

(2021) 10 TEL CK 0039
In the Telangana High Court
Case No : Writ Petition No. 2106 Of 2021

Gugulothu Nagu

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
A.P. Police (SCR) Rules, 1999 — Rule 3G(vi)
Indian Penal Code, 1860 — Section 147, 148, 207, 302, 420, 468, 471

Citation : (2021) 10 TEL CK 0039

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The petitioner applied for the post of Police Constable under ST category in 13th Battalion, TSSP (IR) in the police department, pursuant to notification dated 31.12.2015. The petitioner qualified in the preliminary written examination in April 2016 and later, he appeared in the main examination in the month of October 2016. After qualifying in the main examination, the petitioner was subjected to physical efficiency test by the respondent No.3. The petitioner qualified in the physical efficiency test and was selected provisionally.

2. While so, a show cause notice dated 06.04.2017 was issued against the petitioner alleging that during verification of the antecedents, it was found that a criminal case was pending trial in Cr.No.250 of 2012 under Sections 420, 468 and 471 IPC on the file of the Malakpet Police Station, Hyderabad. It is stated by the petitioner that the in-charge of the Regional Enforcement Squad of APSRTC gave a false complaint against the petitioner and another person on 08.08.2012 alleging that a complaint was received from the verification in-charge of the bus stop centre at Dilsukhnagar stating that bogus application for student concession bus pass was given by him and another person by submitting forged signatures of the Principal of Nova Engineering College in order to get concessional bus

pass. After investigation, charge sheet was filed in C.C.No.802 of 2012 on the file of the VII Additional Chief Metropolitan Magistrate, Hyderabad. The prosecution examined as many as 7 witnesses and marked Exs.P1 to P16 besides M.Os.1 and 2. Having considered the evidence on record, the petitioner was acquitted holding that the evidence adduced by the prosecution does not disclose or establish the essential ingredients of Section 420 IPC and further the documents do not disclose that they were forged and the documents seized from the petitioner are not proved and thereby the prosecution failed to prove their case.

3. Petitioner submitted reply to the show cause vide explanation dated 17.04.2017 stating that he had disclosed about the pendency of the said crime in his application at relevant column No.1 and did not suppress any information. It is contended that without considering the fact that the petitioner was acquitted in the said case, the respondents have issued proceedings dated 03.07.2017 canceling his provisional selection on the ground that the petitioner was involved in criminal case. Aggrieved thereby, the petitioner filed WP.No.25473 of 2017, which was disposed of by order dated 01.08.2017 directing the respondent authorities to dispose of the application of the petitioner dated 23.06.2017. Pursuant to the said order, the impugned memo dated 02.11.2017 was issued rejecting the case of the petitioner for the following reasons:

"It is seen from the judgment that the prosecution witnesses, PW.3 to PW-5 have not supported the case of the prosecution and the court treated them hostile. The court observed that the prosecution would have called the Principal, who has issued Ex.P-16 whereas the witness (Principal) appeared was not the principal during the year 2012. Finally, the court acquitted the accused i.e. Sri. G. Nagu giving being of doubt. His acquittal is not clean.

The apex court in Commissioner of Police, New Delhi & another Vs Mehar Singh held as follows:

"The Police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude.

He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category"

As per Rule 3G(vi) of A.P. Police (SCR) Rules 1999 issued in G.O.Ms.No.315 Home (Police) Dept., Dt.13-10-1999 r/w G.O.Ms.No.97, Home (Legal.III) Department, Dt.01-05-2006, a person involved in an offence involving moral turpitude is liable for disqualification for appointment and the same is also mentioned at para 25(vi) of Recruitment Notification Rc.No.151/Rect/Admn.1/2015, dated 31-12-2015.

In view of the above facts, the representation dated 23-06-2017 of Sri G. Nagu is examined in the light of the orders of the Hon'ble High Court and hereby

considered and rejected."

4. In the counter filed by the respondent No.3, it was stated in para 5 that "as per Rule 12(1) (a) (ii) of T.S. State and Subordinate Service Rules and Rule 3(F) of SCT Rules issued in G.O.Ms.No.97, Home (Legal-II) Department dated 01-05-2006. "No person shall be eligible for appointment to any service by direct Recruitment unless he satisfies the selection authority as well as the Appointing authority, that his Character and antecedents are such as to qualify him for such service". The petitioner was found involved in a case of moral turpitude. He was issued show cause notice. His case was duly considered in accordance with the order passed by this Court in WP.No.25473 of 2017. The representation of the petitioner along with the judgment in CC.No.802 of 2012 dated 14.06.2017 was examined. It was found that the petitioner was acquitted by giving benefit of doubt. The witnesses turned hostile. It was not a case of clean acquittal. Thus, a speaking order was issued rejecting the claim of the petitioner to the post of Police Constable as per the rules as involvement in a case of moral turpitude is a disqualification for appointment as per Rule 3(G)(vi) of the SCT Rules. The petitioner was involved in a case of cheating and forgery and it is a case of moral turpitude.

5. It is further stated in the counter that the order rejecting his case was passed taking into consideration the judgments of the Supreme Court in COMMISSIONER OF POLICE v. MEHAR SINGH (2013) 7 SCC 685, AVTAR SINGH v. UNION OF INDIA (2016) 8 SCC 471 and STATE OF MADHYA PRADESH v. BUNTY 2019 SCC OnLine SC 430. The Supreme Court held that in case acquittal in a criminal case is based on the benefit of 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. The services of a person seeking Uniform Service comes under different category from other services. High moral conduct is required for the Police Service. It is not proper to appoint the persons of criminal record in public interest. Hence, the petitioner though acquitted is involved in a case of moral turpitude and is not suitable to be appointed as Police Constable.

6. Heard Ms. K. Hemalatha, learned counsel for the petitioner and Mr. M.V. Rama Rao, learned Special Government Pleader.

7. In its authoritative pronouncement in AVTAR SINGH's case (2 supra), Hon'ble Supreme Court made the following observations:

"30. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is

immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

...

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects. ...

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

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."

8. The phrase "Honourable acquittal" is unknown to criminal law. However, in service law jurisprudence there has been a consistent approach by the Constitutional Courts in recognizing the concept of "Honourable acquittal". It would be difficult to lay down criteria as to what would constitute an "Honourable acquittal" or "Clean acquittal". Under criminal law, "Acquittal" means that the charge against the accused is not proved. There may be varying situations like acquittal recorded by giving benefit of doubt to the accused; acquittal recorded for lack of evidence or failure to prove charges against the accused; there may be situations where prosecution may not adduce evidence of crucial witnesses; some of the crucial witnesses may have died; there may be negligence on part of the prosecution in the investigation and production of crucial witnesses before the court. In the backdrop of the given illustrations it would be difficult to exhaustively lay down parameters as to what would constitute "Honorable acquittal". The Court has to go by the fact situation existing in each case. The Supreme Court while dealing with the concept of "Honorable acquittal" in *DEPUTY INSPECTOR GENERAL OF POLICE v. S. SAMUTHIRAM* (2013) 1 SCC 598, held as under:

"24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* [(1994) 1 SCC 541]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapoor v. Union of India* [AIR 1964 SC 787], it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam and another v. Raghava Rajgopalachari*

[1972 SLR 44 (SC)], this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope V. Emperor* [ILR (1934) 61 Cal. 168] which is as follows:

"8. ... The expression 'honourably acquitted' is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'."

26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

9. The relevant portion of the judgment of the trial court in CC.No.802 of 2012 is extracted hereunder:

"11. ... PW.3 to 5 have not supported the case of the prosecution. They were treated as hostile and cross examined by the learned APP, but nothing was elicited. Among the hostile witnesses, P.W.3 and 4 are the panch witnesses for confession cum seizure panchanama, in whose presence, the PW6 is said to have seized the forged document, rubber stamp and Xerox machine. The above said witnesses have not supported the case of the prosecution, thereby the seizure of the above material and documents was not proved by the prosecution, through independent witnesses. P.W.5 is the circumstantial witness, who has also not supported the case of the prosecution about assisting PW.2 at the time of

detecting the case, that PW.2 noticed the documents submitted by A1, thereby evidence of PW.2 is not corroborated by their own witnesses. PW.7 is another material witness, who is the Principal of NOVA Engineering college, but as seen from his evidence, he was not the Principal during the year 2012, at the time of the offence. In fact, the letter - Ex.P.16 was issued on 29-8-2012, at the time, PW.7 was not working in the said college. The prosecution would have to call for the Principal who has issued Ex.P.16, but the prosecution has recalled and summoned PW.7 who is no way concerned with Ex.P.16. To establish the case with regard to issuance of Ex.P.16, author of the document ie., Ex.P.16 has to be examined. But he was not examined. Further it is the duty of the investigating agency to investigate the case properly by examining the appropriate witnesses to bring home the guilt of the accused. Merely obtaining letter from NOVA college is not sufficient to establish the case against the accused. Thereby, the evidence of PW.7 also in no way helpful to the case of the prosecution ... The prosecution has not properly collected the evidence or adduced any evidence to show that the said bonafide certificate and identity card are seized from the possession of the accused, or collected from the possession of PW.1.

12. ... The documents exhibited by the prosecution do not in any way helpful to the case of the prosecution case. The documents do not disclose about the forgery of signatures of the Principal NOVA Engineering College and possession of the forged document with the accused.

A total evaluation of evidence on record is that the oral evidence coupled with the documentary evidence, does not disclose or establish the essential ingredients of Section 420 IPC. Accused did not induce PW.1 or 2 to deliver any property, further documents does not disclose that they were forged by the accused and the said forged documents were in possession of the accused. Since the seizure of the documents from the possession of the accused is not proved, thereby the prosecution failed to adduced evidence to attract essential ingredients of Section 420, 468, 471 IPC. Therefore the prosecution failed to bring home the guilt of the accused and they are entitled for benefit of doubt."

(emphasis supplied)

10. It is necessary to point out that the trial Court recorded that the prosecution failed to bring home the guilt of the accused and they are entitled for benefit of the doubt. Though it is mentioned by the trial Court that the accused are entitled for benefit of doubt, it is clear from the above extracted portions of the judgement that it is not a case of acquittal on any technical grounds or only because some of the witnesses have turned hostile. In fact, the trial Court has categorically held that the prosecution has not properly collected evidence or adduced any evidence to show that the bonafide certificate and ID Card are seized from the possession of the accused or collected from possession of PW1 (Para 11 of the judgment of the trial Court). Further, the trial Court held that the documents exhibited by the prosecution are no way helpful to the case of the prosecution; the total evaluation of oral and documentary evidence does not

disclose or establish essential ingredients of Section 420 IPC; since the seizure of documents from the possession of accused was not proved therefore prosecution failed to adduce evidence to attract the essential ingredients of Sections 420, 468 IPC. Thus, clear findings were given by the trial Court holding that prosecution was not able to prove the charge against the accused. Instead of making objective assessment of the judgment of the trial Court the respondent No.3 got carried away by the expression 'benefit of doubt'. The respondent No.3 should not have given undue emphasis to a stray sentence or expression, ignoring the detailed findings given by the trial Court. Thus, the finding in the impugned proceedings dated 02.11.2017 that the acquittal of the accused is not clean and was only by giving benefit of doubt is erroneous, perverse and vitiated by non-application of mind.

11. Moral turpitude is defined as "An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The involvement of the petitioner in an offence of 'moral turpitude' would arise for consideration if there is a conviction recorded against him. But once there is an acquittal of the accused and more so acquittal is held to be on merits and not on technical grounds, the issue of 'moral turpitude' becomes redundant. The principle of law laid down in MEHAR SINGH's case (1 supra) and BUNTY's case (3 supra), on which reliance is placed by the learned Special Government Pleader for Home, is not applicable to the facts of the instant case since it is held that the acquittal of the petitioner was not on technical grounds or benefit of doubt.

12. A Division Bench of the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh in CHAIRMAN v. B. LOKESHWARAIHAH 2015 (2) ALT 628 (DB), while dealing with a matter relating to disqualification of an employee on account of his involvement in an offence of moral turpitude and wherein the employee was acquitted, made the following observations:

"... Therefore, involving in criminal case for the offence punishable under Sections 147, 148, 3254, 207, 302 r/w 149 I.P.C. certainly amounts to moral turpitude. Honourable/clean acquittal of the 1st respondent by the Sessions Court is sufficient to vitiate the stigma on the 1st respondent about his involvement in the criminal case involving moral turpitude. When the Sessions Court found the 1st respondent not guilty and acquitted him honourably/cleanly, it is difficult to accept the contention of the petitioner that the 1st respondent involved in the criminal case involving moral turpitude which disqualified him for being appointed as SCTPCCM. It is common knowledge of everyone that there is every possibility of implication in criminal cases by rivals and if mere implication in a criminal case by itself is treated as a disqualification, it is difficult for many people to get public employment, more particularly in certain areas of the State of Andhra Pradesh. When once the 1st respondent was acquitted for the offences, which he was tried by the Sessions Court, he is no more an accused

and it is not a disqualification for him for being appointed as SCTPCCM."

13. As discussed above, there was honourable acquittal of the petitioner and whatever stigma attached, stood wiped off, upon the petitioner being acquitted in the criminal case. Thus, the impugned proceedings are unjust and arbitrary and violative of Articles 14 and

21 of the Indian Constitution and the same is set aside. Consequently, the respondents shall forthwith appoint the petitioner as Police Constable under SCTPC (TSSP) in 13th Battalion, TSSP (IR) in the Police Department within a period of four (4) weeks from the date of receipt of a copy of this order.

In the result, the writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.