

(2019) 09 RAJ CK 0200

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1079 Of 2019

State Of Rajasthan And Ors

APPELLANT

Vs

Rajesh Kumar Meena

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 341, 325, 376
Code Of Criminal Procedure, 1973 — Section 320, 320(8)

Citation : (2019) 09 RAJ CK 0200

Hon'ble Judges : S. Ravindra Bhat, CJ;Prakash Gupta, J

Bench : Division Bench

Advocate : Harshal Tholia, Dr. Vibhuti Bhushan Sharma, O.P. Jhajharia, Arpan Kumar Sharma

Final Decision : Allowed

Judgement

D.B. Civil Misc.Application No.675/2019:-

For the reasons mentioned in the application, the same is allowed. Delay in filing the appeal is condoned.

D.B. Special Appeal (Writ) No.1079/2019:-

1. The service is complete. With the consent of the parties, the matter is heard finally.

2. The appellant-State is aggrieved by an order of the learned Single Judge, who allowed the petition filed by the sole respondent (hereafter "Rajesh Kumar Meena"). Rajesh Kumar Meena, had applied for the post of Constable pursuant to an advertisement dated 25/05/2018. At the time of the application, though he was required to, he did not make any disclosure about his involvement, in a criminal case (i.e. FIR No.149/2016, PS Bagar, District Jhunjhunu) pursuant to which, he was charge sheeted by the competent court for the offences punishable under Sections 323, 341 and 325 read with Section 34 IPC.

3. He was selected, on the basis of the defective information. Apparently, Rajesh Kumar Meena after his appointment entered into a compromise which led to the compounding of offences and he was acquitted on 25/10/2018. Upon the State becoming aware of these, the respondent was denied appointment (earlier he was selected). He approached the court contending that the State had acted arbitrarily.

4. After considering the submissions of the parties, the Single Judge was of the opinion that the charges levelled against the petitioner were not grave and that his selection made pursuant to the advertisement on 25/05/2018 had to be processed. The Single Judge noted several previous judgments.

5. It is argued on behalf of the State that the Single Judge though has noted the decision of the Supreme Court in *Avtar Singh Vs. Union of India & Ors.* : {(2016) 8 SCC 471} but not followed the principles enunciated therein especially on the question that the effect of the suppression or withholding of information is materially a primary consideration/duty of the employer/authority of the State. It was contended that the given the serious nature of the offences, such as those punishable under Sections 325 and 341 IPC, relief should not have been granted. Learned counsel also relied upon the subsequent judgment of the Supreme Court in *State of Madhya Pradesh & Ors. Vs. Bunty* : (2019 SCC OnLine SC 430) and *State of Madhya Pradesh & Ors. Vs. Abhijit Singh Pawar* {2018} 18 SCC 733}.

6. It is highlighted by the writ petitioner through his counsel that the judgment in *Avtar Singh* (supra) was noticed and its ratio was properly applied. It is contended that although the petitioner had been charged and was facing trial at the stage of selection; fact remained that he was, subsequently acquitted on the basis of a compromise. Learned counsel highlighted that for the nature of the offences punishments were trivial and were compoundable under Section 320 Cr.P.C.

7. We notice that in *Avtar Singh* (supra), in its conclusions, dealt with various aspects of recruitment where applicants were charged with offences. The relevant conclusions in *Avtar Singh* (supra) are as follows:-

"12. A three Judge Bench of this Court in *Avtar Singh v. Union of India* (supra) was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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."

8. In the present case, the petitioner was aware of the criminal proceedings but withheld the information from the State i.e. employer. The case could not have been treated as a trivial one having regard to para 38.4.1, (which factors and incidences of conducts relating to shouting of slogans at a young age and for petty offences). Para 38.1 highlights that relevant information has to be furnished to the employer. Para 38.4.3, states that if acquittal is recorded, 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. Likewise in para 38.4.2 if conviction is recorded which is not trivial, the employer may cancel the candidature of an employee.

9. In the subsequent judgment (Abhijit Singh Pawar) the matter was placed in proper prospective, in the context of compounding orders made by the competent court based upon a compromise. The court held, as follows:-

"14. 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.

15. 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).

16. 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."

10. Similarly, in *Bunty* (supra) the court held as under:-

"8. After hearing learned counsel for the parties, we are of the opinion that the respondent had participated in the selection process in the year 2013, at that time the said criminal case was pending consideration and he has been acquitted subsequently, vide judgment and order dated 7.1.2015 all throughout during selection process the case was pending consideration and as certain witnesses have turned hostile which is not unusual. The respondent knew very well about the pendency of the case against him and it is not uncommon to see that witnesses turned hostile. In the aforesaid circumstance, it cannot be said to be case of clear acquittal, in criminal case, he was given benefit of doubt not acquitted because the case against him was found to be false. Thus, due to such acquittal appointment could not have followed as a matter of course as observed by the Division Bench of the High Court."

11. In the present case at the stage when the respondent applied, the criminal case was pending; and he was facing charges. The non disclosure or withholding of such an information is crucial because nature of employment sought for was appointment as a Constable which involved a degree of trust of confidence. The subsequent compromise based upon compounding of offence, in the opinion of the court, did not absolve the petitioner from the primary duty of disclosing the information to the State to enable it to make the choice whether he should be in its employment or not.

12. For the above reasons, this Court is of the opinion that the impugned order requires to be interfered with; it is accordingly set aside.

13. The appeal is allowed.