructions stand modified,—*vide* instructions dated 31st November, 2007 in cases of candidates involved in cases of moral turpitude, copy of these instructions is appended as Annexure R-II. Placing reliance upon these two instructions, the respondents contend that the petitioners could not be considered for appointment as Constables.

(4) During the pendency of this writ petition, both the petitioners, who are facing trial in their respective FIRs as mentioned above, have been acquitted. Ramnik Kumar (petitioner No. 1) stands acquitted by the Sessions Judge, Kurukshetra,—*vide* his judgment dated 25th July, 2008 and Arvind Rana (petitioner No. 2) stands acquitted,—*vide* judgment dated 11th June, 2008 passed by the Additional Sessions Judge, Karnal. The petitioners have placed the said judgments on record as Annexures P-4 and P-3 respectively. Relying on the said judgments, the petitioners contend that they stand acquitted by the trial court and the perusal of the judgments would show that no evidence has come

forth during the trial, which could support the prosecution case and no incriminating material has been brought on record by the prosecution. The prosecution has miserably failed to prove the guilt of the accused and they have been acquitted of the charges framed against them. The petitioners have also relied upon a Division Bench judgment of this Court in CWP No. 14028 of 2003 titled as **Lalit Kumar versus State of Haryana and others** decided on 27th February, 2004 to contend that merely because the petitioners have been acquitted by giving them the benefit of doubt, it should not be per se taken as a bar for appointment to the posts of Constables without going into the merits of the case. They further rely upon another Division Bench judgment of this Court in CWP No. 17043 of 2007 titled as **Pardeep Kumar versus State of Haryana and others** decided on 2nd May, 2008 to contend that after their acquittal in the criminal case, which does not involve moral turpitude, the candidates must be appointed to the posts of Constables.

(5) We have heard the counsel for the parties and with their assistance have gone through the records of the case.

(6) Rule 12.18 of the Punjab Police Rules as applicable to the State of Haryana and amended,—*vide* Notification dated 18th June, 2002 reads as follows :

“Rule 12.18 Recruits verification of character :—

Verification rolls of selected candidates for the post of Constable shall be sent to the local police and criminal investigating department with a copy to the concerned District Magistrate and character verification shall be done as per the extent Government instructions on the subject. Candidate who has been convicted for any offence under any law, under moral turpitude, as specified in the Government instructions from time to time, shall not be considered for appointment as Constable under these rules.”

(7) A perusal of the above Rule would show that it is only on conviction for any offence under any law, which involves moral turpitude and as specified in Government instructions from time to time, which

debars a candidate for consideration for appointment as Constable under these Rules.

(8) The Director General of Police, Haryana has issued instructions dated 2nd July, 2007 (Annexure R-I), which reads as under :—

“Subject : Allotment of Constabulary numbers to the selected candidates for the post of constables.

Memorandum/

Some Chairmen of Selection Boards have sought clarification regarding appointment of candidates who have been acquitted before and after submission of application forms for recruitment as Constables.

2. The matter has been examined and it is clarified that :—

- (a) Candidates who were involved in criminal cases and stand acquitted at the time of declaration of selection list may be considered for appointment as constable even if they had not disclosed the facts of their facing trial or acquittal in column No. 12 of the application form. But those candidates who have faced charges of moral turpitude during their trial but got acquitted merely on technical grounds or on account of giving of benefit of doubt may not be considered for appointment as Constable. In this regard it is stated that all 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 honorably may, however, be considered for appointment as constable.
- (b) All those candidates who are facing trial for any criminal offence will not be considered for appointment as constable.
- (c) Candidates who have been convicted for any criminal offence shall not be given appointment.

(Sd.) . . .,

(R. S. DALAL),

Director General of Police, Haryana.”

(9) Thereafter a clarification of the said instructions has been issued,—*vide* instructions dated 13th November, 2007 (Annexure R-II), which reads as follows :

“Memorandum

In continuation of this office endst. No. 7463-68/E(II) 1, dated 2nd July, 2007, on the above subject.

2. This matter has been further examined and Clarification conveyed,—*vide* this office letter referred to above is modified as under :—

- (a) Candidates against whom cases are pending should be considered for allotment of Constabulary number except those who are facing investigation/trial or have been convicted in offences, involving moral turpitude.
- (b) The candidates acquitted on technical grounds in offences involving moral turpitude, shall also not be considered for allotment of Constabulary number.
- (c) Candidates who on appeal have been declared medically fit by the PGIMS Rohtak may be considered for allotment of Constabulary numbers.

While allotting constabulary numbers in view of above clarification it may be ensured that appointments should be made against the notified vacancies only.

(Sd.) . . . ,

(R.S. DALAL)

Director General of Police, Haryana.”

(10) A perusal of the above instructions dated 2nd July, 2007 would show that the Director General of Police, Haryana had,—*vide* these instructions in Clauses (b) and (c), debarred all candidates, who have been convicted for any criminal offence for consideration for appointment as Constables. This position, it appears that the Director General of Police realized, was contrary to the Statutory Rule 12.18

as applicable to the State of Haryana (reproduced above) and, therefore, clarified the position,—*vide* instructions dated 13th November, 2007. A perusal of Clause (a) of these instructions would show that the earlier instructions dated 2nd July, 2007 were modified to the extent that the debarment for allotment of constabulary number would be applicable to those, who are facing investigation/trial or have been acquitted in the offences involving moral turpitude only.

(11) It is the positive case of the petitioners in para 10 of the writ petition that the petitioners have been falsely involved in the FIRs registered against them with a *mala fide* intention and the offence does not involve moral turpitude. Para No. 10 of the writ petition reads as follows :—

“10. That from the perusal of the FIRs, it is clear that the petitioners have been falsely involved in the above mentioned cases with *mala fide* intention and the offences involves no moral turpitude.”

(12) The assertion of the petitioners that the offences, which are alleged to have been committed by the petitioners in the FIRs, do not involve moral turpitude, has not been denied by the respondents in their written statement. Para 10 of the written statement reads as under :—

“10. In reply to the para No. 10 of the petition, it is submitted that both the petitioners are involved in the criminal cases and these were not *malafidely* registered against them which are still pending in the court at Kurukshetra and Karnal respectively.”

(13) In view of the above, the case of the petitioners is fully covered under para 2 Clause (a) of the instructions dated 13th November, 2007 (Annexure R-II), which clarifies the instructions dated 2nd July, 2007 issued by the Director General of Police, Haryana, as the cases, which were pending trial against the petitioners, related to offences, which did not involve moral turpitude as it has not been denied by the respondents in their written statement. It would not be out of place to mention here that,—*vide* instructions dated 13th November, 2007 Para 2 Clause (b) of the instructions dated 2nd July, 2007 stood clarified/modified as intially this clause totally barred the consideration for



appointment as Constable of all candidates, who were facing trial for any criminal offence. The respondents have relied on this Para 2 clause (b) of instructions dated 2nd July, 2007, which according to their own stand, stands clarified,—*vide* instructions dated 13th November, 2007. The respondents have wrongly applied the instructions dated 2nd July, 2007 to the case of the petitioners when instructions dated 13th November, 2007, which is the clarification of the instructions dated 2nd July, 2007, applies to the case of the petitioners wherein in para 2(a), the case of the petitioners is fully covered and, therefore, the petitioners could not be debarred for allotment of constabulary number as they were selected candidates for the post of constables. The action of the respondents in not allotting the constabulary number to the petitioners is contrary to Rule 12.18 of the Punjab Police Rules as applicable to the State of Haryana as well as their own instructions dated 13th November, 2007 (Annexure R-II) and, therefore, cannot be sustained. The petitioners are entitled to the allotment of the constabulary number in the light of the above mentioned Rule as applicable to the posts on which they have been appointed and also under the instructions issued by the Director General of Police itself.

(14) As we have already held the petitioners entitled for allotment of the constabulary number, we do not find it necessary to proceed to decide the other contentions raised by the petitioners basing their claim on acquittal on merits by the trial courts in the FIRs registered against them.

(15) In the light of the above, this writ petition is allowed. The respondents are directed to allot constabulary number to the petitioners within a period of 15 days from the date of receipt of a copy of this order and the petitioners be deputed for training of Constables (GD) in the very first course commencing thereafter. They shall be given seniority from the date candidates lower in merit to the petitioners were allotted constabulary number. They will be entitled to the deemed benefit of fixation of pay and other consequential benefits. It is, however, made clear that they will get only deemed benefits without getting any actual financial benefits, in view of the principle of 'no work no pay' as laid down by the Hon'ble Supreme Court in the case of "**Union of India and another versus Tarsem Lal and others** (1).

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**R.N.R.**