

(2019) 03 MP CK 0171
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5342 Of 2019

Ajay Yadav

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 323, 342, 376, 506B
Scheduled Castes And Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x)
Code Of Criminal Procedure, 1973 — Section 320(8)
Constitution Of India, 1950 — Article 227

Citation : (2019) 4 MPLJ 283

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Shashank Indapurkar, Pawan Singh Raghuvanshi

Final Decision : Dismissed

Judgement

This petition under Article 227 of the Constitution of India has been filed against the order dated 14/09/2018 passed by Director General of Police, MP, Bhopal, by which the petitioner has been disqualified for appointment on the post of Constable on the ground that a criminal case for the offence under Sections 294, 323/34, 342, 506-B of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was registered against him and although the witnesses had turned hostile and he was already acquitted but previous conduct of the petitioner makes him unfit for recruitment to the post of Constable in the Police Department.

Challenging the order passed by respondent No.2, it is submitted by the counsel for the petitioner that the petitioner, in his verification form, had not suppressed any information. A criminal case was registered against the petitioner in the year 2012 and by judgment dated 24/08/2013, passed by Special Judge (SC & ST, Atrocities Act), Morena in Special Case No.92 of 2013 had acquitted him of all the charges because the compromise had taken place between the parties and

the petitioner was acquitted of offence under Sections 294, 323/34, 342, 506-B of IPC on the basis of compromise and since the witnesses had turned hostile on the question of commission of offence under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, accordingly, he was acquitted. Thereafter, an advertisement was issued for recruitment to the post of Constable in Police Department. The petitioner appeared in the written examination and he was qualified and later on, the petitioner also cleared the physical test. In the verification form, the petitioner has specifically disclosed that he was tried for an offence under Sections 294, 323/34, 506-B, 342, 506-B of IPC and Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and he has been acquitted. However, contrary to the law laid down by the Supreme Court in the case of Avtar Singh vs. Union of India and Others, reported in (2016) 8 SCC 471, the candidature of the petitioner has been cancelled by respondent no.2 (although the order dated 14/09/2018, Annexure P1 has been passed by Inspector General of Police and not Director General of Police).

Per contra, it is submitted by the counsel for the State that it is well-established principle of law that mere acquittal in the criminal case would not give a vested right to an employee/candidate who is seeking recruitment in the Police Department. The authorities can still consider the effect of acquittal (whether it was honourable or benefit of doubt) for assessing the desirability of the candidate in the Police Department.

Heard the learned counsel for the parties.

The Supreme Court in the case of State of Madhya Pradesh and Others vs. Abhijit Singh Pawar, passed in Civil Appeal No. 11356 of 2018 (Arising out of SLP (c) No.17404 of 2016) by judgment dtd. 26th November, 2018 has observed as under:-

"14. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of

the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."

The Supreme Court in the case of Union of Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Another, reported in (2018) 1 SCC 797 has held as under:-

"11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision.....

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in Avtar Singh v. Union of India and Others(2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (38.5), (SCC p. 508)

"38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate."

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to

consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character.

* * *

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

Thus, it is clear that mere acquittal of the candidate in a criminal case does not automatically entitle him for the recruitment to the post of Constable in the Police Department, still the authorities can consider the effect and consequence of registration of the criminal case as well as acquittal. The candidature of the petitioner has been rejected on the ground that offence under Section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act involves Moral Turpitude. The observations made by Inspector General of Police cannot be said to be baseless and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is a Special Act, promulgated with a view to check the atrocities on the members of SC or ST. Thus, in the light of the judgment passed by the Supreme Court in the case of Pradeep Kumar (supra), this Court is of the considered opinion that no illegality could be found in the order dated 14/09/2018 passed by the Inspector General of Police, by which the candidature of the petitioner for recruitment to the post of Constable in the Police Department has been rejected.

This petition fails and is hereby dismissed.