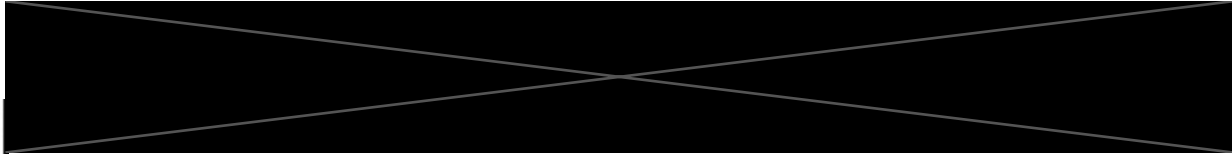




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 2808/2024



-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Home, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. The Director General Of Police, Police Headquarter, Jaipur, Rajasthan.
3. The Additional General Director Of Police (Recruitment And Promotion Board), Police Headquarter, Jaipur Rajasthan.
4. The Principal Secretary, Department Of Personnel, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Sanjay Nahar.
Mr. Sandeep Kumar

For Respondent(s) : Mr. Sandeep Soni for
Mr. B.L. Bhati, AAG.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

19/02/2025

1. The petitioner herein, aspirant to become a Sub-Inspector/Platoon Commander, inter alia, seeks issuance of an appropriate writ, order and/or direction commanding the respondents to consider his candidature for the said post pursuant to advertisement dated 03.02.2021 and appoint him on the appropriate post, as per his merit, if found otherwise suitable. He



pleads that he was successful in the selection process. After filing of the writ petition, a coordinate bench of this court, then seized of the matter, vide an interim order dated 20.09.2024 directed one post in question to be kept vacant. Said order since succinctly sums up the controversy to be adjudicated herein, is reproduced here in below :-



"1. Heard learned counsel for the parties.

2. Learned counsel for the petitioner has disclosed the involvement of the petitioner in the criminal cases wherein, the orders of acquittal have been passed giving benefit of doubt. Learned counsel submits that the respondents have denied the appointment to the petitioner on the ground that the petitioner's acquittal in the criminal cases is not clean and the same is done after giving the benefit of doubt. He further submits that there are other candidates namely Vinod Kumar Sharma / Hanuman Sahay Sharma, Rajeshwari / Babu Lal, Kamal Kumar Meena / Rang Lal Meena, Dinesh Varhat / Amrit Lal Varhat & Vishal Parmar / Jeevanprakash Parmar in whose cases the appointments have been granted although they were acquitted in the criminal cases by giving benefit of doubt. He, therefore, submits that the petitioner's case has been discriminated viz-a-viz the other persons mentioned above who have been given appointments by the respondents.

3. Learned counsel for the respondents prays for a short time to place on record the material which was taken into consideration by the Committee recommending the names of those persons as mentioned by the counsel for the petitioner.

4. Time prayed for is allowed.

5. List on 14.10.2024.

6. Meanwhile and till the next date of hearing, one post of Sub-Inspector (AP) which is being filled in pursuance of the advertisement dated 03.02.2021 and the corrigendum dated 07.06.2021 shall be kept vacant, if the same has not been completely filled up till date."

2. Despite being successful, due to past three FIRs against him, petitioner has not been given appointment letter. The FIRs were registered when he was a student (a juvenile). In the trials arising



there from, he was subsequently acquitted in all by competent court, though by giving benefit of doubt.

3. The petitioner approached the competent authority by filing a representation dated 19.10.2023 (Annex.10). He apprised inter-alia that during his student life he was involved in three criminal cases, all registered at Police Station Ratanada, Jodhpur.

3.1. Out of the three, in first FIR No. 262/2012, the petitioner (15-16 years old then) and six others were charged under Sections 147, 149, 341, and 323 IPC. After trial, all accused were acquitted due to a lack of evidence qua Section 147 IPC and the remaining charges were settled through a compromise, leading to acquittal on 04.06.2013.

3.2. In second FIR No. 293/2013, the petitioner (16-17 years old then) and three others were charged under Sections 143, 341, 323, and 427 IPC. They were acquitted of Section 143 IPC on basis of doubt, while the other charges were settled vide compromise, resulting in acquittal on 01.09.2018.

3.3. In third FIR No. 168/2015, the petitioner (18-19 years old then) and four others faced charges under Sections 147, 148, 149, 323, 326, 324, and 307 IPC. However, the High Court quashed the entire case arising out of said FIR No.168/2015 on 17.01.2017.

3.4. Thereafter, not a single criminal act of any kind against him has ever been alleged or reported. Therefore, he pleaded that his candidature be considered, but to no avail.

3.5. Hence, this petition.

4. The stand taken by the respondents in their reply is that the case of the petitioner was considered by the Departmental



Committee and on 03.10.2023, petitioner was not deemed fit for appointment. The translated version of the recommendation of the said Committee is as under:-



"The Departmental Committee, after thoroughly examining the case, found that in view of the successive cases registered against the candidate in the years 2012, 2013 and 2015, the conduct of the candidate appears to be criminal in nature. Also, the candidate has not been honourably acquitted but has been acquitted on the basis of compromise/benefit of doubt. Hence, the candidate is not entitled for appointment under Rule 13(2) of the Rajasthan Police Subordinate Service Rules, 1989."

5. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

6. Learned counsel for the petitioner would submit that even if there was any doubt on the good character of the petitioner, he stood subsequently completely vindicated by virtue of his acquittal. He would rely on a judgment rendered by Punjab and Haryana High Court in **Sukhjot Singh & Ors. Vs. State of Punjab & Anr.** (CWP No.9808 of 2003) & other connected matter in support of his contentions. He contends that an acquittal is an acquittal and merely because petitioner was given benefit of doubt or he was acquitted on the basis of compromise, the respondents cannot deny him the employment on the specious plea that he has not been honourably acquitted.

7. Per contra, learned counsel for the respondents would submit that a candidate seeking employment, if involved in any criminal case, is not entitled to appointment as he does not meet the criteria of having a sound character to the satisfaction of the employer. The requirement of having a good character is a sine qua non as per the condition of the advertisement. Even



otherwise, it is the right of the employer to ascertain the suitability of a candidate depending upon his character. He places reliance upon the judgment of the Supreme Court rendered in the case of **Commissioner of Police Vs. Raj Kumar** [(2021) 8 SCC 347].

8. In light of the above, I shall now proceed to render my opinion on the rival contentions by recording reasons and discussion in the preceding part of the order.

9. First and foremost it is pertinent to note that the relevant question seeking information from a candidate with regard to the criminal antecedents as put in the application form was "Are you ex-prisoner?". The petitioner, as on the cut off date of applying, i.e. 23.06.2021, for the post in question had since already been acquitted in the criminal proceedings arising out of the FIRs registered against him when he was student, opted "No" as an answer. In my view, rightly so. He had no reason to believe by any stretch of imagination to treat himself either as a convict or a prisoner once he was acquitted by the competent court and the said acquittal had attained finality. Therefore, there is no concealment and/or mis-representation or over-statement on his part, be it overt and covert. It was only when his candidature was rejected that he came to know of the earlier FIRs being the reason qua the same.

10. Reliance placed by the learned counsel for the respondent on a Supreme Court judgment in the case of Commissioner of Police Vs. Raj Kumar (supra) seems to be out of place in view of the fact that the Screening Committee therein (in Raj Kumar's case) had given a finding that the nature of offences and the role attributed



to the petitioner directly impinged on the duties to be performed by him and thus, amounting to moral turpitude. The Supreme Court upheld the Screening Committee's decision to consider the circumstances of acquittal of Raj Kumar who was accused of criminal trespass, theft, and assault but was acquitted due to lack of evidence. The Supreme Court held that the Screening Committee had the right to assess suitability beyond mere acquittals.

11. Adverting now to the Screening Committee, in its report dated 03.10.2023 (Annex.R/1), at S.No.3, it opined that since the petitioner was acquitted on the ground of benefit of doubt in view of the compromise, therefore, he is not entitled to be considered for the job in question. There is no such finding as to the allegations attributed to him and/or the offences or role attributed to him being of such nature so as to impede the nature of duty to be performed by him or the same bordering moral turpitude, in any manner.

12. Having regard to the aforesaid, there is no quibble about the proposition that a person who wishes to join the police force must be having an impeccable character and integrity and if the offence committed involves any moral turpitude, then the employer is entitled to reject the candidature given the sensitive nature of job which the disciplinary forces are meant for.

13. There is no gainsaying to observe that mere registration of an FIR does not reduce a citizen to the status of either a convict or not having a good character. Every citizen is presumed innocent unless proved guilty. In the case in hand it so transpires that the alleged role attributable to the petitioner is not of such a nature so



as to either impinge on the nature of duties to be performed by him or otherwise, even bordering moral turpitude.

14. In somewhat similar circumstances, services of a police official were terminated on the ground of his non-disclosure of criminal proceedings against him, which were registered prior to his appointment when he was 20 years old, in the case titled as Rakesh Yadav Vs. Union of India & Ors.¹. The reasoning given in the judgment therein (rendered by me), being relevant in the context of the controversy herein is reproduced as below:-

"13. Perusal of record shows that the criminal case under Sections 323 and 147 of IPC was filed by persons having enmity against the petitioner's family members. Same is evident from the fact that all the family members including petitioner were made accused in the said case. Even otherwise, the case was compromised and the petitioner was acquitted of all the charges by the learned Chief Judicial Magistrate, District Mau, Uttar Pradesh vide order dated 17.03.2011. Sheer pendency of criminal proceedings in a petty offence cannot be made ground of termination of services of the petitioner. Particularly, keeping in view that when the case was registered the petitioner was only aged 20 years. In this context, reliance may be had on a judgment rendered by Hon'ble the Supreme Court in case titled as 'Commissioner of Police and others Vs. Sandeep Kumar' in Civil Appeal No. 1430 of 2007, wherein it has been held as under:-

"We respectfully agree with Delhi High Court that cancellation of his candidature was illegal but we wish to give our opinion in the matter. When the incident happened the respondent must have been of 20 years of age. At that age young people often commit indiscretions and such indiscretions can often be 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 rest of their lives."

14. With respect to the allegation that the petitioner failed to disclose the pendency of criminal case at the time of filling up his application form for recruitment as per CRPF Form 25, given the young age of 20 years of petitioner at the relevant time, there is some force in the contention of learned counsel for

¹ P&H High Court, CWP No.24254 of 2015 (O&M), decided on 02.07.2019





the petitioner that it was bonafide. The petitioner was under the false impression that being a co-accused and a petty family feud and also having been granted bail in the criminal case there was no case pending in the Court against him and he did not disclose the same under a genuine mistake.

15. The explanation rendered in normal course would lack the credence so as to be believable enough, however, as already stated the petitioner was about 20 years boy at the relevant time and, therefore, in all likelihood would have perceived non-disclosure of the requisite information to be innocuous in nature. In somewhat similar circumstances, in a case titled Naresh Baliram Ingle Vs. Commandant CISF NLC Neyveli Tamil Nadu, 2012(11) SCT 800, learned Brother B. Rajendran, J. of Madras High Court observed thus:-

“10. 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 be 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.”

I see no reason why nature of indiscretion committed by the petitioner be not treated with a little lenient view. However, a word of caution would not be out of place here, so as not to treat this as a precedent. It is made clear that each case has to be seen in its own peculiar facts and circumstances and, therefore, by no stretch of imagination, it should be perceived that indiscretions committed at the young age ought to be condoned merely because youth deserves certain leniency.”

15. Youth need a reformatory approach to the indiscretions committed in heat of the moment, which may or may not be intentional. Societal and so should the legal perspective be, of course depending upon the nature of delinquency, that youthful indiscretions should not permanently tarnish an individual's future. A compassionate and reformatory approach ought to be adopted when dealing with young individuals who may have committed minor transgressions. Young people, particularly in their late teens and early twenties, are still in the process of emotional and intellectual development. At this stage, they often act impulsively,



sometimes making decisions that are not well thought out. A punitive approach that permanently brands young individuals as criminals for relatively minor mistakes contradicts the principles of justice/fairness, recidivism and reformation and reintegration into society.

16. Furthermore, the principle of proportionality must be kept in mind by the administrative authority. Not all offenses are of the same gravity, and minor indiscretions should not be equated with serious crimes. In the instant case, in one of the FIRs (168 of 2015), when the petitioner was not a juvenile, though section 307 of IPC was also invoked, but the High Court quashed the entire criminal proceedings arising therefrom, including the FIR itself. The same has to be thus treated as if the FIR never existed.

17. In the context of alleged offences invoked in other two FIRs, when petitioner was a juvenile (or a minor), reference may be had Section 24 of The Juvenile Justice (Care and Protection of Children) Act, 2015, being relevant, same is reproduced hereunder:-

"24. Removal of disqualification on the findings of an offence.

(1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:



Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court."

(emphasis supplied)

18. In fact, given the aforesaid position of law, a mechanism must be devised in juvenile justice system by expungement of records for minor offenses committed by youth. This will enable their easier rehabilitation and also prevent youthful mistakes from becoming lifelong barriers to personal and professional growth.

19. Furthermore, in the present case, the petitioner's candidature has simply been rejected on the ground that his acquittal is not an honourable acquittal.

20. Similar controversy was involved in a case titled Sukhjit Singh vs. State of Punjab². Vide a judgment rendered therein incidentally by me, while as a Judge of Punjab and Haryana High Court, which in turn is based on Division Bench judgments of two different High Courts³. For ready reference, relevant thereof is reproduced hereinbelow:-

"12. Every acquittal is honourable acquittal. There is nothing in the Criminal Procedure Code nor is there any rule of criminal jurisprudence for treating the effects and consequences of an honourable acquittal from an acquittal on failure of the prosecution to prove the case beyond reasonable doubt.

13. A Division Bench of this Court in a case titled as Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576 relying in turn on another Division Bench of Madras High Court has held that the terms honourable acquittal or fully exonerated unknown in the Criminal Jurisprudence. His Lordship S.S.Nijjar, J. (as he then was of this Court) speaking for the Division Bench observed as below:-

7. In any event, the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of

² Punjab & Haryana High Court, CWP No.9808/2003, decided on 13.08.2019

³ Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam, 2005(1) SCT 576 & Union of India Vs. Jayaram, AIR 1860 Madras 325.



Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR 1960 Madras 325. Rajammannar, C.J. Delivering the judgment of the Division Bench observed as under:-

There is no conception like "honourable acquittal" in Criminal Procedure Code. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental Inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

8. *The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal Vs. State of Punjab through Secy, to Punjab Govt. Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (punjab). In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol.I Part-1, it was observed as follows:-*

(2) XXX XXX XXX

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of



the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying Rule 7.5 can be no other except this" the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

21. As an upshot of my discussion in the preceding part and in view of the ratio laid down in the aforesaid judgments, the writ petition has to be necessarily allowed.

22. It is so ordered.

23. It is borne out that during pendency of the writ proceedings, vide an interim order dated 20.09.2024, one post of Sub-Inspector (AP), to be filled in pursuance of the advertisement dated 03.02.2021 and the corrigendum dated 07.06.2021 was ordered to be kept vacant. Respondents are, therefore, directed to give the benefit of the said interim order to the petitioner, pass appropriate orders for petitioner's appointment pursuant to his selection and allow him to join the service, subject of course to his otherwise being eligible and meritorious in the selection process.



24. Necessary exercise be carried out within a period of 30 days of the petitioner approaching the respondents with the web print of the instant order.

25. For the period he remained out of service, he shall not be entitled to any financial benefits on the principal of 'No Work No Pay', however, the petitioner shall be accorded all the notional benefits including seniority with effect from the same date his counterparts were appointed pursuant to the selection process wherein petition also competed along with them.

26. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA),J

108-Mohan/skm

Whether fit for reporting : Yes / No