
(2018) 10 MP CK 0001
In the Madhya Pradesh High Court
Case No : Writ Petition No. 18718 Of 2018

Mukesh Kumar Verma

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Constitution of India, 1950 — Article 14
Indian Penal Code, 1860 — Section 379

Citation : (2018) 10 MP CK 0001

Hon'ble Judges : Hemant Gupta, CJ; Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Manoj Kumar Sharma, Namrata Agrawal, Anshuman Singh

Final Decision : Dismissed

Judgement

1. The challenge in the present writ petition is to an order dated 15.6.2018 (Annexure P-1) whereby name of the petitioner was struck off from the merit list of the selected candidates for the post of Civil Judge, Class-II, for the reason that he was not found suitable for appointment.

2. The petitioner was appointed in this High Court as a Law Clerk on 17.8.2016 (Annexure P-2) on contract basis. While working as a Law Clerk, the petitioner applied for appointment to the post of Civil Judge, Class-II in response to an advertisement published on 6.10.2016 (Annexure P-8). The petitioner in the application form disclosed two criminal cases registered against him such as Criminal Case Nos. 423/2008 and 422/2008 but he stands acquitted. In Criminal Case No.423/2008 he was acquitted on 25.9.2009 for an offence under Section 379 of IPC whereas, in Criminal Case No.422/2008 he was exonerated on 5.4.2010.

3. The question: as to whether acquittal in a criminal case is proof of good conduct has been examined by a Full Bench of this Court in Ashutosh Pawar Vs. High Court of M.P. & Another [2018 (2) MPLJ 417] wherein after review of the

cases including the judgment of the Supreme Court in the case of Union Territory, Chandigarh Administration and others Vs. Pradeep Kumar and another [(2018) 1 SCC 797], it has been held as under:-

"25. The present is not a case of concealment of facts but in view of the judgment of the Supreme Court in Commissioner of Police, New Delhi and another vs. Mehar Singh, (2013) 7 SCC 685 and State of Madhya Pradesh and others vs. Parvez Khan, (2015) 2 SCC 591 wherein appointment to the post of Constable has been held to be a post requiring utmost rectitude and only a person of impeccable character and integrity is required to be appointed, such test will increase manifold in respect of a Judicial Officer, who is called upon to discharge the sovereign functions in the administration of justice. The Supreme Court in a judgment reported as (1993) 4 SCC 288, All India Judges' Association and others vs. Union of India and others observed as under:-

"7. It is not necessary to repeat here what has been stated in the judgment under review while dealing with the same contentions raised there. We cannot however, help observing that the failure to realize the distinction between the judicial service and the other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of 'employment'. The Judges are not: employees. As members of the judiciary, they exercise the sovereign judicial power of the State..... The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.

8. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties, is to impair and whittle away justice itself."

26. In a judgment reported as (1987) 3 SCC 1, Daya Shankar v. High Court of Allahabad and others while examining the conduct of use of unfair means by a Judicial Officer in the LL.M. examination, it was held that Judicial Officers have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. The Court held as under:-

"11. In our opinion the conclusion reached by the Inquiry Officer that the petitioner used unfair means is fully justified. No amount of denial could take him away from the hard facts revealed. The conduct of the petitioner is undoubtedly

unworthy of a judicial officer. Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

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28. Thus, 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 same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well."

4. Learned counsel for the petitioner further refers to the appointment of one Nidhi Jain and Bhupendra Arya, who have been appointed, though there were criminal cases also registered against them.

5. We do not find that appointment of another candidate, who stood acquitted, by itself is a ground on the basis of which the petitioner can claim any right to be appointed. It is a decision of the competent Authority as to whether a candidate is suitable for appointment. The nature of offences of said Nidhi Jain and Bhupendra Arya has not been disclosed; therefore, we do not find that any assistance can be taken by the petitioner on the basis of appointment, if any, of such candidates. Still further, even if such candidates have been appointed, the petitioner cannot claim any parity in illegality.

6. Even if there is some irregularity and illegality in the process of appointment of such candidates, the same will not confer any right with the petitioner to claim appointment. There cannot be any parity with the illegality. The Supreme Court in *Arikaravula Sanyasi Raju v. Branch Manager, State Bank of India, Visakhapatnam (A.P.) and others*, (1997) 1 SCC 256, held that merely because, on a wrong advice, another employee was given pension after removal from service, the same cannot be made a ground under Article 14 of the Constitution of India to perpetuate the same mistake. Thus, the Article 14 does not apply and no discrimination arises.

7. In its judgment in *National Aluminium Co. Ltd. and others v. Bharat Chandra Behera and another*, (2013) 16 SCC 622, the Supreme Court held that if two appointments were irregular and not strictly in accordance with the scheme providing for appointment in the case of land displaced persons, it can only be stated that the same would be hit by the principle of one illegality cannot be the basis for committing another. In other words, two wrongs do not make one right. The reliance was placed on a Judgment rendered in *Union of India and another v. International Trading Co. and another*, (2003) 5 SCC 437 wherein it is laid down that a party cannot claim that since something wrong has been done in another case, direction should be given for doing another wrong. It would not be setting

a wrong right but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment does not mandate repetition of a wrong action to bring both wrongs on a par. Even if a wrong has been committed in some other cases, there cannot be negative equality.

8. Mr. Anshuman Singh, learned counsel appearing for the High Court submitted that the High Court has given a notice to the petitioner of concealment of Case No.422/2008 while seeking appointment as a Law Clerk in pursuance of an order passed by this Court on 27.8.2018.

9. In view of the said fact, we do not find any merit in the present writ petition. Consequently, the writ petition is dismissed.