

HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

CORAM :

**Hon'ble Shri Justice Hemant Gupta, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

Writ Appeal No.163/2009

Roop Narayan Sahu

-Versus-

State of M.P. & others

Shri Rajendra Tiwari, Senior Advocate along with
Shri Nityanand Mishra, Advocate, for the appellant.

Shri Pradeep Singh, Govt. Advocate for the State.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	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
<i>Significant paragraph Nos.</i>	12.

JUDGEMENT

(11.8.2017)

Per: Vijay Kumar Shukla, J.-

Taking exception to the order dated 5-02-2009 passed by the learned Single Judge in W.P. No.8935/2008(S) in this intra-court appeal preferred under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, assail is to the decision of the respondents denying the

appointment to the petitioner-appellant on the post of constable, on the ground of verification of antecedents and character of the appellant.

2. The factual expose adumbrated in a nutshell : that the petitioner-appellant was a candidate, who submitted his candidature for appointment on the post of constable on being found eligible and successful in the selection process. His name was empanelled for appointment and the order dated 28-5-2007 (Annexure-P/2) was issued asking the petitioner to appear and participate in the further process of submitting the form and other credentials for appointment. It is submitted that the appellant appeared and submitted his declaration and verification form, vide Annexure-P/3 and in column No.12 he had stated that he was arrested in respect of the offence punishable under sections 457 and 380 of the Indian Penal Code [for short 'the IPC'] and was acquitted by the criminal Court.

3. The main grievance of the appellant is that even though he had made declaration in the form in column No.12 and inspite of the fact that he has been acquitted in the criminal case vide order contained in (Annexure-P/4) dated 7-8-2007 the respondents have cancelled his selection on the ground that his acquittal was on the

bedrock of benefit of doubt and he is unfit for seeking appointment in the Police Department. Case of the appellant is that he had not made any suppression of facts and in the criminal case which was instituted against him, he has been acquitted of the alleged charges and the order of acquittal has also been maintained by the appellate Court.

4. Counsel for the State submitted that even though in Column No.12 of Annexure-P/3 – the declaration form, the appellant had mentioned the fact about his involvement in a criminal case, but the respondents have examined the case of the petitioner-appellant in the light of the Circular dated 5-6-2003 (Annexure-R/1) issued by the Department of Home, Govt. of M.P., Bhopal and it was found that as the appellant was prosecuted for the offence involving moral turpitude under Section 380 of the IPC and, therefore, he was declared unfit for employment in the Police Department. It is further submitted that in the Circular (Annexure-R/1) in clause 6(ii) in the schedule list of offences, which can be considered as the offences falling under the category of moral turpitude, disentitling for appointment in service. It is contended that even after acquittal in the criminal case, the competent authority has the right to evaluate the case of a candidate in the light of the

Circular (Annexure-R/1) and determine the suitability of the candidate for appointment in the Police Department.

5. Learned counsel for the appellant placed reliance upon the judgment of the apex Court rendered in the case of **Avtar Singh vs. Union of India and others, (2016) 8 SCC 471** and contended that since there is no concealment of the criminal case in the verification form submitted by the appellant, therefore, he could not have been denied the appointment by the respondents. He strenuously urged that the offence which was registered against the appellant does not involve moral turpitude.

6. Before adverting to the facts of the present case, it is apposite to refer the case of **Arvind Gurjar vs. State of M.P. [W.P. No.5887/2016, decided on 27-10-2016]** wherein a co-ordinate Bench of this Court, taking into consideration the facts of the case, held that the decision of the State denying appointment of the petitioner on the police verification despite his acquittal based on compromise in a case of trivial nature was not proper and directed the State to appoint the petitioner. In the said case, the petitioner who was a student, got involved in a minor altercation between the students, the matter was compromised and the same was accepted by the Court. The Principal of the College had issued a character

certificate in favour of the petitioner to the effect that the petitioner had successfully completed BA.LL.B Course without being involved in any illegal activities. In this backdrop of the facts, this Court had directed the Government to issue an appropriate order after quashing the decision of the employer denying the appointment. At this stage we would like to clarify, that in exercise of powers under Article 226 of the Constitution of India, while issuing a *writ of certiorari* the High Court demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views, as held in the case of **T.C. Basappa vs. T. Nagappa, AIR 1954 SC 440** referred and followed by Full Bench in the case of **Shailendra Kumar vs. D.F.O. & another [W.A. No.286/2017, decided on 6-7-2017]** while answering reference on the issue of maintainability of an intra-court appeal preferred under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam 2005 against an order passed by the learned Single Bench assailing an award passed by the Tribunal. Therefore, after quashing the decision of the employer denying the appointment on consideration of entire materials, ordinarily, this Court would not direct the employer to offer appointment to such candidate but, to relegate the matter to the employer for fresh consideration. Keeping in view para 38.5 of the judgment passed by the apex Court in Avtar Singh (supra) wherein

it is held that that 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.

7. In view of the aforesaid discussion, the order passed by this Court in the case of **Arvind Gurjar (supra)** was on consideration of peculiar facts of the said case.

8. Now, coming to the facts of the present case. Regard being had to the submissions advanced on behalf of the parties, we perused the record in proper perspective. It is not in dispute that the respondents have rejected the claim of the petitioner-appellant for his appointment on the ground that he has suppressed any fact with regard to his involvement in the criminal case, nor it is their case that his acquittal is based on conferring the benefit of doubt, therefore, he is unfit for appointment. It is the case of the respondents that for appointment the Home Department, Govt. of M.P., has issued a Circular (Annexure-R/1) dated 5-6-2007 and in clause 6(ii) of the said Circular, special conditions are laid down to consider the case of the employees who have been prosecuted in a criminal case and how the same has to be dealt with, even after they are acquitted of the charges.

9. A bare perusal of the Circular indicates that if a person is prosecuted in a court of law and acquitted either by trial Court or the appellate Court, even in such cases, the competent authority has to apply its mind independently by following the facts in entirety. If it is found that the person was prosecuted for an offence involving moral turpitude and his involvement disentitles him from claiming the employment, he should not be given appointment. In Annexure-R/1, list of offences which according to the respondents falls in the category of offences involving moral turpitude.

10. Thus, it is amply clear that in the present case the respondents have not rejected the claim of the appellant on the ground of suppression of information or his acquittal by granting benefit of doubt, but the respondents have evaluated the claim of the appellant in the light of the Circular issued by the Department and found that the appellant was involved in a case where an offence involving moral turpitude was existing, and they found the appellant unfit to be appointed in the Police Department.

11. A careful reading of sub-clause (ii) of Clause 6 indicates that there may be acquittal by granting benefit of doubt, liberty is granted to the competent authority to evaluate the entire factual

aspects and to take a decision as to whether the person concerned, should be employed or not. There is a further provision contained in clause 2 whereas sub-clause 3 contemplates a provision wherein even if offence does not fall in the category of those involving moral turpitude, even in such cases after acquittal, if there is suppression of his prosecution, the appointment can be denied. Further, sub-clause (viii) of clause 6 indicates that if the Court has given clean acquittal, such person should be granted appointment without any evaluation by the competent authority.

Clause 6 of the Circular as a whole, clearly indicates that only in the cases where the acquittal is clean without any benefit of doubt, appointment order has to be issued as a matter of course, but in other cases, power is conferred to the Competent Authority to evaluate the entire record and examine the suitability and fitness of the candidate for the said post.

12. At this stage it is condign to state that a three-judge Bench of the apex Court in **Avtar Singh (supra)** has reviewed the entire case law on the subject, i.e., jurisdiction of an employer to adjudge eligibility and suitability in the matter of selection or appointment in the event of suppression of material information or giving false information in the application form as to conviction, acquittal, arrest or pendency of a criminal case and in the event

where the employee has made a declaration truthfully of a concluded trial or for the offence of trivial nature and ultimately resulting into acquittal based on a compromise prior to submission of the application form for appointment. In para 38 of the judgment the Supreme Court has summarised the conclusions regarding nature of offences and their ultimate eventualities in the context of scope of jurisdiction of the authority to deal with these aspects while taking a decision for judging the suitability and eligibility of a candidate for employment on the post.

13. In the present case, the employer has examined the case of the appellant in the light of the Circular dated 5-6-2003 issued by the Department. It was found that the appellant was involved in a case of theft of crown (MUKUT) from a temple, the value of the aforesaid stolen property was more than 40 lacs and the appellant was prosecuted in respect of the offence punishable under sections 452 and 380 of the IPC. The courts found that even though the stolen property was recovered from the possession of the appellant, but there was some discrepancy in the seizure-memo, Ex.P/4; statement of the Investigating Officer (PW-6) and seizure witnesses and, therefore, the appellant was extended the benefit of doubt and he was acquitted. The competent authority evaluated the entire matter in proper perspective after going through the judgements of

the trial Court as well as the appellate Court and ascribed the finding that the appellant has been granted benefit of doubt to the discrepancies in the statements of witnesses. However, considering the nature of the case and implication of the appellant and taking note of the fact that he is not acquitted on a clear finding of non-existing of guilt but has acquitted him by extending the benefit of doubt and, therefore, he was not found fit to be considered for appointment in the Police Department in accordance to the requirements of the Circular (Annexure-R/1).

14. Thus, the decision taken by the Department was not mechanical, but it was a conscious decision after taking into consideration the facts and circumstances of the case in proper perspective. Further, if a candidate is to be recruited to the Police service, he must be worthy confidence of an utmost rectitude and must have impeccable character and integrity. The persons having criminal antecedents, would not fall within the ambit of the said category. Even if he is acquitted or discharged, it cannot be presumed that he can be completely exonerated. [See: **State of Madhya Pradesh and others vs. Parvez Khan, (2015) 2 SCC 591**]

15. In the conspectus of the above discussion, we are of the considered opinion, that there is no illegality or impropriety in the

decision taken by the respondents, denying appointment to the appellant-petitioner, the same is in accordance with law expounded in **Avtar Singh (supra)** and the findings ascribed by the learned Single Judge are impeccable and deserve stamp of approval of this Court.

16. In view of the aforesaid analysis, the inevitable conclusion is that the appeal is devoid of any substance and deserves to be dismissed and accordingly, we so direct. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Hemant Gupta)
Chief Justice

(Vijay Kumar Shukla)
Judge

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