

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT**JABALPUR****W.P. No. 5887 of 2016**

Arvind Gurjar

Versus.

State of M.P. and another

For petitioner : Shri Udayan Tiwari, Adv.

For respondent/State : Shri Pradeep Singh, Govt. Adv.

For respondent no. 2 : Anoop Nair, Adv.

ORDER**(Pronounced on 27 .10.2016)****As per S.K. Gangele, J:-**

1. The petitioner has filed this petition against the order dated 9.3.2016, (Ann. P-1) passed by the Principal Secretary Department of Law and Legislative Affairs, Bhopal. The petitioner has a qualification of B.A. LL.B. He appeared in the entrance test for recruitment to the post of Civil Judge Class-II. He cleared the preliminary examination with 91% marks. He also cleared Final Examination and placed at 56th rank in the general category, although the petitioner belongs to OBC category. He received sufficient marks to be placed in the merit list of general category candidates.

2. The petitioner submitted an attestation form for appointment to the post of Civil Judge, Class-II. He mentioned the fact that he was tried for commission of offence punishable under Sections 323, 294, 506 -34 of IPC and he was acquitted from the offence on the basis of compromise entered between the parties.

3. The case of the petitioner was sent for Police Verification and in the aforesaid verification, it was found that the petitioner was tried for commission of offence punishable under Sections 323, 294, 506 -34 of IPC, hence, he was not fit for appointment to the post of Civil Judge, Class-II. Subsequently, the Principal Secretary issued the impugned order Annexure P-1 to the effect that the petitioner is not a person of "good character" in accordance with the provisions of the Madhya Pradesh Lower Judicial Service (Recruitment and Conditions of Service) Rules 1994, in short "the Rules of 1994, hence, he is not eligible for appointment to the post of Civil Judge, Class-II.

4. Learned appearing counsel on behalf of the petitioner has contended that the order passed by the authority is against the law. The petitioner was not tried for commission of offence punishable under Sections 323, 294, 506 -34 of IPC which involves moral turpitude. There was minor altercation between the students, hence, offence was registered and thereafter the matter was compromised. Learned counsel for the petitioner heavily relied on the judgment of three Judges Bench of the Apex Court passed in **Avatar Singh Vs. Union of India** passed in **Special Leave Petition No. (C) No. 20525 of 2011 on 21st July 2016.**

5. Learned counsel for the State has submitted that in accordance with Rule 7 of the Rules 1994 a person must have "Good Character" for appointment to the post of Civil Judge -II. Because a criminal case was registered against the petitioner, hence, he is not eligible for

appointment to the post of Civil Judge, Class- II. In support of his contentions learned counsel for the petitioner has relied on the judgment of the Apex Court in **State of M.P. and others Vs. Parvez Khan**, reported in **(2015) 2 SCC 591** and **Jarnail Singh Vs. State of Haryana** reported in **(2013) 7 SCC 263**.

6. Learned counsel for the High Court has submitted that the High Court does not want to file any reply because the High Court has not taken decision that the petitioner is not eligible for appointment to the post of Civil Judge, Class -II. It is the decision of the State and the State has also filed its reply.

7. The question for consideration before this Court is that whether on account of registration of a criminal case against the petitioner punishable under Sections 323, 294, 506 -34 of IPC and consequent his acquittal on the basis of compromise, the petitioner is eligible to be appointed or not on the post of Civil Judge, Class-II. Rule 7 of the Rules of 1994 prescribes eligibility for appointment by direct recruitment to the post of Category 1. Rule 7 (d) further prescribes a condition that a candidate should have "good character" and sound health for appointment. The relevant provision of Rule 7 (d) reads as under :-

7. Eligibility :-

(a).....

(b)

(c)

“(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.”

8. The facts of the criminal case registered against the petitioner are that on 20.8.2010 the complainant lodged a report that on 9.8.2010 at cycle stand of M.L.B. College some students including the petitioner had abused the complainant and threatened to kill him. On that report the offence was registered against the petitioner. There is no allegation that the petitioner caused any injury to the complainant. After filing the charge sheet the petitioner and other students and complainant both filed an application for compromise to the effect that they had entered into a compromise in view of future piece and there was no dispute. The compromise was accepted by the court. The offence was registered against four persons, i.e. the petitioner and other students Ramdas, Abhishek and Ravi. The court vide order dated 9.12.2011 accepted the compromise and acquitted the petitioner and other accused persons from the charge. The Principal of Maharani Laxmi Bai Government College of Excellence, Gwalior, M.P. issued a character certificate in favour of the petitioner to the effect that the petitioner had completed successfully five years B.A. LL.B. Course from the Academic Sessions 2005- 2010 and he had never been part of any illegal activities and no disciplinary action had been taken against him during the period of 2005-2010.

9. The facts of the case reveals that there was simple quarrel between the students of the college alongwith the petitioner. Three other students were also implicated in the case. The complainant did

not depose before the court against the petitioner. The case was compromised at pre trial stage. In the above facts it has to be determined that whether the petitioner could be disqualified for appointment to the post of Civil Judge in view of Rule 7 (d) of the Rules of 1994 on the ground that he is not a person of "good character".

The Apex Court in the case of **Nilgiris Bar Association Vs. T.K. Mahalingam and another** reported in **(1998) 1 SCC 550** about definition of "character" on the basis of dictionary meaning has held as under :-

"10. When considering the nature of the offence the court must have a realistic view on the gravity of the offence, the impact which the offence could have had on the victims and whether considerations of deterrence can be overlooked etc. No fixed yard-stick can be laid down to measure the nature of the offence for affording or denying the reliefs envisaged in [Section 4](#) of the Act. However, as the court is enjoined to take into consideration the character of the offender it is well to remember that character is not the abstract opinion in which the offender is held by others. The word "character" is not defined in the Act. Hence, it must be given the ordinary meaning. According to Webster's New International Dictionary "character" means "an attribute, or quality especially a trait or characteristics which serves as an index to the essential or intrinsic nature of a person". In Black's Law Dictionary "character" is defined as "the aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguished attributes". The celebrated lexicographer has at the same time pointed out the following aspects also about the subject:

"Although character and reputation are often used synonymously, the terms are distinguishable. `Character's is what a man is, `reputation' is what he is supposed to be in what people say he is, `Character' depends on attributes possessed and `reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."

10. The Character in Rule 7 (d) an adjective has been used alongwith the character i.e. "good character". There was an allegation against the petitioner in the criminal case that he alongwith other students had abused the complainant who was also a student. Thereafter, the matter was compromised. This incident had happened in a spur of moment. Only on the basis of one incident a person cannot be said to be a person not having "good character" because the character denotes general reputation of a person. The Apex Court in **Avtar Singh vs Union Of India & Ors** passed in **Special Leave Petition No. (C) No. 20525 of 2011 on 21st July 2016** in regard to consideration by employer for not appointing a person on the basis of registration of a criminal case has held as under :-

22. The employer is given `discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into

consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to

young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

11. The larger Bench of three Judges Bench of the Apex Court has specifically held that it is obligatory on the part of the employer to consider the background facts of the case, nature of offence and whether acquittal in a criminal case would affect fitness for employment. In the present case it has been mentioned in the order that the offence punishable under Section 506-B of IPC is a grievous offence and conviction of seven years could be imposed and because the petitioner was acquitted on the basis of compromise, hence, he is not eligible to be appointed to the post of Civil Judge, Class-II. There is no consideration about the facts of the case and the fact that the incident had taken place between two groups of students. There was no plan and thereafter the matter was compromised. It is a common knowledge that at the time of registration of a case the complainant intends to mention the grievous nature of offence. It is very easy to mention that person threatened to kill but that has to be considered taking into consideration the facts of the case. The petitioner did not use any force. There is no mention of the fact that even the petitioner threatened the complainant to kill. During the student life there is possibility of quarrel between the two groups

of students. On that basis the person cannot be held a person of not having a good character. If a criminal case is registered and which has resulted in compromise, on our opinion on that basis, it can not be held that a person is not having good character when the character certificate has been issued by the Principal after judging the total academic career. In the character certificate it is specifically mentioned that no disciplinary action was taken against the petitioner neither it was initiated when he was studying law, Hence, in our opinion, the order of denial of the petitioner for appointment to the post of Civil Judge, Class - II is contrary to law on the basis of singular incident which has resulted in compromise.

12. Learned counsel for the State has relied on two judgments of the Apex courts in **State of M.P. and others Vs. Parvez Khan**, reported in **(2015) 2 SCC 591. Against Parvez Khan** who had applied for compassionate appointment two criminal cases were registered and he was prosecuted in those cases. One was for commission of offence punishable under Sections 323, 334, 325, 294, 506 and 13/34 of IPC and in another case was under Sections 452, 394, 395 of IPC. The offences against Parvez Khan were serious in nature, hence, the case of Parvez Khan is distinguishable on facts. Similarly in another case **Jarnail Singh Vs. State of Haryana reported in (2013) 7 SCC 263**, the criminal case was registered for commission of offences punishable under Sections 143, 341, 323 and 427 of IPC. The allegations against him were that when the bus

reached at the bus stand of village Raipur on 15.5.2004 at about 3.15 pm, Maihar Singh alongwith other persons armed with iron chain, lathi, belt, danda and stones stopped the bus on the road and rebuked Conductor of the bus as to how he dared to take fare from one of his associates. Number of persons suffered injuries. All the accused persons had broken the side windows of the bus and thereafter flade away. Certainly, offence alleged against Maihar Singh was serious. However, the allegations in the present case are different hence, the facts of this case are distinguishable. It is well settled principle of law as has been held by the apex Court that little variation in the facts of a given case could vary the application of law. Looking to the facts of above two cases cited by learned counsel for the State of the Apex Court in our opinion, the facts of the present case are quite distinguishable.

13. In our opinion, the impugned order passed by the State is contrary to law on the basis of criminal case registered against the petitioner which has resulted in acquittal of the petitioner on the basis of compromise, it can not be held that the petitioner does not have good character, hence, the petitioner cannot be denied appointment to the post of Civil Judge, Class-II. Consequently, the petition is allowed. The impugned order, (Ann. P-1) passed by the respondent is hereby quashed.

14. It is ordered that the petitioner be appointed on the post of Civil Judge, Class-II from the date when his juniors were appointed. He

be given the similar seniority. However, he would not be entitled to the arrears of salary on the principle of no work no pay but he would be eligible to get other consequential service benefits.

15. No order as costs.

(S.K. Gangele)
Judge

(Subodh Abhyankar)
Judge

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ORDER

FOR CONSIDERATION

**(S.K. GANGELE)
JUDGE
.10.2016**

Hon'ble Shri Justice Subodh Abhyankar

**(Subodh Abhyankar)
Judge**

POST FOR : .10.2016.

**(S.K. GANGELE)
JUDGE
.10.2016**