

(2009) 08 P&H CK 0108

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Parvesh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Aug. 20, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 294, 307, 323, 324, 325

Citation: (2010) 2 Crimes 379 : (2009) 156 PLR 630 : (2009) 4 RCR(Criminal) 469 : (2009) 7 SLR 295

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ranjit Singh, J.

Despite due selection, the respondents have declined to appoint the petitioner as Constable on the ground that, though he is acquitted of the offence alleged, but it was involving `moral turpitude". Can this be done, is the question begging an answer? What is meant by the term `moral turpitude" is another question arising in this case. What good is this acquittal for the petitioner if it is to continue to stigmatize him. Respondents would wish to place reliance on self serving instructions issued by them to justify this action.

2. The facts, in brief, are that the petitioner applied for a post of Constable on 5.10.2007 in response to 1940 posts so advertised. The petitioner is a Scheduled Caste candidate and belongs to District Mewat. The petitioner qualified in physical test and possessed the requisite educational qualifications. He was found fit and called for joining duty as a Constable. Even thereafter, the petitioner was not issued belt number, which was so issued to the remaining selected candidates. The petitioner accordingly represented on 11.10.2008. He gave an application also in this regard. He, however, was sent back to his home with an assurance that he would be

informed about the reasons within a week or so. Thus, the petitioner was expelled from the training and was informed that this was due to the fact that he was involved in a criminal case in the year 2005.

3. The petitioner indeed was involved in a criminal case for offences under Sections 323, 325, 307, 506, 34 IPC but was acquitted after trial. Copy of the judgment has been placed on record as Annexure P-6. Aggrieved against this action, the petitioner filed Civil Writ Petition No. 18395 of 2008, which was disposed of with a direction to the respondents to treat that writ petition as a representation and dispose of the same by passing a speaking order. Superintendent of Police, Mewat (respondent No. 4) passed an order on 11.11.2008 that the petitioner was rightly selected for the post of Constable in Haryana and disposed of the representation accordingly. Matter thereafter appears to have been dealt with by Commandant 4th Battalion, H.A.P. Madhuban, who on 24.12.2008, rejected the representation. The reasons as can be discerned from the impugned order rejecting the representation, are that the petitioner was acquitted of the offence involving moral turpitude by extending benefit of doubt and so the instructions dated 13.11.2007 would not apply. The petitioner was, thus, not found eligible for allotment of Constabulary Number. He is again before the Court to challenge the said order.

4. In the reply filed, respondent Nos. 1 to 5 would urge that the writ petition is not maintainable. Reference is made to instructions issued on 3.2.2009 in support of the impugned order, rejecting the claim of the petitioner. Copy of the order dated 24.12.2008, which is impugned by the petitioner (Annexure P-10), is annexed with the reply as Annexure R-2. The highlighted portion in Annexure R-2, which reads the candidate acquitted on technical ground in offences involving in moral turpitude shall also not be considered for allotment of constabulary number will give out the reasons for which the petitioner has been denied appointment. The representation of the petitioner is rejected by observing that he was acquitted on technical ground of an offence involving moral turpitude.

5. Is this action fair? What is then a difference between conviction and acquittal if the effect is to be the same. As per instructions dated 3.2.2009 (Annexure R-1), the petitioner would appear eligible for appointment but still is struggling to get one. These instructions have been specifically issued for recruitment of 1940 male constables as can be seen from the subject heading of the instructions. As per the said instructions, if a candidate was acquitted before the date of appearance of the advertisement i.e. 23.8.2007, he is to be given an appointment if he fulfills all other mandatory requirements. Since the petitioner in this case was acquitted prior to issuance of this advertisement, he is eligible for appointment as per the instructions, dated 3.2.2009, Annexure R-1. The other part of the instructions in fact may not be attracted to the case of the petitioner. It appears that the petitioner has been denied appointment by invoking instructions issued by the D.G.P., dated 13.11.2007, which provides that such candidates who are acquitted on technical grounds in offences

involving moral turpitude are not entitled for allotment of any constabulary number. These instructions have not been placed on record but have been perused by the Court. The relevant part thereof reads as under:

6. 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.

7. It is part (b) above of the instructions, which is being invoked against the petitioner. The instructions dated 13.11.2007 are in continuation of another communication/instructions dated 2.7.2007, relevant portion of which is as under:

(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 fact 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 honourably may, however be considered for appointments 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.

8. These instructions seem to have been issued in regard to particular selection and apparently are not for general application.

9. These are apparently for the purpose of guidance and can not be taken to be of a binding in nature. As per these instructions, Constabulary number can be denied to those who are facing investigation, trial or have been convicted for offences involving moral turpitude. Those who are acquitted on technical ground of the offence involving moral turpitude are also not to be considered for allotting the constabulary number. The clarificatory communication dated 2.7.2007, part of which is reproduced above would show that the cases of acquittal and charges of moral turpitude are to be minutely examined and after careful appraisal of the judgment, those who are acquitted honourably are to be considered for appointment as

Constables. The provision to honourable acquittal of a charge perhaps is not available. Reading of these communications and the stand taken by the respondents would clearly show that the petitioner is being denied appointment on the ground that he is acquitted of an offence involving moral turpitude by giving benefit of doubt and hence, is not to be so appointed as Constable.

10. Instructions dated 2.7.2007 and 13.11.2007 are relied upon by the respondents. Thus, cases of acquittal and charge of misconduct are to be minutely examined after appraisal of the judgment. What and which offences are involving 'moral turpitude'? Only after knowing this one can take a proper decision to appoint or deny appointment.

11. The term 'moral turpitude' is not defined anywhere. This term is used in law for centuries. Though subject matter of many decisions by the Courts but its definition has not gained clarity by prolixity of statement. Various conflicting statements can be found concerning the term, some saying it vague, indefinite, lacking in precision or that it is susceptible of more than one interpretation. On the other, it has equally been said that it is well defined, easily understood and the term has received well known and established definition by some Courts. In some opinions, it is viewed that the term has no definite meaning and that it shifts and fluctuates in keeping with changes in the moral standards of people or country. This may be so when the term is solely viewed as question of morals. However, when private rights are being adjudicated, then these are determined by rules of Civil Law and not by morals. It is then that Civil law fixes a definite meaning to the term.

12. Generally speaking, moral turpitude has been defined as meaning an act of baseness, vileness or depravity in private and social duties which a man owes to his fellow men or society in general. This definition has been given by great many authorities and almost uniformly approved. Some time, the term is assigned as meaning anything done contrary to justice, honesty, principal or good morals or everything so done or anything so done knowingly. It is defined to mean baseness, depravity or wickedness, a shameful character; base or shameful act. As a legal term, it is defined as quality of a crime involving grave infringement of the moral sentiment of the community. However, it is noticeable that better reasoned views are quite in line with the definition that a man owes to fellow man etc. as noted above. It is a tautological expression.

13. Considerable difficulty is experienced in application of the term to facts in each case. Reason could be that the term does not refer to legal standards but largely refers to moral character and state of mind. There is no hard and fast rule as to what constitutes 'moral turpitude'. It often involves the question of intent. It signifies an inherent quality of baseness, vileness, depravity and, thus, an act inherent baseness etc. in private social or public duties which a man owes to his fellow being. Moral turpitude is not involved in every criminal act. Whether any particular conviction involves 'moral turpitude', may be a question of fact and

frequently depending on surrounding circumstances. It is, thus, difficult to determine just what crimes do involve moral turpitude. There may be many reasons in this regard like concept of morals vary according to community or time etc. Some crimes, however, are of such a nature that these involve moral turpitude as a matter of law. Some crimes may be such that these do not involve moral turpitude. In between these two classes may be the cases where it would become a question of, fact to be determined if these involve moral turpitude or not. In such cases attendant circumstances would furnish the best guide. Severity of the punishment imposed may not control the issue. There is a tendency to restrict the term to sexual crimes but the meaning certainly is much broader. Sexual crimes of course would fall within the scope of definition. Keeping in view the definition of the term, it may be possible to say that mere assault, causing hurt etc. does not or may not involve moral turpitude. Whether it does or does not would depend upon particular facts of each case/individual case. Thus, homicide may or may not involve moral turpitude depending upon the degree of the crime and so would be the position regarding attempted homicide.

14. There has been more than one judicial attempt to give meaning to these words. Long ago, in case of [Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others](#), the term was said to mean anything done contrary to justice, honesty, modesty or good morals. It was also observed that it would imply depravity and wickedness of character or disposition of the person charged with the particular conduct. A stand or a conduct, which is vile or shows depravity in doing of any private or social duty, which a person may owe to his fellow man or society in general, was also termed as being covered by the term. Hon"ble Supreme Court in the case of [Allahabad Bank and Another Vs. Deepak Kumar Bhola](#), held that the observations made by the Allahabad High Court in the case of Baleshwar Singh (supra), correctly spelt out the true meaning of the expression 'moral turpitude'. The Apex Court, thus, approved the said meaning assigned to these words. In another case titled [Pawan Kumar Vs. State of Haryana and another](#), gave the following meaning to this expression:

15. Moral turpitude is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.

16. In Pawan Kumar's case (supra), the Hon"ble Supreme Court went ahead to make observation that the Courts should be sensitive to the changing perspective or concept of morality to appreciate the effect of a particular offence on today's Society. This was so observed while making reference to the contents of Section 294 IPC. In this context only, the Hon"ble Court made reference to a policy decision dated 2.2.1993, which was issued in the background of considering the question of rehabilitation of ex. Convicts. In this policy decision, the Government took a view that the Ex. Convicts, who were convicted for offences involving moral turpitude,

should not be taken into Government service. These instructions again have not been placed on record of this case but have been perused. In these policy instructions, it is mentioned that the test should ordinarily be applied in judging whether certain offences are such which would involve moral turpitude or not and these are as under:

1. Whether the act leading to a conviction was such as could shock the moral conscience of society in general.
2. Whether the motive which led to the act was a base one.
3. Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down upon by the society.

17. Significantly, it was further observed that the decision in each case will depend upon the circumstances of the case and the competent authority has to exercise its discretion while taking the decision in accordance with the principles as noticed. A list of offences involving moral turpitude is also enclosed. This of course was for information and guidance and it was specifically observed that the list can not be said to be exhaustive and there might be offences, which are not included in it but in certain situations and circumstances may involve moral turpitude. No doubt, the offence of attempt to murder u/s 307 IPC is noted as one of the offence in the list of offences involving moral turpitude but offences under Sections 323, 325, 506 etc. are not such offences which are listed as those involving moral turpitude. The conviction of these offence listed as involving "moral turpitude" is the ground to decline service. Action to deny appointment even after acquittal is the own addition by the Police Department.

18. No reference is made to these instructions while passing the impugned order. As rightly noticed in these instructions and otherwise also, this term is not defined anywhere but is by now reasonably understood. Courts have assigned the meaning to the term as is understood and explained above. Moral turpitude is something which would mean, as noticed by the Supreme Court, an act which is vile, deprave or having any connection showing depravity. It has been held to mean something which is contrary to justice, honesty, modesty or good morals in Baleshwar Singh's case (supra) in the background of false statement made by a person. This case is an example of a situation where the facts and attendant circumstances were taken as guide to hold the act to be so.

19. It would have to be seen in this case if the conduct alleged was inherently base, vile, depraved or showing such tendency etc. or not. To say that all conduct alleging an attempt to murder would be an offence involving moral turpitude would amount to doing injustice to the term. This has to be seen and appreciated in the context and circumstances of the case to see if conduct was base, vile or deprave. To term the offence of attempt to murder as such, involving moral turpitude, would not be

fair approach and can not be so adopted. The facts of the case, thus, will have to be seen to find if the petitioner had been alleged to have depicted such characteristics to term that he was accused of an offence involving moral turpitude of which he has been acquitted.

20. The facts in the case rather can exemplify that how blind acceptance of the term 'moral turpitude' by referring to Section can lead to injustice. As it would emerge from the copy of the judgment placed on record, the petitioner alongwith one Pardeep was playing football in village abadi and they both quarreled with each other while so playing. Thereafter, they left for their respective houses. They again quarreled somewhere in the street near the house of the complainant. One Darshan Singh was standing in the street at that time. He tried to intervene and separate Pardeep and Parveen. At that time, Parveen caused a brick blow to said Darshan Singh. Thereafter, Parvesh (the petitioner) and Naresh reached the scene and allegedly caused lathi blows to Darshan. This alone seems to be the allegation against the petitioner of which he has been acquitted. It may need a notice that the case initially was registered u/s 323, 506 read with Section 34 IPC. During investigation, it revealed that injury caused to Darshan Singh on the skull was found dangerous to life and offence u/s 307 IPC was added. It is also noticed from the judgment that prima-facie the case u/s 307 IPC is made out against accused Naresh and u/s 325 IPC against accused Parveen. The petitioner, however, was made accused with the aid of Section 34 IPC for offences under Sections 307, 325, 324 IPC. Ultimately, while acquitting the petitioner and others, the Court observed as under:

21. In view of my aforesaid discussion, I have no hesitation to hold that PW-1 Dhanpati and PW7 Darshan have not deposed even a single word against the accused persons. They have given clean chit to them. Their statements are no evidence against the accused persons. The statement of PW-6 Ajmer, alleged eye witness and PW-8 Ajmer Singh ASI are liable to be disbelieved.

22. It is to be seen whether the petitioner could be alleged to have committed a conduct which could be termed as inherently base, vile, depraved etc. Such a conduct from the facts can not be termed as something which would show wickedness of character or lack of honesty, modesty or good morals. To say that the petitioner is not to be appointed only because he was accused of an offence, which has been described as involving moral turpitude, would amount to doing injustice not only to the words but also to the petitioner as well. The allegations against the petitioner are not for having committed the substantive offence u/s 307 IPC. He was tried only with the aid of Section 34 IPC. In this background, it can not be said that he has committed an offence of which he is acquitted was such which was involving moral turpitude. Unfair operation of this approach and the instructions can easily be demonstrated by noticing that a person in service even if charged of such offence, can not be dismissed unless convicted of offences involving moral turpitude.

23. The impugned order, thus, can not be sustained. The same is set-aside. The respondents shall, therefore, consider the case of the petitioner for appointment by giving him constabulary number within a period of one month from the date of receipt of copy of this order. The petitioner shall also be entitled to all the consequential benefits arising out of the order.

24. The writ petition is accordingly allowed.