
(2019) 04 MP CK 0114

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4689 Of 2017

Anoop Singh Thakur

APPELLANT

Vs

State Of Madhya Pradesh And Ors.

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 376, 452
Code Of Criminal Procedure, 1973 — Section 320(8)
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 MP CK 0114

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

Bench : Single Bench

Advocate : Prashant Sharma, Vijay Sundaram

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India has been filed challenging the order dated 29.6.2017 by which the candidature of the petitioner to the post of Constable has been rejected on the ground of registration of a criminal case.

2. The necessary facts for the disposal of the present petition in short are that the recruitment drive was conducted by the respondents for the post of Constable sometime in the year 2015-16. The petitioner also appeared in the said selection process and he was declared successful. The verification form was submitted by the petitioner and in the said verification form it was declared by him that he was tried in Crime No.72/2012 for offence under Sections 147, 148, 149, 307, 452 of IPC and he has been acquitted by judgment dated 10.2.2017. The verification form was submitted on 16.2.2017. Thus it is clear that during the pendency of the recruitment process, a criminal case for above-mentioned offence was pending against him and the petitioner was acquitted just before six days of filling of his verification form. The respondents by order dated 29.6.2017 have rejected the candidature on the ground that the acquittal of the petitioner

does not come within the category of clean or honourable acquittal. It has also been observed in the impugned order that the offence under Sections 147, 148, 149, 307 and 452 of IPC involves moral turpitude and it is expected from the employees of the Police Department that they shall remain away from any kind of biases and shall live a peaceful life. The candidate must be of clean image and since it is the duty of the police officials to put a check on the criminal activities of the criminals, therefore, any person having criminal record cannot be appointed in the police department.

3. Challenging the order passed by the respondents, it is submitted by the counsel for the petitioner that while rejecting the candidature of the petitioner it is not clear that whether the Screening Committee had seen the record of the criminal case or not. Once the petitioner has been acquitted, then the respondents have no authority to comment that whether the acquittal was honourable or not?

4. Per contra, it is submitted by the counsel for the State that since the petitioner was tried for an offence under Section 307 of IPC along with other offences and since the witnesses had turned hostile, therefore, it cannot be said that the acquittal of the petitioner was honourable and thus the respondents have not committed any mistake in rejecting the candidature of the petitioner.

5. Heard the learned counsel for the parties.

6. The Supreme Court in the case of Avtar Singh vs. Union of India and Others, reported in (2016) 8 SCC 471 has held as under:-

"38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the

lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

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.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

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 Mohammed Imran Vs. State of Maharashtra and others passed in C.A. No. 10571 of 2018, by order dated 12-10-2018 has held as under :-

"6. Employment opportunities is a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of

vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, albatross around the neck of the candidate, may not always constitute justice. Much will, however, depend on the fact situation of a case.

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.

The Supreme Court in the case of *The State of M.P. and others Vs. Bunty* by order dated 14/3/2019 passed in Civil Appeal No.3046/2019 has held as under:-

"13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench."

7. The petitioner has filed the copy of the charge sheet. According to which, the complainant Kartar Singh was beaten by a group of persons including the petitioner and Kartar Singh had sustained multiple wounds including the puncture wounds. He had suffered multiple fractures. Thus the allegation that all the accused persons had assaulted the complainant Kartar Singh is corroborated by his medical evidence. The name of the petitioner was specifically mentioned in the FIR as well as in the 161 statement of Kartar Singh. It appears that thereafter the witnesses turned hostile and since none of the witnesses had supported the prosecution case, therefore, the Trial Court has acquitted the petitioner.

8. The Full Bench of this Court in the case of *Ashutosh Pawar vs. State of M.P.* reported in 2018 (2) MPJR 178 has held as under:-

" Decision of Criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. Division Bench judgment of this Court in W.P.No.5887/2016 (*Arvind Gurjar vs. State of M.P.*) is overruled. Another Division Bench judgment in W.A. No.367/2015 (*Sandeep Pandey vs. State of M.P. and others*) is also overruled. Jurisdiction of the High Court in a writ petition under Art. 226 of the Constitution of India is to examine the decision-making process than to act as Court of appeal to substitute its own decision. In appropriate case,

if the Court finds decision-making process is arbitrary or illegal, the Court will direct the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own.

The expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The standard of conduct in the case of Judicial Officer is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. The same must be in tune with the highest standard of propriety and probity."

9. Thus if the facts of the case are considered in the light of the judicial pronouncement in various judgments, it is clear that a criminal offence under Sections 307, 452, 148, 149 of IPC was registered against him. There were specific allegations against the petitioner in the FIR itself which were fully corroborated by the medical evidence and the acquittal of the petitioner was recorded because the witnesses had turned hostile. Under these circumstances, this Court is of the considered opinion that the respondents did not commit any mistake in rejecting the candidature of the petitioner.

10. Accordingly, the petition fails and is hereby dismissed.