

The High Court of Madhya Pradesh
WP 25262/2018
[Jitendra Kumar Gupta vs. State of MP]
Gwalior, dtd. 28/02/2020

Shri Jitendra Kumar Sharma, counsel for the petitioner.

Shri RK Soni, Government Advocate for the respondents/State.

This petition under Article 226 of the Constitution of India has been filed against the order dated 17/10/2018 (Annexure P1) by which the selection of the petitioner for the post of Assistant Grade-III has been rejected on the ground that criminal cases were registered against him.

(2) The necessary facts for disposal of the present petition in short are that an advertisement was issued for recruitment to the post of Assistant Grade-III for the disabled persons. The petitioner is a disabled person, also participated and was selected and accordingly, an order of appointment dated 20/11/2015 was issued. After his selection, the petitioner was directed to fill up the verification form. In the verification form, the petitioner disclosed the criminal cases which were registered against him along with the fact that he has already been acquitted. Thereafter, it appears that by order dated 14th July, 2016, the petitioner was declared ineligible for appointment to the post of Assistant Grade III in the Office of Excise Commissioner and accordingly, a Writ Petition No.5146/2016 was filed by the petitioner, which was allowed by this Court by order dated 09/12/2016 with the following observations:-

"Accordingly, the impugned order dated 14.07.2016 (Annexure P/1) is hereby quashed. Respondents are directed to reconsider candidature of the petitioner for appointment on the post of Platoon Commander, after taking into account the

law laid down in the case of **Avtar Singh (Supra)** as well as observations made by this Court in WP. Nos. 3719/2014(s), 7412/2014 and 5795/ 2015 and pass a speaking order as early as possible within a period of two months from the date of receipt of certified copy of this order passed today.

With the aforesaid observations, this petition stands disposed of finally. There shall be no order as to cost."

(3) Since in the operative para of the order, the designated post was mentioned as "Platoon Commander", therefore, the petitioner filed a Review Petition No.05/2017 which was allowed by order dated 16/01/2017 and it was directed that in place of "Platoon Commander", the word "Assistant Grade III" be read. It is submitted that in compliance of direction given by this Court in Writ Petition No.5146 of 2016, the respondents have reconsidered the case of the petitioner and have once again held that the petitioner is not fit for appointment. It is submitted that the State has published a list of offences which fall under the category of "moral turpitude" and the petitioner was never tried for the offence involving the "moral turpitude".

(4) *Per contra*, it is submitted by the counsel for the State that even if an employee has been acquitted but still the employer can always consider the acquittal of the employee and if the respondents have come to a conclusion that the petitioner is not entitled for recruitment to the post of Assistant Grade III, then it cannot be said that the order passed by the respondents is bad. It is further submitted that the petitioner was tried for offence under Section 307 of IPC which involves moral turpitude.

(5) Heard the learned counsel for the parties.

(6) Undisputed facts are that the petitioner was selected for the post of Assistant Grade III and in the verification form, the petitioner had specifically pointed out that Crime No.348/2008 and Crime No.144/2000 were registered against him at Police Station Morar, District Gwalior. It is also mentioned that the proceedings under Sections 107 and 116(3) of CrPC were initiated in the year 2000 and one Claim Case No.49/2004 is pending in the Court of First Additional Motor Accident Claims Tribunal, Dabra, District Gwalior. It is also mentioned that the petitioner has already been acquitted in both the criminal cases on the ground of compromise and the proceeding under Section 107 and 116(3) of CrPC has come to an end by efflux of time and the Award in Claim Case No.49/2004 has already been passed, which has been finally adjudicated in the High Court Mega Lok Adalat.

(7) The Supreme Court in the case of **State of Madhya Pradesh & Others vs. Abhijit Singh Pawar**, passed in **Civil Appeal No.11356 of 2018 (Arising out of SLP (c) No.17404 of 2016)**, by judgment dated 26th November, 2018, reported in **(2018) 18 SCC 733** and **Union of Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Another**, reported in **(2018) 1 SCC 797** has held that for entering into the police service, the candidate is required to be of a good character, integrity and clean antecedents. However, in the considered opinion of this Court, the aforementioned judgments are not applicable because the petitioner had never applied for his appointment in the Police Department but had applied for the post of Assistant Grade-III in

the Excise Department.

(8) The Supreme Court in the case of **Avtar Singh vs. Union of India and Others**, reported in **(2016) 8 SCC 471** has held as under:-

37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If 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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of *suppressio veri* or *suggestio falsi*, knowledge of the fact must be attributable to him."

(9) The Supreme Court in the case of **Mohammed Imran vs. State of Maharashtra and Ors. [Civil Appeal No.10571 of 2018 arising out SLP(C) 6599 of 2018]** decided on 12th October, 2018 has held as under:-

"6. Employment opportunities is a scarce

commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-employment. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.

7. That, the expression "moral turpitude" is not capable of precise definition was considered in *Pawan Kumar vs. State of Haryana and another*, (1996) 4 SCC 17, opining:

"12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity...."

8. The appellant by dint of hard academic labour was successful at the competitive examination held on 16.08.2009 and after viva voce was selected and recommended for appointment by the Maharashtra Public Service Commission on 14.10.2009. In his attestation form, he had duly disclosed his prosecution and acquittal. Mere disclosure in an appropriate case may not be sufficient to hold for suitability in employment. Nonetheless the nature of allegations and the conduct in the facts of a case would certainly be a relevant factor. While others so recommended came to be appointed, the selection of the appellant was annulled on 04.06.2010 in view of the character certification report of the police.

9. It is an undisputed fact that one Shri Sudhir Gulabrao Barde, who had been acquitted on 24.11.2009 in Case No.3022 of 2007 under Sections 294, 504, 34, IPC, has been appointed. We are not convinced, that in the facts and circumstances of the present case, the appellant could be discriminated and denied appointment arbitrarily when both the appointments were in judicial service, by the same selection procedure, of persons who faced criminal prosecutions and were acquitted. The distinction sought to

be drawn by the respondents, that the former was not involved in a case of moral turpitude does not leave us convinced. In *Joginder Singh* (supra), it was observed as follows:-

"25. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the Appellant was not up to the mark to appoint him to the post..."

10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well-settled in this regard in **Avtar Singh vs. Union of India and Others**, (2016) 8 SCC 471. If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.

11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand."

(10) From the criminal history of the petitioner, it is clear that in Crime No.144 of 2000, he was tried for offence under Sections 323, 324, 294, 504 of IPC and in Crime No.348 of 2008, he was tried for offence under Sections 294, 307/34 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989. It appears that the charges under Sections 324/34, 323/34 of IPC were framed and no charge under Section 294 or Section 504 of IPC was framed. Since offences under Section 324/34, 323/34 of IPC were compoundable, therefore, an application under Section 320 of CrPC was filed, which was accepted in the Lok Adalat and by order dated 16/05/2008, the petitioner was acquitted.

(11) So far as Crime No.348/2008 is concerned, the petitioner has been acquitted by judgment dated 05/11/2009 passed in SST No.01/2009. From the plain reading of this judgment, it appears that the witnesses have turned hostile and they did not support the prosecution case.

(12) Now, the only question for consideration is that the acquittal of the petitioner would amount to honourable acquittal or not ?

(13) The Full Bench of this Court in the case of **Ashutosh Pawar vs. State of M.P.** reported in **2018 (2) MPJR 178** has held 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.

(14) Thus, it is clear that the petitioner has not obtained honourable acquittal but the question for consideration is that whether the respondents have considered the suitability of the petitioner for his appointment to the post of Assistant Grade-III or have merely rejected

his candidature on the ground that the criminal cases were registered against him and he cannot be granted appointment in spite of the fact that he was acquitted.

(15) Undisputedly, the recruitment in the Excise Department on the post of Assistant Grade-III would also require public standard, integrity, but it may differ in comparison to any post in the Police Department. Therefore, this Court is of the considered opinion that the respondents committed a material illegality by not considering the suitability of the petitioner to the post of Assistant Grade-III in the light of his criminal background but his candidature has been rejected only on the ground that the petitioner had criminal antecedents. It is not the case of the respondents that the petitioner had suppressed any material fact. On the contrary, it is clear from the verification form that the petitioner had disclosed the registration as well as the outcome of the criminal cases.

(16) The Division Bench of this Court in the case of **Ramvaran Singh Gurjar vs. State of MP & Others**, passed in **Writ Appeal No.1257 of 2018** by order dated 29/10/2018 has observed as under:-

"7.Once this Court holds that acquittal of petitioner/appellant in regards offence punishable u/S. 3(1)(b), 3(1)(e) and 3(2) of the 1989 Act was honourable and not on technical grounds, the question of element of moral turpitude coming into play against petitioner does not arise.

7.1. Undoubtedly, the element of moral turpitude which is inherent part of certain offences of serious nature including offence punishable u/S. 3(1)(a), 3(1)(e) and 3(2) of the 1989 Act can very well be brought into play to the detriment of a candidate in a selection provided there is some evidence worth its name supporting the prosecution story creating a reasonable doubt as regards complicity of the accused.

7.2. However, in the instant case, the prosecution failed to produce even an iota of evidence to establish the foundational ingredients of offences under the 1989 Act. Thus, no offences as alleged could be established against the petitioner/appellant."

(17) Therefore, this petition is allowed and the order dated 17/10/2018 (Annexure P1) is hereby quashed and the matter is remanded back to the respondents with a direction to pass a fresh order after considering the suitability of the petitioner to the post of Assistant Grade III in the Excise Department in the light of his criminal antecedents. Let the entire exercise be completed within a period of **four months** from the date of receipt of certified copy of this order.

(18) This petition succeeds and is hereby **Allowed**.

(G.S. Ahluwalia)
Judge