

(2019) 03 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12523 Of 2018

Vijay S/O Mohan Singh Mujalda

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 149, 294, 323, 426, 427, 506B
Code Of Criminal Procedure, 1973 — Section 320, 320(8)

Citation : (2019) 03 MP CK 0027

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : P.R.Bhatnagar, Arvind Sharma

Final Decision : Allowed

Judgement

[1] The petitioner has filed the present petition being aggrieved by the order dated 18.05.2018 (Annexure P/1) by which the Directorate of Public Prosecution has terminated him from service in the public interest by applying the principles laid down in the case of Avtar Singh v/s Union of India [(2016) 8 SCC 471].

[2] Facts of the case, in short, are as under :-

(a) The petitioner is a permanent resident of District Dhar belongs to Scheduled Castes category. The Professional Examination Board conducted joint Recruitment Examination in the year 2016 in which the petitioner did apply apply for the post of Assistant Grade-III. After passing the examination, he was selected and allotted the Department i.e. Public Prosecution Directorate.

(b) The petitioner was called for attestation of documents and he filled the attestation form. According to the petitioner he gave correct declaration in Column No.12 (b) (iv) of the attestation form about the registration of Criminal Case No.1109/2010 decided on 08.08.2013 whereby he was acquitted from all charges.

(c) After submitting the aforesaid information, verification was done and vide order dated 21.09.2017 he was appointed as Assistant Grade-III.

(d) In pursuant to the aforesaid appointment, the petitioner gave joining on 03.10.2017 and started working. After the period of six months, a show-cause notice dated 22.03.2018 was issued alleging that in attestation form he did not mention the case number, charges and the name of police station which amounts to suppression of information about criminal antecedents. After receipt of the show-cause notice, the petitioner submitted a reply. The reply of the petitioner was not found satisfactory, hence, vide order dated 18.05.2018 the appointment of the petitioner has been cancelled in view of the law laid down by the Apex Court in the case of Avtar Singh (supra).

(e) Being aggrieved by the order dated 18.05.2018, the petitioner has filed the present petition before this Court.

[3] The petitioner has assailed the impugned order on the ground that he has bonafidely declared about his acquittal in a criminal case and he did not suppress any fact from the Department. After verification of his form, he was duly appointed as Assistant Grade-III. The law laid down by the Apex Court in the case of Avtar Singh (supra) has not been considered and impugned decision the Respondents is not based upon objective criteria on due consideration of all relevant aspects. Hence, the impugned order is liable to be set-aside.

[4] After notice, the Respondents filed the return by submitting that the challan was filed against the petitioner under Sections 147, 294, 323, 426 and 506-B of IPC. Thereafter charges under Sections 325, 427 and 149 of IPC were framed against him and he was acquitted by way of compounding/compromise with the complainant vide order dated 08.08.2013, therefore, it cannot be said that the petitioner got clean acquittal from the criminal Court. It is further submitted that the State Government has issued the list of offences which involves moral turpitude and in which Sections 427 and 149 of IPC are also included. Therefore, the appointment of the petitioner has rightly been cancelled.

[5] I have heard learned counsel for the parties and perused the record.

[6] The copy of the attestation form submitted by the petitioner is filed along with the return (Annexure R/1) by the State Government. In Column No.12 (b), the selected candidate is required to give declaration about his criminal antecedents. In Clause 12 (b) (i) to (iii) candidate is liable to give declaration about pending criminal cases in which the challan has been filed. Sub-clause (iv) deals with the declaration about the decision of a criminal case. Sub-clauses (v) (vi) and (vii) deals with the fact whether he has been convicted , acquittal or withdrawal of the prosecution. Clause 12 (b) is reproduced below :-

"12.(क) क्या आप कभी गिरफ्तार किए गये, क्या आप, पर कभी अभियोजन चलाया गया है? क्या आप कभी निरूद्ध किए गये है ? या आपसे मुचलका लिया गया है/ आप पर जुर्माना किया गया है ? क्या आप किसी अपराध के लिये न्यायालय द्वारा दोषी ठहराये गये है ? या आपको किसी भी लोक सेवा आयोग द्वारा उसके द्वारा संचालित परीक्षाओं/किए

जाने वाले चयनों में सम्मिलित होने से वर्णित किया गया है ? उसके लिये अनर्ह ठहराया गया है या क्या आपको किसी भी विश्वविद्यालय या किसी भी अन्य शैक्षणिक प्राधिकरण/संस्था द्वारा किसी भी परीक्षा में बैठने से वर्णित किया गया है ? निष्कासित किया गया है ?

.....हाँ.....
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(ख) क्या इस अनुप्रमाणन फार्म को भरते समय किसी भी न्यायालय विश्वविद्यालय या किसी भी शैक्षणिक प्राधिकरण/संस्था में आपके विरुद्ध कोई मामला लंबित है ? यदि (क) अथवा (ख) में पूछे गये प्रश्नों के संबंध में आपके उत्तर हाँ में हों तो आपको इस अनुप्रमाणन फार्म को भरते समय मामले, गिरफ्तारी, निरोध, जुर्माने, दोष सिद्ध तथा दण्डादेश आदि के पूरे ब्यौरे प्रस्तुत करने चाहिए तथा इस फार्म को भरते समय न्यायालय/विश्व विद्यालय/शैक्षणिक प्राधिकरण आदि के समक्ष जो मामला लंबित हो उसका स्वरूप बतलाना चाहिये इस जानकारी के अतिरिक्त जहां लागू हो वहां निम्नलिखित ब्यौरे भी दिये जाएंगे :-

(एक) अपराध/आरोपनहीं.....

(दो) पुलिस थाने में पंजीबद्ध नहीं.....

(तीन) यदि न्यायालय में चालान प्रस्तुत किया गया हो तो न्यायालय का नाम..... नहीं.....

(चार) मामले का क्रमांक न्यायालय द्वारा उसका निपटारा किस तारीख को किया गया।

क्र..... 1109/10..... निपटारा - 8/8/2013 को किया गया।

(पांच) दिया गया दण्ड..... नहीं.....

(छ) क्या दोषमुक्त कर दिया गया है

(सात) दोषमुक्ति संदेह के लाभ पर आधारित थी या मामला वापस ले किया गया था

.....
नहीं....."

[7] Since the criminal case pending against the petitioner had been decided vide judgment dated 08.08.2013, therefore, he was required to give declaration only in blank space below sub-clause (iv) because sub-clauses (i) to (iii) are required to be filled only in case of pending trial. Therefore, the petitioner did not suppress any fact in attestation form.

[8] So far as the involvement of moral turpitude under Sections 149 and 427 of IPC are concerned, the petitioner got acquittal vide judgment dated 08.08.2013 by virtue of compromise under Section 320 of the Code of Criminal Procedure. Sub-clause (8) of Section 320 provides that the composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded. Therefore, the petitioner is liable to be treated as acquittal from all charges because he was acquitted on the basis of compromise. Sub-clause (8) of Section 320 is reproduced below :-

"(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

[9] In the case of Avtar Singh (supra), the Apex Court has held that the verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects. As has been held above, the petitioner did not suppress any information to the Respondents about his involvement in a criminal case. In para 38.4.3, the Apex Court has held that if the acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, 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. The petitioner is falling in one of the category because he had been acquitted and by virtue of sub-clause (8) of Section 320 having status of clean acquittal. Apart from this criminal case, there is no adverse material against the petitioner. Therefore, the Respondents did not consider his case based upon objective criteria on due consideration of all relevant aspects.

[11] Accordingly this petition is allowed. The impugned order dated 18.05.2018 (Annexure P/1) is hereby set-aside. The petitioner be reinstated into service forthwith without back wages, but with all consequential benefits.

No order as to costs. Cc as per rules.