

THE HIGH COURT OF MADHYA PRADESH 1
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

Gwalior, Dated :02/09/2020

Shri Arun Dudawat, counsel for the petitioner.

Shri Sankalp Sharma, Panel Lawyer for the respondents/ State.

Heard finally through video conferencing.

This petition under Article 226 of the Constitution of India has been filed against the order dated 29-07-2019 passed by respondent No.3, by which the candidature of the petitioner for the post of Police Constable (Sweeper) has been rejected on the ground that a criminal case was pending against the petitioner.

The necessary facts for disposal of the present petition in short are that an advertisement was issued for Recruitment on the Post of Constable in the Police Department and the petitioner applied for appointment on the post of Constable (Sweeper). It appears that the advertisement was issued sometime in the year 2016. The petitioner was declared successful and was called upon to fill up his Character Verification Form. It is the case of the petitioner that he has disclosed that a criminal case was registered against him, but he has been acquitted by the Court of JMFC, Sabalgarh, District Morena by judgment dated 11/03/2017. It is submitted that in spite of acquittal of the petitioner in the criminal case, he was denied his appointment vide order dated 01/08/2017.

Being aggrieved by the said order, the petitioner preferred a Writ

THE HIGH COURT OF MADHYA PRADESH 2
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

Petition No.6044/2017 which was dismissed by order dated 25/04/2018. The said order of the Single Judge was successfully challenged by the petitioner in Writ Appeal No.587/2018, which was allowed by order dated 4/5/2018 and the matter was relegated back to the authorities for fresh consideration. Thereafter, the respondents have once again considered the case of the petitioner and have declared him unfit by order dated 29/07/2019 on the ground that a criminal case was registered against the petitioner for offence under Sections 336, 457 of IPC. It is the case of the petitioner that no offence under Section 457 of IPC was ever registered against him. It is further submitted that the impugned order has been passed on the basis of the instructions dated 5/6/2003 and those instructions were withdrawn by order dated 24/07/2018 and, therefore, the instructions dated 5/6/2003 are no more in existence. Furthermore, it is submitted that looking to the nature of the duties which were to be discharged by the petitioner, the registration of a criminal case in which the petitioner has secured acquittal will not have any bearing and the impugned order is contrary to the judgment passed by the Supreme Court in the case of **Avtar Singh vs. Union of India and Others**, reported in **(2016) 8 SCC 471**. It is further submitted that the respondents have failed to apply their mind and perverse reasons have been assigned for arriving at the impugned decision. It is further submitted that the valid reasons are

THE HIGH COURT OF MADHYA PRADESH 3
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

heart-beat of the decision and while passing the impugned order, the respondents must disclose cogent reasons for denying him appointment. It is further submitted that the impugned order dated 29-07-2019 is in direct conflict with the judgment passed by the Writ Appellate Court in Writ Appeal No.46/2018.

The respondents have filed their return and submitted that Crime No.150/2012 was registered in Police Station Kailaras, District Morena for offence under Sections 457, 336, 294, 506-B, 34 of IPC. It is further mentioned in the return that although the petitioner had disclosed about the registration of Criminal Case in the Character Verification Form, but the Screening Committee has found that the charges under Sections 457, 336, of IPC falls within the category of "moral turpitude", therefore, the petitioner is not entitled for appointment. It is further submitted that it is clear from the judgment passed by the Trial Court that the petitioner was acquitted on the basis of compromise. A 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 according to his suitability for the post. It is

THE HIGH COURT OF MADHYA PRADESH 4
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

submitted that the suitability and eligibility are two different things. The test for finding the culpability and test for suitability to the post are two different parameters and mere acquittal in a criminal case on the basis of compromise is not a certificate of good conduct. It is further submitted that the offence was registered against the petitioner in the year 2012 and the trial was pending on the day when the advertisement was issued. Even on the date of declaration of result, the trial was pending against the petitioner. It appears that a few days prior to filling up of the Character Verification Form, the petitioner was acquitted on the basis of compromise between the parties. It is further submitted that it is clear from the judgment passed by the trial Court that the petitioner was tried for offence under Sections 452, 336 of IPC. It is further submitted that even if the contention of the petitioner that he was never charge-sheeted nor tried for offence under Section 457 of IPC is concerned, the undisputed fact is that the petitioner was tried for offence under Section 452 of IPC and the said offence is also no more less grave than the offence under Section 457 of IPC. It is further submitted that the petitioner had submitted an affidavit [Annexure P6] in which he himself had declared that he is being tried for offence under Sections 350, ~~457~~, 336, 294, 323, 506-B of IPC, therefore, now he cannot claim that the facts were not correctly considered by the respondents. It is further submitted that the

THE HIGH COURT OF MADHYA PRADESH 5
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

judgment passed by the Division Bench of this Court in the case **Bhupendra Yadav vs. State of MP** passed on 21/04/2018 in **Writ Appeal No.46/2018** is already a subject-matter of SLP which is still pending before the Supreme Court. It is further submitted that the petitioner had filed a Contempt petition which was registered as CONC No.2346/2018 which was decided by order dated 29/03/2019 by holding that since a SLP has already been preferred against the order passed in the case of **Bhupendra Yadav (supra)**, therefore, the High Court was not inclined to take any action against the respondents and it was further observed that if the judgment passed in the case of **Bhupendra Yadav (supra)** is upheld, then the petitioner would be at liberty to revive the contempt petition.

Challenging the impugned order, it is submitted by the Counsel for the petitioner, that an offence under Section 336,452 of I.P.C. doesnot involve “Moral Turpitude” and merely because the petitioner was once tried for a criminal offence, therefore, he should not be debarred from Govt. job. The Counsel for the petitioner has relied upon the order passed by a Division Bench of this Court in the case of **Bhupendra Singh (Supra), Rohit Singh Raghuvanshi Vs. State of M.P.** passed in **W.A. No. 7 of 2020** on **2-3-2020, Arvind Gurjar Vs. State of M.P.** reported in **2016 Supreme (MP) 905.**

Per contra, the Counsel for the State has supported the order. It

THE HIGH COURT OF MADHYA PRADESH 6
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

is submitted that until and unless the decision of the Screening Committee suffers from *mala fide*, *bias* or arbitrariness, the High Court may not act as an appellate authority. The counsel for the State has also relied upon the judgment passed by the Supreme Court in the case of **State of Madhya Pradesh and Others vs. Parvez Khan** reported in **(2015) 2 SCC 591, Commissioner of Police, New Delhi and Anr vs.Mehar Singh**, reported in **(2013)7 SCC 685, Union of Territory, Chandigarh Administration & Others vs. Pradeep Kumar & Another**, reported in **(2018) 1 SCC 797** and the judgment dated 20/08/2020 passed by Coordinate Bench of this Court **(Principal Seat Jabalpur)** in the case of **Virendra Jatav vs. State of Madhya Pradesh & Others** passed in **Writ Petition No.27106/2018**.

Heard the learned counsel for the parties.

Before coming to the question of suitability of the petitioner to be appointed in the Police Force, this Court finds it appropriate to find out as to whether the offence under Sections 452, 336 of IPC involves moral turpitude or not ?

The Supreme Court in the case of **Pawan Kumar vs. State of Haryana and Another**, reported in **(1996) 4 SCC 17** has held as under:-

"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

THE HIGH COURT OF MADHYA PRADESH 7
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

connection showing depravity.....”

Thus, it is clear that "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.

If the facts of the criminal case which was registered against the petitioner are considered, then it is clear that on 07/04/2012, complainant Man Singh lodged a FIR in police station Kailaras, District Morena that at about 09:30, he was in his house and at that time, the petitioner along with other co-accused persons came there and started abusing the complainant on the issue of electricity supply. When the complainant replied that he has no information as to why there is no electricity supply, then the petitioner as well as other co-accused persons started pelting stones. When the complainant took shelter in his house, then the petitioner as well as other co-accused persons entered inside the house of the complainant and caused damage to the electric wires and assaulted him. On hearing the alarm raised by the complainant, witnesses Narayan, Ganpati @ Vakil and Triveni came on the spot and intervened in the matter and accordingly, Crime No.150/2012 was registered for offence under Sections 452, 336, 294, 506-B, 34 of IPC. The petitioner was tried for offence under Sections 452, 336, 294, 323, 323/34 of IPC. Since an application

THE HIGH COURT OF MADHYA PRADESH 8
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

under Section 320 of CrPC was filed, therefore, on the basis of said application for compounding the offence, the petitioner was acquitted of charges under Sections 294, 323, 323/34 of IPC. Since offences under Section 452 and 336 of IPC were not compoundable, therefore, the evidence of the witnesses were recorded and the complainant as well as the witnesses namely Triveni and Ganpati alias Vakil turned hostile and accordingly, the petitioner was acquitted. If the facts of the case are considered, then it is clear that for no good reason the petitioner along with other co-accused persons not only used abusive language against the complainant, but also pelted stones and forcibly entered in his house and assaulted him.

The Full Bench of this Court in the case of **Ashutosh Pawar (supra)** had already held that the acquittal on the basis of compromise cannot be said to be a honourable acquittal.

Certain offences which have been made compoundable are mentioned in Section 320 of Cr.P.C. Although the effect of compounding would be at par with acquittal, but the question is that whether such acquittal would amount to honourable acquittal or not?

“Compounding an offence” doesnot mean that the allegations of committing an offence were false, but it means that the complainant has now decided not to further prosecute the offender or in other words, the complainant has forgiven the accused or the complainant

THE HIGH COURT OF MADHYA PRADESH 9
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

has entered into a compromise or agreement with the accused and has decided to drop the charges. Although every offence is against a society, but considering the nature of offences, some offences can be placed in the category of heinous offences, which cannot be compounded at all, and some offences have been made compoundable so that the harmony in the society may be promoted. The word crime has been defined in **Black's Law Dictionary** as “ a positive or negative act in violation of penal laws; an offence against the State.” Similarly Compounding of a crime has been defined in **Black's Law Dictionary** as “the offence of either agreeing not to prosecute a crime that one knows has been committed or agreeing to hamper the prosecution”. Similarly in **Law Lexicon**, “Compounding” has been defined as “the offence of taking a reward for forbearing to prosecute a felony; as where the party takes his goods again, or otherwise amends upon an agreement not to prosecute”. Thus, compounding means that a victim agrees to enter into an agreement with an undertaking that he would not prosecute or undertake a legal action against the offender. Thus, it is clear that acquittal on the basis of compromise is not an acquittal on merits after appreciation of evidence, but it is an acquittal on the basis of an act of a victim by which he either forgives or enters into an agreement with an undertaking not to prosecute the offender. Thus, the acquittal on the basis of compromise can never be a

THE HIGH COURT OF MADHYA PRADESH 10
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

honourable acquittal.

Even otherwise, forcibly entering in the house of the complainant and thereafter, assaulting him for no good reason indicates the criminal mind set of the petitioner. The alleged offence was committed by the petitioner without any provocation which shows the aggressiveness in the nature of the petitioner and he can go to the extent of committing an offence. This act of the petitioner clearly indicates the conduct of the petitioner is inherently base, vile or deprave.

The word “Moral Turpitude” has not been defined in any statute or Service Rule. In the light of the judgment passed in the case of **Pawan Kumar (Supra)**, this Court is of the considered opinion, that no straight jacket formula can be applied thereby explaining “Moral Turpitude” and has to be considered on case to case basis after taking into consideration, the duties and liabilities attached to a particular post.

The Police Department is a disciplined force having primary duty to maintain law and order. Therefore, it is necessary that the employees working in the police department must be of honest character having high values. They are required to deal with not only the General Public but are also required to check the activities of the criminals and to ensure that no wrong doer goes scotfree and is

THE HIGH COURT OF MADHYA PRADESH 11
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

brought to the Court for trial. If any person, who is having criminal tendency is recruited in the police department, then because of his inclination towards the crime and criminals, he may not discharge his duties with utmost honesty and may protect the criminals which would be certainly detrimental to the civilized society. Therefore, the word “Moral Turpitude” has to be given a strict meaning where a person seeks appointment in the Police Department, because morally culpable quality would neither be in the interest of Police Department nor in the interest of General Public At large. This Court in the case of **Jitendra Kumar Gupta Vs. State of M.P.** passed in W.P. No. 25262 of 2018 by order **dated 28-2-2020** has held as under :

(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

THE HIGH COURT OF MADHYA PRADESH 12
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

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)(द)**, **3(1)(ए)** 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."

Thus, it is clear that for recruitment to any post in the Police Department, requires that the character and past history of the candidate must be unblemished and of high standard. Therefore, the word "Moral Turpitude" cannot be given liberal meaning for recruitment to any post in the Police Department.

The Supreme Court in the case of **State of Madhya Pradesh and Others vs. Abhijit Singh Pawar**, passed in **Civil Appeal No. 11356 of 2018 (Arising out of SLP (c) No.17404 of 2016)** by judgment dtd. 26th November, 2018 has observed as under:-

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

THE HIGH COURT OF MADHYA PRADESH 13
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

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."

THE HIGH COURT OF MADHYA PRADESH 14
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

The Supreme Court in the case of **Union of Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Another**, reported in **(2018) 1 SCC 797** has held as under:-

"11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commissioner of Police, New Delhi and Another Vs Mehar Singh* (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision.....

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in *Avtar Singh v. Union of India and Others*(2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (38.5), (SCC p. 508)

"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."

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* and *Parvez Khan* cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with

THE HIGH COURT OF MADHYA PRADESH 15
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

utmost character.

* * *

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside

The Supreme Court in the case of **The State of M.P. and others**
Vs. Bunt by order dated 14/3/2019 passed in **Civil Appeal**
No.3046/2019 has held as under:-

“13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.”

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 as under:-

" 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

THE HIGH COURT OF MADHYA PRADESH 16
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

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. Division Bench judgment of this Court in W.P.No.5887/2016 (Arvind Gurjar vs. State of M.P.) is overruled. Another Division Bench judgment in W.A. No.367/2015 (Sandeep Pandey vs. State of M.P. and others) is also overruled. Jurisdiction of the High Court in a writ petition under Art. 226 of the Constitution of India is to examine the decision-making process than to act as Court of appeal to substitute its own decision. In appropriate case, if the Court finds decision-making process is arbitrary or illegal, the Court will direct the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own.

Thus, this Court is of the considered opinion that on the date of advertisement, the petitioner was facing trial. Even on the date of declaration of his result, the criminal trial was pending against him. Only just few days prior to filling up of the Character Verification Form, the petitioner succeeded in getting acquittal on the basis of compromise. This Court has already come to a conclusion that the charges leveled against the petitioner involved “Moral Turpitude”, and “Compounding of offence” is nothing but an undertaking by the victim to give up the prosecution of the offender.

It is contended by the Counsel for the petitioner, that since, the

THE HIGH COURT OF MADHYA PRADESH 17
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

petitioner has applied for his recruitment on the post of Constable (Sweeper) and he would never be given field posting, therefore, the nature of work of the petitioner is such, that even if a criminal case was registered against the petitioner, but still, it would not have any bearing on the nature of duties which are to be discharged by the petitioner.

Considered the submissions made by the Counsel for the Petitioner.

The petitioner has sought recruitment on the post of Constable (Sweeper) in the police department. It is not important that whether the petitioner would be given any field posting or not, but the important aspect of the matter is that as he would be holding the post of Constable, therefore, he may show his influence to the general public.

Now the next question for consideration is that to what extent the judicial review of decision of screening committee is possible.

“Suitability” cannot be confused with “Eligibility”. A co-ordinate Bench of this Court in the case of **Madhur Vs. State of M.P.** by order dated **17-4-2018** passed in **W.P. 21231 of 2017** has held as under :

The “suitability” cannot be confused with eligibility”. In the ‘Major Law Laxicon’ by P. Ramanatha Iyer about the word following view is expressed-”the word ‘suitable’ does not

THE HIGH COURT OF MADHYA PRADESH 18
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

require a definition because any man of experience would know who is suitable. However, each case has to be viewed in the context in which the word “suitability” or “suitable” is used, the object of the enactment and the purpose sought to be achieved.” A constitution Bench of Supreme Court in State of J & K vs. Trilokinath Khosa (1974) 1 SCC 19 and another Bench in State of Orissa vs. N.N. Swami (1977) 2 SCC 508 opined that eligibility must not be confused with the suitability of the candidate for appointment. These judgments were considered 9 W.P. No.21231/2017 by Calcutta High Court in 2013 SCC Online 22909 (All b. Ed. Degree Holders Welfare Association vs. State of West Bengal). In (2009) 8 SCC 273 (Mahesh Chandra Gupta vs. Union of India) it was again held that suitability of a recommendee and the consultation are not subject to judicial review but the issue of lack of eligibility or an effective consultation can be scrutinized.. The Supreme Court in (2014) 11 SCC 547 (High Court of Madras vs. R. Gandhi) while dealing with appointment on a constitutional post opined that ‘eligibility’ is an objective factor. When ‘eligibility’ is put in question, it could fall within the scope of judicial review. The aspect of ‘suitability’ stands excluded from the purview of judicial review. At the cost of repetition, the Apex Court opined that ‘eligibility’ is a matter of fact whereas ‘suitability’ is a matter of opinion. In this view of the matter, when Competent Authority has examined the suitability in the teeth of relevant enabling provision i.e. Rule 6 (3) of Rules of 1961, interference is totally unwarranted.

While exercising the power under Article 226 of the Constitution of India cannot act as an Appellate Authority and cannot substitute its own findings.

The Supreme Court in the case of **UPSC v. M. Sathiya Priya**, reported in (2018) 15 SCC 796 has held as under :

18.....It is the settled legal position that the courts have to show deference and consideration to the recommendations

THE HIGH COURT OF MADHYA PRADESH 19
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints—self-imposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

This Court can look into the decision making process. The Petitioner has not pointed out any deficiency in the decision making process. It is the contention of the Petitioner, that valid reasons are the heart-beat of order. However, the Counsel for the petitioner could not point out as to how the reasons assigned by the respondents were not valid? Merely an order has been passed which is not of a good taste for the petitioner, would not mean that the same is not based on valid reasons. The Counsel for the petitioner did not argue as to how the offence which was registered against the petitioner did not involve “Moral Turpitude”. Further no malice in law has been pointed out by the Petitioner. The Supreme Court in the case of **Kalabharati Advertising v. Hemant Vimalnath Narichania** reported in (2010) 9 SCC 437 has held as under :

Legal malice

25. The State is under obligation to act fairly without ill will or malice— in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or

THE HIGH COURT OF MADHYA PRADESH 20
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide *ADM, Jabalpur v. Shivakant Shukla*, *S.R. Venkataraman v. Union of India*, *State of A.P. v. Goverdhanlal Pitti*, *BPL Ltd. v. S.P. Gururaja* and *W.B. SEB v. Dilip Kumar Ray*.)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide *Punjab SEB Ltd. v. Zora Singh* and *Union of India v. V. Ramakrishnan*.)

So far as the contention of the petitioner, that the respondents should have relied upon the instructions dated 24-7-2018 and should not have relied upon the instructions dated 5-6-2003 is concerned, the instructions which were in force on the date of recruitment would be material. The candidature of the petitioner was rejected for the first time by order dated 1-8-2017. Thereafter, the matter was remanded back by the Writ Appeal Court and the respondents were considering the suitability of the petitioner after the remand, therefore, the contention of the petitioner, that the instructions which were in force on the date of consideration for the second time would apply cannot be accepted and hence rejected.

Thus, in absence of any allegations of malice, arbitrariness, bias,

THE HIGH COURT OF MADHYA PRADESH 21
WP 23104 of 2019(S)
Anil Kumar Balmik vs. State of MP and Others

and in absence of any deficiency in decision making process, this Court cannot substitute its own findings like an Appellate Authority. Even otherwise, considering the fact that the petitioner is seeking recruitment in the police department and he has a criminal background and could not get honourable acquittal but was acquitted on the basis of compromise, this Court is of the considered opinion, that no interference is warranted.

Accordingly, this petition fails and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge

MKB