
(2019) 11 MP CK 0068
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 925 Of 2019

Pramod Goswami

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)
Indian Penal Code, 1860 — Section 148, 294, 325, 376, 440, 447, 506II
Code Of Criminal Procedure, 1973 — Section 320(8)

Citation : (2019) 11 MP CK 0068

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : Prashant Sharma, Alok Kumar Sharma

Final Decision : Dismissed

Judgement

1. The instant Intra Court Appeals filed u/S. 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 20/2/2019 in W.P.22613/17 passed by learned single judge dismissing the petition in question preferred by petitioner assailing Annexure-P/1 dated 29/8/2017 passed by S.P., Dewas (M.P.) by which candidature of petitioner for appointment to the post of constable in police was cancelled on the ground of suppression of material fact of registration of criminal case on 31/10/2013 against petitioner for offences punishable u/Ss. 148, 294, 325, 440, 447 and 506-II IPC in the verification form by disclosing that neither there is criminal case registered nor pending against him.

2. Pertinently, the petitioner-appellant was acquitted of the aforesaid offence by judgment dated 9/7/2014 which was after petitioner filled the verification form in the month of May, 2014.

2. 1 Learned counsel for appellant has argued with great vehemence relying upon instructions of the Govt. of M.P. dt/ 24/7/2018 to contend that even in

cases where candidate suppresses the factum of registration of offence in his verification form the competent authority is still vested with discretion to decide as to whether this suppression would cause adverse consequence upon prospects of petitioner to be inducted into a disciplined force, i.e., police or not.

2.2 It may not be out of place to mention that while cancelling the candidature of petitioner vide P/1 the competent authority exercised discretion and found that in the attending facts & circumstances the petitioner is not suitable for appointment as constable in police.

2.3 Based on the above factual matrix the sole question begging for an answer is whether this court can direct the competent authority to re-consider the case of appellant to ascertain his suitability for appointment in the face of factum of suppression (supra) of the offence as alleged in which appellant has subsequently been acquitted.

2.4 This very question has been answered in the negative by single bench of this court in W.P.5409/2009 (Dinesh Vs. Union of India & others) decided on 19/2/2019 after placing reliance on decision of Apex Court in Avtar Singh Vs. Union of India (2016) 8 SCC 471 and subsequent decision in case of State of M.P. & others Vs. Abhijit Singh Pawar in SLP © 17404/2016 decided on 26/11/2018. Relevant portion of order dated 19/2/2019 in WP 5409/2019 is reproduced below:-

"5. The Appointing Authority found that petitioner in his character verification form suppressed the information about registration of offence and pendency of criminal prosecution against him by not providing the necessary details in Column No.12 of aforesaid prosecution. As such it is evident from the return that the real reason behind discharging of services was suppression of the fact of petitioner having been prosecuted.

6. Counsel for the petitioner relied upon the decision of three Judge Bench in Avtar Singh Vs. Union of India reported in (2016) 8 SCC 471, to contend that there is nothing on record to disclose as to whether mind was applied by the Competent Authority as regards suitability of petitioner for retention in service, and whether the suppression is good enough to disqualify further continuance in service.

7. Learned counsel for the respondent on the other hand relying upon the recent judgment of the Apex Court in the case of State of M.P. and Ors. Vs. Abhijit Singh Pawar in SLP (C) No.17404/2016 passed on 26.11.2018, whereby two Judge Bench decision of Apex Court, while dealing with earlier decision on the point including the case of Avtar Singh held thus:-

"14. In Avtar Singh (supra), though this Court was principally concerned with the question as to nondisclosure 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.

18. Before we part, we must record our appreciation for the efforts put in by Mr. Siddharth Dave, learned Amicus Curiae and the assistance rendered by him."

8. This Court also had an occasion to decide similar issue holding that suppression of criminal prosecution in character antecedents form qua uniformed services, where rectitude and discipline is paramount, can be a good ground for the Competent Authority to either reject the candidature or to discontinue the services, which are not yet confirmed. The relevant extract of the said case is as under:-

"13. The most relevant and crucial factor which dissuades this court from

exercising writ jurisdiction in favour of the petitioner is the suppression of material fact about criminal antecedent in the verification form as held supra. The act of suppression in the verification form reflects adversely on the moral fiber and character of the candidate thereby enabling the employer to oust the petitioner from competition and choose another eligible candidate, though less meritorious, but of clean image and character for induction into the police force."

9. In view of above, this Court is of the considered view that looking to the nature of service, job requirement on the post of Constable and it's job profile, the act of suppression gives rise to necessary inference that the candidate has a tendency to mislead for his own advantage thereby causing dent in his moral fiber rendering him susceptible to fear and favour thereby making him unfit for disciplined service.

10. Accordingly, this Court declines interference in the matter and dismisses the present petition.

No cost. "

3. In view of the above, it is explicit that present is a clear case of suppression of information of registration of offence against the petitioner which adversely reflects upon the character of petitioner thereby rendering the petitioner a person of dubious and unreliable character. Moreover, the verification form at the end contains declaration which has been duly signed by petitioner that if any requisite information is suppressed or is found to be incorrect then candidature/appointment shall be liable to be cancelled without giving any opportunity of hearing.

4. In view of above, no fault can be found with the view taken by the learned single judge in dismissing the petition.

5. Accordingly, the impugned order dated 20/2/2019 in W.P.22613/17 is affirmed and appeal stands dismissed, sans cost.