
(2018) 08 MP CK 0118
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 424 Of2016

State Of Madhya Pradesh And Others	Vs	APPELLANT
Tahseeldar Singh		RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Constitution of India, 1950 — Article 142(1), 226
Indian Penal Code, 1860 — Section 147, 148, 149, 294, 323, 324

Citation : (2018) 08 MP CK 0118

Hon'ble Judges : Sanjay Yadav, J;Ashok Kumar Joshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

There is delay of 271 days in filing the appeal, condonation whereof is being sought vide I.A. No. 8116/2016.

Respondent though served has chosen not to appear. Consequently, the application is taken up for consideration.

For the reasons which find mention in the application which prevented the appellants from filing the appeal within the period of limitation, we are of the considered opinion that appellants have made out sufficient cause. Consequently, delay of 271 days in filing the appeal is condoned.

I.A. No. 8116/2016 stands disposed of.

Writ appeal is directed against the order dated 14/12/2015 passed in Writ Petition No. 7412/2014, whereby an order dated 14/08/2014 declaring the

respondent ineligible for appointment to the post of Constable in the police department has been set aside with a direction to the department to

reinstate the respondent petitioner.

The ineligibility incurred was because of the criminal case No. 438/2015

whereon the respondent was prosecuted for the offence

under Sections 147, 148, 149, 294, 323, 324 of IPC. Wherein he was acquitted on basis of the compromise arrived between the parties.

It is a matter of record that having participated in the recruitment process the respondent was selected as Constable; however, because of his

involvement in the criminal case, the Committee cancelled his candidature by communication dated 14/08/2014.

Learned Single Judge relying on the decision in W.P. No. 10342/2013 [Pankaj Shakya Vs. Secretary, State of M.P. and others] decided on

05/08/2014, quashed the impugned order and directed for reinstatement.

The issue as present one came up for consideration before Full Bench of our High Court in Ashutosh Pawar Vs. High Court of Madhya Pradesh &

Another (Writ Petition No.5865/2016 Order dated 12.01.2018), wherein following questions were dwelt upon:-

1. Whether in all cases, where an FIR lodged against a person for minor offences has been quashed on the basis of a compromise arrived at

between the parties or a person has been acquitted on account of a compromise between the parties, the character of the person applying for

appointment thereafter, has to be treated as Good and such a person cannot be held ineligible for appointment under the Rules of 1994 ?

2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority

and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has

wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority

concerned for reconsideration or for fresh consideration as to the eligibility of the person ?

3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further

direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated

seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard ?

4. Whether the high standards of adjudging the good character of a candidate for

appointment as a Judicial Officer, which has been adopted and followed by the State under the Rules of 1994 till the decision in the case of Arvind Gurjar (supra) were and are right and proper or whether in view of the decision in the case of Arvind Gurjar (supra), the same should be considered to be relaxed to the extent that in all cases the character of a person should be treated to be good where he has been acquitted for minor offences on the basis of a compromise?

5. Whether the decision in the case of Arvind Gurjar (supra) lays down the correct law ?

6. Any other question that may arise for adjudication or decision in the dispute involved in the present petition and which the Larger Bench thinks appropriate to decide ?

Dwelling on Questions No.1, 4 and 5, it is held:

32. Therefore, in respect of the Questions No.1, 4 and 5 we hold that 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. In this view of the matter, we find that the judgment in Arvind Gurjar's case (supra)

holding that it cannot be held that candidate does not have a good character, is not the correct enunciation of law. Consequently, the judgment in

Arvind Gurjar's case (supra) is overruled.

In regard to questions No.2 and 3, it is held:-

40. In view of the law laid down in above said judgments, there is no doubt that in exercise of power of judicial review under Article 226 of the

Constitution of India, this Court only examines the decision-making process and does not substitute itself as a Court of appeal over the reasons

recorded by the State Government. We find that the decision of the State Government holding that the petitioner is not suitable, is just, fair and

reasonable keeping in view the nature of the post and the duties to be discharged.

41. Even if the High Court finds that the decision of the State Government is suffering from some illegality, the jurisdiction of the High Court in a writ

petition under Article 226 of the Constitution of India is to remit the matter to the Authority for reconsideration rather than to substitute the decision of

the competent Authority with that of its own. The Supreme Court in a judgment reported as (1994) 4 SCC 448 (State of Haryana vs. Naresh Kumar

Bali) was examining a question: as to whether there could be a direction to appoint a candidate, who sought appointment on compassionate ground.

The Supreme Court held as under:-

16. With regard to appointment on compassionate ground we have set out the law in Life Insurance Corpn. of India v. Asha Ramchandra Ambekar

(1994) 2 SCC 718. The same principle will clearly apply here. What the High Court failed to note is the post of an Inspector is a promotional post. The

issuing a direction to appoint the respondent within three months when direct recruitment is not available, is unsupportable. The High Court could have

merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall

within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the

decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of

interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the

Constitution can be of no guidance on the scope of Article 226.â??

The impugned order when is tested on the anvil of the law laid down by the Full Bench, cannot be upheld. Consequently, the order passed in W.P. No.

7412/2014 is set aside. The rejection of candidature of respondent is upheld. The petition filed thereagainst is dismissed.

Appeal is allowed to the extent above. No costs.