
(2019) 07 MP CK 0103
In the Madhya Pradesh High Court
Case No : Writ Petition No. 11319 Of 2019

Pankaj Shukla

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 34, 294, 323, 324, 327, 452, 506B

Citation : (2019) 07 MP CK 0103

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

Bench : Single Bench

Advocate : Prashant Sharma, S.N. Seth

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

i- That, the order impugned annexure P/1 may kindly be quashed.

ii- That, respondents may kindly be directed to grant appointment to the petitioner on the post of constable.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted.

2. The facts necessary for disposal of the petition in short are that the petitioner had appeared for recruitment to the post of Constable and was

declared successful. During character verification it was found that the petitioner was tried in Crime No.77/2015 for an offence under Sections 294,

323, 506-B, 452 and 324 of IPC and on the basis of compromise, he was acquitted for offence under Sections 323/34, 294, 506-B of IPC and was

acquitted for offence under Sections 452, 324/34 of IPC. Similarly, in Crime

No.132/2012 the petitioner was charge-sheeted for offence under

Sections 323, 294, 506-B, 327 of IPC and it appears that he was not tried for offence under Section 323 and was acquitted for offence under Sections

294 and 506-B of IPC on the ground of compromise and was acquitted for offence under Section 327 of IPC.

3. It is submitted by the counsel for the petitioner that earlier by order dated 20/7/2014 the petitioner was declared not eligible for appointment to the

post of Constable in the Police Department. Accordingly, writ petition No.5894/2015 was filed which was decided by this Court by order dated

27/6/2016 and the following order was passed:-

“In view of aforementioned submissions, the controversy involved in the instant writ petition is squarely covered by the aforesaid decision delivered

by the Bench of this Court vide order dated 05/08/2014 in W.P. No.10342/2013 which is not disputed by the opposite side.

Accordingly, the impugned order dated 26/7/2014 is hereby quashed. The respondents are directed to take necessary action for issuance of order of

appointment to the petitioner within a period of one month from the date of receipt of certified copy of this order. Needless to state that the

respondents shall keep in mind the placement of the petitioner in the merit list. The petitioner shall not be entitled for back wages, however, he shall be

entitled for seniority and all other consequential benefits.”

4. Since the petitioner was directed to give appointment, therefore, the State of M.P. filed a Writ Appeal, which was registered as Writ Appeal

No.393/2016 and the said writ appeal was allowed by the Division Bench of this Court by order dated 16/12/2016 with the following observations:-

1. The impugned order of the writ Court and the impugned order dated 26.07.2014 are set aside.

2. The appointing authority is directed to consider the case of the applicant for appointment on the post of constable in the attending facts and

circumstances by deciding the case on the anvil of law laid down by the Apex Court in the case of Avtar Singh.

3. The above said exercise shall be completed within three (3) months of production of copy of this order.”

5. Accordingly, by order dated 20/2/2017 the respondents had held that since the petitioner was acquitted on the ground of compromise and the

offence under Sections 452 and 327 of IPC amounts to moral turpitude, therefore, the petitioner is not entitled for recruitment in Police Department.

Being aggrieved by the said order, the petitioner filed Writ Petition No.2489/2017, which was allowed by this Court by order dated 24/7/2018 with the

following observations:-

“In view of the aforesaid, the impugned order dated 20/02/2017 (Annexure P-1) is set aside and the matter is relegated to the competent authority

to pass a fresh order after taking into consideration the fact of his acquittal and conduct a detailed deeper probe and pass a speaking and reasoned

order as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of the order. However, it is

made clear that this Court has not expressed any opinion on the merits of the case.

With the aforesaid, the writ petition stands disposed of.”

6. Accordingly, the petitioner had moved a representation to the respondents, however, in the meanwhile the State of M.P. also filed a writ appeal

challenging the order dated 24/7/2018 passed in Writ Petition No.2489/2017. The order passed by the Writ Court in Writ Petition No.2489/2017 was

set aside and the rejection of the candidature of the petitioner was upheld, however, in the meanwhile on 7/12/2018, i.e. prior to disposal of the Writ

Appeal No.1761/2019, the impugned order has been passed in compliance of order dated 24/7/2018 passed in Writ Petition No.2489/2017. It is

submitted by the counsel for the petitioner that rejection of the candidature of the petitioner is erroneous and thus, liable to be set aside.

7. Heard learned counsel for the petitioner.

8. A coordinate Bench of this Court by order dated 24/7/2018 passed in Writ Petition No.2489/2017 had relegated the matter to the competent

authority to pass a fresh order after taking into consideration the fact of his acquittal. Although there was merely a direction to the respondents to

reconsider the fact of acquittal of the petitioner in criminal case, but the State had filed a Writ Appeal, which was registered as Writ Appeal

No.1761/2018. Before the said Writ Appeal could be decided, it appears that in the light of the remand made by the Writ Court by order dated

24/7/2018 passed in Writ Petition No.2489/2017, the respondents have passed a

fresh order dated 7/12/2018 and after considering the fact of trial as well as the acquittal of the petitioner, has once again rejected his candidature. However, the rights of the petitioner were finally decided by the Division Bench of this Court in Writ Appeal No.1761/2018, by which the order dated 24/7/2018 passed by the Writ Court in Writ Petition No.2489/2017 was set aside. Operative part of the order dated 14/12/2018 passed in Writ Appeal No.1761/2018 reads as under:-

“The impugned order when tested on the anvil of above analysis cannot be given the stamp of approval. Consequently, it is set aside. The order

rejecting candidature of the respondent is upheld.”

9. Thus, the order of rejection of the candidature of the petitioner has already been upheld by the Division Bench of this Court in Writ Appeal

No.1761/2018.

10. Under these circumstances, in the light of the order passed by the Writ Appellate Court as well as in the light of the order passed by the Supreme

Court in the case of Union Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Another reported in (2018) 1 SCC 797, this Court is

of the considered opinion that the respondents did not commit any mistake in rejecting the candidature of the petitioner. Furthermore, as the rights of

the petitioner had already been decided by the Writ Appellate Court, therefore, the same cannot be reconsidered by this Court while exercising

power under Article 226 of the Constitution of India.

11. Accordingly, this petition fails and is hereby dismissed.