

(2013) 11 CAL CK 0048**Calcutta High Court****Case No:** W.P.S.T. 393 of 2012

Taraknath Bhandari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Nov. 29, 2013**Citation:** (2014) 1 CHN 442**Hon'ble Judges:** P.K. Chattopadhyay, J; Murari Prasad Shrivastava, J**Bench:** Division Bench**Advocate:** L.K. Gupta, Mr. Tapabrata Chakraborty, Mr. Kamal Mishra and Mr. Barun Kr. Chatterjee, for the Appellant; Tapan Kr. Mukherjee and Mr. Md. Hasanuzzaman for the State, for the Respondent**Final Decision:** Allowed

Judgement

Murari Prasad Shrivastava, J.

The writ petitions have been filed by the petitioners assailing the common order dated 20th September, 2012 passed by the West Bengal Administrative Tribunal in the Original Application Nos. 1125 and 1126 of 2011 whereby and whereunder the said learned Tribunal disposed of the applications filed by the petitioners, holding that the authorities rightly did not allow the petitioners to join training and accordingly no question of their appointment would arise. Going through the records, we find, that the petitioners were recruited as constable in the West Bengal Police being sponsored by Diamond Harbour Employment Exchange and were sent to COSAP 8th Battalion, Barrackpore for training on 26th May, 2004. However, discrepancy was detected in the date of birth on comparison of the Verification Roll Forms filled in by the said petitioners with the entries in the Employment Exchange at the time of registration of their names. Accordingly, the COSAP, 8th Battalion, Barrackpore sent the petitioners back. The matter was enquired thoroughly by DIB and the said DIB found that the petitioners did not study in their respective schools and by producing fake and forged documents manage to enroll their names in the employment exchange which sponsored their candidature for appearance in the

recruitment process.

2. The Reserve Office Inspector (ROI), Alipore on 10th August, 2004 lodged an FIR against both the petitioners under Sections 468 /471 /420 of the Indian Penal Code. After full-fledged trial in the Court of Learned Additional Chief Judicial Magistrate, Diamond Harbour, wherein several witnesses were examined and documents were produced on behalf of the prosecution, the petitioners were found not guilty of the said offences under Sections 468 /471 /420 of the Indian Penal Code and were acquitted from the case. After acquittal, the petitioners submitted representation for allowing them to join as Constable, but their prayers, having not been considered, they filed separate applications before the West Bengal State Administrative Tribunal. The Learned Tribunal by the impugned common order disposed of the applications.

3. At the outset, Mr. Mukherjee, learned Advocate appearing on behalf of the respondents submits that the petitioners were not allowed to join the training school and their names were struck off under rule 750 of the Police Regulations of Bengal. According to Mr. Mukherjee the petitioners not having challenged such order, no relief whatsoever could be granted to them. However, such contention was not made before the learned Tribunal nor has the same been raised in the four corners of the affidavit-in-opposition filed by the state-respondents.

4. Furthermore, such alleged order was also not communicated to the petitioner and at this stage such submissions of Mr. Mukherjee cannot be considered at all. Mr. Mukherjee referred to the observations of the Ld. Criminal Court wherein it was observed that the loss of original documents would benefit the accused persons though the Xerox copies of the documents show the truthfulness of the complaint. Such observations were clearly uncalled for and learned ACJM could not rely on the Xerox copies in absence of the original documents. It is pertinent to note that neither the Original Case Diary nor the original documents were produced before the Criminal Court which clearly found the present petitioners not guilty of the offences of forgery, fabrication, and cheating and they were acquitted from the case.

5. Learned Advocate appearing for the respondents referred to the unreported decision of Hon"ble Supreme Court in Civil Appeal No. 4842 of 2013 (Arising out of SLP (Civil) No. 38886 of 2012) Commissioner of Police, New Delhi and Anr. Vs. Mehar Singh with Civil Appeal No. 4965 of 2013 (Arising out of SLP (Civil) No. 4057 of 2013) Commissioner of Police, New Delhi and Anr. Vs. Shani Kumar and submitted that Their Lordships clearly held that for entry in the police force, acquittal order based on benefit of doubt in a serious case is bound to act as impediment. However, in the case before Their Lordships all the witnesses were declared hostile for which the learned Sessions Judge had given the accused the benefit of doubt and acquitted them, but in the present case as many as 15 (fifteen) witnesses were examined and several documents were produced and marked exhibits and after full-fledged trial,

petitioners were acquitted. Furthermore, Their Lordships were dealing with the Standing Order issued by the Delhi Police which incorporated policy for deciding cases of candidates provisionally selected in Delhi Police involved in Criminal Cases (facing trial or acquitted) and the said Standing Order provided that after the judgment of Court, if the candidate was acquitted or discharged, the case would be referred to the Screening Committee comprising Special Commissioner of Police/Administration, Joint Commissioner of Police/Headquarters and Joint Commissioner of Police/Vigilance to assess the suitability of the candidate for appointment in Delhi Police. In the present case there is no such Circular or standing order issued by the West Bengal Police. In our opinion, the said decision cited by Mr. Mukherjee does not apply in the facts and circumstances of the present case.

6. Learned Tribunal has observed that "having regard to the undisputed fact of detection of forgery by the petitioners in respect of their school leaving certificate, we hold that the authority rightly did not allow the petitioners to join training and hence no question of their appointment would arise." It is indeed baffling as to how learned Tribunal could hold that the detection of forgery by the petitioners in respect of their school-leaving certificate was undisputed, when all along, the petitioners unequivocally disputed the allegations of forgery and fabrication. In fact had the same been undisputed, the petitioners would have suffered conviction in the Criminal Case.

7. For the reasons discussed above, the impugned judgment and order passed by the learned Tribunal cannot be sustained and the same is accordingly set aside. The respondent state authorities are directed to allow the petitioners to undergo the requisite training and thereafter join the police force as Constable by issuing appropriate orders within a period of 4 (four) weeks from the date of communication of this order. With the aforesaid directions, the present writ petitions stand allowed without any order as to costs. Urgent Xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

P.K. Chattopadhyay , J.

I agree