

WP-671-2015

(PUSHPENDRA MISHRA Vs THE STATE OF MADHYA PRADESH)

19-08-2015

Shri V. D. S. Chouhan, learned counsel for the petitioner.

Shri Lalit Joglikar, learned P. L. for the respondent/State.

Heard.

The petitioner has filed this petition against the order dated 23.12.2014.

The petitioner participated in a selection process named as Police Constable Recruitment Test (Second) 2013. The petitioner cleared the written examination after getting sufficient marks. He was called for physical test. He was also directed to submit his choice of posting at District. The petitioner mentioned District Anuppur of his choice. The Screening Committee rejected the candidature of the petitioner by the impugned order dated 23.12.2014 (Ann. P.5) for appointment to the post of Constable on the ground that a criminal case was registered against the petitioner vide Crime No.27/13 for commission of offences under Section 294, 323, 451, 506-B and 34 of IPC. The charge sheet was filed against the petitioner. After holding trial the petitioner was acquitted from the offences vide judgment dated 19.6.2014 passed in criminal case No.2506/13. Because the petitioner was involved in commission of offence, hence it was not in the interest of the Police Department to appoint the petitioner on the post of Constable.

The respondents in reply pleaded that a criminal case was registered against the petitioner for commission of offences punishable under Section 294, 323, 451, 506-B and 34 of IPC. He was acquitted after giving benefit of doubt. However, looking to the facts of the case, it was not proper to appoint the petitioner on the post of Constable.

Learned counsel for the petitioner has contended that acquittal of the petitioner was honourable one and there was no evidence in the criminal case, hence the finding recorded by the authority that the petitioner was given benefit of doubt is contrary to law. From the

judgment passed by the Magistrate, it is clear that the petitioner was falsely implicated in the criminal case and in such circumstances, the petitioner could not be denied the benefit of appointment to the post of Constable on account of his selection. In support of his contention learned counsel relied on the judgment of Supreme Court in Commissioner of Police, New Delhi and another Vs. Mehar Singh and others reported in (2013) 7 SCC 685 and Commissioner of Police and others Vs. Sandeep Kumar, reported in (2011) 4 SCC 644.

Contrary to this, learned P.L. has contended that the petitioner was tried in a criminal case, although he was acquitted. The offence was serious in nature, hence competent authority has rightly rejected the claim of the petitioner for appointment on the post of Constable. In support of his contention, learned PL has relied on the judgment of the Supreme Court in State of M.P. and others Vs. Parvez Khan reported in 2015 (1) M.P.H.T. 1 (SC).

Undisputed facts of the case are that the petitioner mentioned in verification form that he was tried for commission of offences punishable under Section 294, 323, 451, 506-B and 34 of IPC by the Magistrate and he was acquitted from the said offences. Copy of the judgment of acquittal passed by the Magistrate has been filed by the petitioner alongwith petition as Annexure P-5, dated 19.6.2014 passed in Criminal Case No. 2506 of 2013. The criminal Court in the judgment has recorded the findings in para 9 that after appreciation of evidence the prosecution story appears to be suspicious. The present petitioner in his evidence deposed that he was selected on the post of the Police Constable. The complainant had ill-will against the family of the petitioner. Hence, a complaint was lodged at police station. On the date of incident there were verbal abuses between the wife of the complainant and the mother of the present petitioner. The family members of the petitioner had submitted a complaint to the Superintendent of police in this regard. Thereafter, the police had conducted an inquiry and counter case was also registered against the complainant.

From the facts of the criminal case, it is clear that family member of the petitioner and complainant party were neighbour and

there was some dispute between mother of the petitioner and wife of the complainant. Thereafter, both the parties filed complaint against each other. Counter case was also registered against the complainant party. After appreciation of evidence the Court observed that prosecution story is suspicious. In such circumstances, it could not be ruled out that the petitioner was falsely implicated in the case. The trial Court has acquitted the petitioner from the charge of offences.

The authority has rejected the claim of the petitioner for appointment to the post of Constable on the ground that a criminal case was registered against the petitioner. However, authority did not consider the merit of the criminal case. The authority has also not taken into consideration the fact that a counter case was also registered against the complainant party. The petitioner and complainant party are neighbour. The offences are minor in nature. The trial Court already observed that the story put-forth by the prosecution is suspicious. It is a fact that a person who has criminal antecedents cannot be appointed in the police department. However, it has also to be taken into consideration that whether a person was falsely implicated in the case or not. In certain circumstances, there is a possibility that a person may have been falsely implicated in the case.

The judgment relied on by the learned PL State of M.P. and others Vs. Parvez Khan (supra) is distinguishable on facts because in the aforesaid judgment the person was tried in two criminal cases. In one case he was prosecuted for commission of offences under Sections 323, 324, 325, 294, 506-B/34 of IPC and other case under Section 452, 394, 395 of IPC. Certainly commission of offences under Section 394, 395 of IPC is serious offence. The Supreme Court in the matter of State of West Bengal and others Vs. S. K. Nazrul Islam reported **(2011) 10 SCC 184** has observed in regard to cancellation of appointment of a Constable on the ground that he had submitted false information to the effect that criminal case was registered against him or not as under:

"Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of

constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/427/596 IPC, he cannot possibly be held to be suitable for appointment to the post of constable."

The Supreme Court further observed in the matter of Commissioner of Police and Ors Vs. Sandeep Kumar passed in Civil Appeal No.1430/2007, as under:

"When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives."

Although the matter has been referred by the Supreme court to larger Bench but in my opinion, the observation made in the aforesaid case by the Court are relevant to decide the controversy involved in this case.

The Supreme Court in the matter of Pawan Kumar Vs. State of Haryana and another reported in 1996 SCC (4) 17 has observed as under:

"Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; [Penal Code](#), mostly committed by the young and/or the inexperienced. The cruel

result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

From the observation made by the Supreme Court in the aforesaid cases, it is clear that life of the young person to get the job could not be jeopardise merely on the ground that a criminal case was registered against him.

In the present case the petitioner has been acquitted from the offence after trial. The trial Court specifically observed that false implication of the petitioner in the case cannot be not ruled out. As per facts of the criminal case, in which the petitioner was prosecuted there was a quarrel between the parties and thereafter FIR was lodged. A counter case was also lodged against the complainant party.

Regulation 64 of Madhya Pradesh Police reads as under:

64. General Condition of Service- Every candidate for an appointment in the police should be made acquainted, prior to appointment, with the general conditions of police service, which are as follows: -

(1) Each police officer shall devote his whole time to the police service alone. He shall not take

part in any trade or calling whatever, unless expressly permitted to do so.

(2) He shall faithfully and honestly use his best abilities to fulfill all his duties as a police officer.

(3) He shall conform himself simpliciter to all rules, which shall, from time to time, be made for the regulation and good order of the service. And shall cultivate a proper regard for its honour and respectability.

(4) He shall submit to discipline, observe subordination and promptly obey All lawful orders.

(5) He shall serve and reside wherever he may be directed to serve and reside.

(6) He shall wear, when on duty, such dress and accoutrements as shall, from time to time, be prescribed for each rank of the service and shall be always neat and clean in his appearance. At no time shall any police officer appear partly in uniform and partly in mufti.

(7) He shall allow such deductions to be made, from his pay and allowances as may be required for kit, quarters and the like, under the rules of the service.

(8) He shall promptly discharge such debts as the Superintendent may direct and shall not without the

Superintendent's permission, have money transactions with any other police officer, or borrow money from a resident of the district in which he is employed.

(9) He shall not withdraw from the service without distinct permission in writing, or (in the absence of such permission) without giving two months' previous warning of his intention to do so.

(10) He shall not on any occasion or under any pretext, directly or indirectly take or receive any present, gratuity or fee from any person what so ever, without the sanction of the Superintendent.

(11) He shall act with respect and deference towards all officers of Government and with forbearance, kindness and civility towards private persons of all ranks. In private life he shall set an example of peaceful behaviors and shall avoid all partisanship.

(12) On ceasing to belong to the force, he will immediately deliver up all kit and accoutrements, and vacate any quarters that have been supplied to him at the public cost.

From the facts of the case, conclusion cannot be drawn that the petitioner was not suitable candidate to be appointed in police service.

In my opinion, the authority did not consider the case of the petitioner in proper perspective and rejected the candidature of the

petitioner only on the ground that the petitioner was tried for commission of offence. This approach of the authority is not proper.

Consequently, the petition filed by the petitioner is allowed. The impugned order dated 23.12.2014 , (Ann. P-5) is hereby quashed. It is ordered that the petitioner be given appointment on the post of Constable in pursuance to his selection within a period of four weeks from the date of receipt or copy of this order. The petitioner shall not be eligible to receive arrears of salary but he shall be entitled to get benefit of seniority and other benefits from the date of his initial appointment on which date other persons were appointed in pursuance to same selection to the post of Constable.

No order as to costs.

(S.K. GANGELE)
JUDGE

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