



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 22<sup>nd</sup> OF APRIL, 2025**

**WRIT PETITION No. 9032 of 2021**

***SUNIL KUMAR***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Prashant Singh Kaurav – Advocate for petitioner.*

*Shri S.S. Kushwaha- Government Advocate for respondent/State.*

*Shri Sankalp Sharma- Advocate for respondent No.2.*

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**ORDER**

This petition, under Article 226 of the Constitution of India, has been filed seeking the following relief(s):

“The order impugned Annexure P/1 may kindly be quashed;

i. The Respondent be directed to Reinstate Petitioner along with backwages.

iii. The Respondent be directed to pay salary since December, 2019 alongwith interest.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted.”

2. It is the case of petitioner that he was working as a Pharmacist in Primary Health Centre, Patai, District Gwalior, as a contractual employee. By order dated 03.04.2021, services of petitioner were terminated on the ground of registration of FIR as well as that petitioner had remained in jail from



12.04.2017 to 04.05.2017. It is submitted that FIR No.37/15 was registered against petitioner for offences under Sections 395, 397, 353, 332, and 186 of IPC and Sections 11 and 13 of the M.P.D.V.P.K. Act on the allegations that petitioner was involved in booth capturing and accordingly he was sent to jail on 12.04.2017 and was released on bail on 04.05.2017.

3. It is submitted by counsel for petitioner that mother of petitioner was contesting the election and the allegation of booth capturing is false. Later on, by order dated 18.01.2018, petitioner was allowed to join the services. However, the department was not making payment of salary to petitioner, therefore, numerous letters were issued to the department for payment of salary. However, by order dated 03.04.2021, services of petitioner were terminated with a direction to decide the pending question of honorarium separately.

4. It is submitted by counsel for petitioner that later on petitioner was acquitted. (He further admitted that although witnesses had claimed that the incident of booth capturing had taken place but they turned hostile on the question of identity of petitioner). As petitioner has been acquitted by judgment dated 26.07.2022, therefore, the very basis for termination of services of petitioner by order dated 03.04.2021 no more exists and thus the order dated 03.04.2021 be quashed. It is further submitted that in fact, on 22.2.2015, petitioner was not present on the spot and he was falsely implicated alleging booth capturing by him.

5. *Per contra*, petition is vehemently opposed by counsel for the respondents.

6. The questions for consideration are:

1. Whether the acquittal of petitioner was a clean and honorable acquittal or it was on the basis of benefit of doubt?



2. Whether the authorities have a jurisdiction to consider the fact of registration of a criminal case to discontinue his contractual services or not?
3. Whether petitioner was not present on the spot at the time when the booths were captured?

**First question** : *Whether the acquittal of petitioner was a clean and honorable acquittal or it was on the basis of benefit of doubt?*

7. The Supreme Court in the case of **State of Rajasthan and Others Vs. Love Kush Meena** reported in **(2021) 8 SCC 774**, wherein it has been held as under:-

“24. Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.

25. We may also notice this is a clear case where the endeavour was to settle the dispute, albeit not with the



job in mind. This is obvious from the recital in the judgment of the trial court that the compoundable offences were first compounded during trial but since the offence under Sections 302/34 IPC could not be compounded, the trial court continued and qua those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

26. The judgment in *Avtar Singh case [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425]* on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.”

8. The Supreme Court in the case of **Avtar Singh (supra)** has held as under:-

"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 recourse 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 **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 dated 26<sup>th</sup> 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 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."





10. The Supreme Court in the case of **Mohammed Imran Vs. State of Maharashtra and others** passed in **C.A. No. 10571 of 2018**, by order dated **12-10-2018** 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-improvement. To make past conduct, irrespective of all considerations, albatross around the neck of the candidate, may not always constitute justice. Much will, however, depend on the fact situation of a case."

11. 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 v. 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 utmost character.

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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.

12. 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.”

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 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 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.

The expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The standard of conduct in the case of Judicial Officer is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. The same must be in tune with the highest standard of propriety and probity."



14. This Court in the case of **Anil Kumar Balmik vs. State of M.P. and others** by order dated 02.09.2020 passed in **W.P.No.23104/2019(s)** has held as under:-

“Compounding of offence” is nothing but an undertaking by the victim to give up the prosecution of the offender.

15. This Court in the case of **Bhagwat Singh Vs. State of M.P. and others** decided on 08/12/2021 in **Writ Petition No.26996/2021** has held as under:-

“8. Although it is the case of the petitioner that he had not suppressed the factum of registration of criminal case and acquittal of the petitioner on the basis of compromise, but it appears that the screening committee after considering the case, found that the petitioner is not fit for police service.

9. By the impugned order, the candidature of the petitioner has been once again rejected on the ground that since the petitioner has been acquitted on the basis of compromise, therefore, it cannot be said to be an honourable acquittal. As already held by the Full Bench of this Court in the case of **Ashutosh Pawar (supra)**, an acquittal on the basis of compromise cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with a view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. Further, the Supreme Court in the case of **Pradeep Kumar (supra)** has held that entering into the police service requires good character, integrity and clean antecedents.

10. Undisputedly, it is for the employer to consider the suitability of a candidate. Eligibility and suitability are to



different aspects and this Court cannot substitute its finding by holding that the candidate should be held to be suitable. This Court in the case of **Anil Kumar Balmik (supra)** has held as under:

“Suitability” cannot be confused with “Eligibility”. A coordinate 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 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 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—selfimposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.””

16. Thus, it is clear that where the acquittal is not honorable and clean and was recorded on account of the fact that witnesses had turned hostile, it cannot be said that the respondents cannot consider the nature of allegations made against petitioner.

17. Petitioner has also placed copies of deposition sheets of witnesses who have clearly stated that there was an incident of booth capturing, but they turned hostile with regard to the identity of the petitioner. Thus, the incident of booth capturing had taken place. The mother of the petitioner was one of the candidates. Since certain witnesses had turned hostile, therefore, the petitioner was granted acquittal. Under these circumstances, it cannot be said that it was a clean and honorable acquittal, but, it was on the basis of benefit of doubt as the witnesses had turned hostile.

**Second question:** *Whether the authorities have a jurisdiction to consider the fact of registration of a criminal case to discontinue his contractual services or not?*

18. The petitioner was given contractual appointment on the post of Pharmacist by order dated 12.09.2013. Petitioner has filed a copy of the





contract/Human Resource Manual. Clauses 2.9 and 11.2 of the same read as under:-

2.9 प्रथम संविदा पर चरित्र सत्यापन – संविदा पद पर चयनित कर्मचारी को नियुक्ति के समय इस आशय का स्वप्रमाणन देना होगा कि उसके द्वारा प्रस्तुत समस्त दस्तावेज सत्य एवं वैध हैं तथा उसके विरुद्ध किसी अन्य संस्था में कोई शिकायत, आपराधिक प्रकरण विचाराधीन नहीं है। आवश्यकतानुसार संबंधित आवेदक/आवेदक द्वारा प्रस्तुत अभिलेखों की पुलिस द्वारा जांच करवाई जा सकेगी। चरित्र के संबंध में किसी प्रतिकूल टिप्पणी की दशा में नियुक्ति प्राधिकारी द्वारा संविदा नियुक्ति बिना कोई कारण बताए तुरंत रद्द कर दी जायेगी। (मध्यप्रदेश राजपत्र-06 फरवरी 2003 कडिका 10(3))

11.2 संविदा कर्मचारी द्वारा कदाचरण करने, वित्तीय अनियमितता में शामिल होने, किसी भी अपराधिक कृत्य में लिप्त होने अथवा ऐसे किसी भी कार्य में लिप्त होने पर, जिससे राष्ट्रीय स्वास्थ्य मिशन की छवि को ठेस पहुँचती हो, राक्षम प्राधिकारी द्वारा मौखिक अथवा लिखित सुनवाई का अवसर दिया जायेगा। निर्धारित समयवाधि में प्रत्युत्तर नहीं दिये जाने अथवा प्रत्युत्तर समाधान कारक न पाये जाने पर नियोक्ता अधिकारी द्वारा अनुबंध तत्काल समाप्त किया जा सकेगा। इस हेतु 01 माह के नोटिस/01 माह का मानदेय देने की बाध्यता नहीं होगी।

19. The allegation against the petitioner is that he was involved in booth capturing and had also remained in jail for a period of about one month. Booth capturing is the biggest enemy of democracy. A voter has a right to elect the candidate of his choice, and by capturing the booth, if somebody takes away that valuable right from the voter and casts votes in favour of a particular candidate or tries to destroy the votes already cast by the voters in favour of another candidate, then it is clear that it is the biggest offence in the eyes of democracy. Election of a candidate has to be on the basis of his or her good image in society, and no one can be allowed to win an election by using muscle power. Therefore, in the light of the judgments passed by the Supreme Court in the cases of **Love Kush (Supra)** and **Avtar Singh (Supra)**, it is clear that since the acquittal was not honorable, respondents are well within their rights to



consider the effect of registration of a criminal case for the purposes of discontinuation of his contractual services.

20. Furthermore, from order dated 03.04.2021, it is clear that services of the petitioner must have been terminated after he remained in jail, but after 11 months, he was again taken back in service. Petitioner has filed a copy of order dated 18.01.2018 in which it is mentioned that petitioner is permitted to appear on duty, and in case the charges are proved, then the honorarium paid to him shall be recovered, and action shall be taken in accordance with government rules. For that purpose, the petitioner was required to give his consent on a judicial stamp of Rs. 500. It was specifically mentioned that joining in compliance with order dated 18.01.2018 shall be treated as new joining on contractual basis, and previous services rendered by the petitioner shall not be considered for any other purpose. It was also mentioned that no honorarium shall be paid for the previous period. Thus, it is clear that petitioner must have been discontinued sometime in the month of February 2017 (as it is mentioned in the impugned order that he was taken back in service after 11 months of his discontinuation). For reasons best known to the petitioner, he has not filed a copy of the order of discontinuation of his contractual services, which must have been passed in the year 2017. Furthermore, it is clear that the criminal case was registered against the petitioner on 22.02.2015, and he was arrested only on 12.04.2017 and remained in jail up to 04.05.2017. Thus, it is clear that the petitioner must have been absconding from the date of registration of offence i.e. 22.02.2015 till 12.04.2017 when he was arrested. Meanwhile, his services must have been discontinued, but nothing has been placed on record. Even in the writ petition, petitioner has not mentioned the date on which his services were discontinued and has also not mentioned the reasons for permitting him to rejoin by treating his rejoining as new appointment on



contractual basis. If order dated 18.01.2018 is considered, then it is clear that although criminal trial was pending against the petitioner, still he was obliged and was taken back in service by treating it as a new contractual appointment. How such an order could have been passed in favour of the petitioner has not been explained.

21. Be that whatever it may be.

22. Once an offence of booth capturing was registered against the petitioner, and petitioner was not honorably acquitted, then respondents are well within their right to consider the effect of allegations made against the petitioner. As already pointed out, booth capturing is a direct attack on democracy. Therefore, it cannot be said to be an offence of trivial nature, specifically when the mother of the petitioner herself was one of the candidates.

23. Thus, this Court is of considered opinion that the respondents did not commit any mistake by discontinuing the contractual services of the petitioner by impugned order dated 03.04.2021.

**Question No. 3** : *Whether petitioner was not present on the spot at the time when the booths were captured?*

24. Petitioner has tried to take the plea of alibi. Accordingly, counsel for the petitioner was directed to point out from the judgment of acquittal as to whether the trial Court had found that petitioner was not present on the spot at the time when the offence was committed. It was fairly conceded by counsel for the petitioner that there is no such finding by the trial Court, and the acquittal has been recorded only on the ground that the witnesses had turned hostile.

25. Thus, whether the petitioner was present on the spot or not is beyond the scope of jurisdiction of this Court in a petition filed under Article 226 of the Constitution of India.



26. Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference.

27. The petition fails and is hereby dismissed.

**(G. S. AHLUWALIA)**  
**JUDGE**

(and)