

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
JUSTICE SUJOY PAUL  
ON THE 4<sup>th</sup> OF OCTOBER, 2023  
WRIT PETITION No.11143 OF 2017**

**BETWEEN :-**

**PRAMOD KUMAR VERMA S/O SHRI  
UMASHANKAR VERMA, AGED ABOUT 31 YEARS,  
OCCUPATION – UNEMPLOYED, R/O C-5/60,  
POLICE LINE, NEHRU NAGAR, BHOPAL (M.P.)**

**.....PETITIONER**

***(BY MR. PRAKASH UPADHYAY - ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH THROUGH  
PRINCIPAL SECRETARY, MINISTRY OF  
HOME, VALLABH BHAWAN, BHOPAL (M.P.)**
- 2. DIRECTOR GENERAL OF POLICE, POLICE  
HEADQUARTERS, BHOPAL (M.P.)**
- 3. ADDITIONAL DIRECTOR GENERAL OF  
POLICE (RECRUITMENT), POLICE  
HEADQUARTER, BHOPAL (MP)**
- 4. SUPERINTENDENT OF POLICE, RAISEN,  
DISTRICT RAISEN (MP)**

**.....RESPONDENTS**

***(BY MR. DEEPAK SAHU –PANEL LAWYER)***

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*This writ petition coming on for orders this day, JUSTICE SUJOY PAUL passed the following :*

**ORDER**

With the consent, finally heard.

2. The challenge is mounted in this petition filed under Article 226 of the Constitution is to the order dated 14/04/2014 whereby petitioner was informed that Screening Committee has found him unsuitable for appointment in Police Department.

**Facts of the case :-**

3. The admitted facts between the parties are that petitioner submitted his candidature for the post of Constable in the Police Department. The petitioner in 'character verification' form clearly disclosed about outcome of criminal case instituted against him. The petitioner was subjected to a trial for allegedly committing offences under Sections 294, 323, 325 and 506-II of IPC. However, the matter was compromised and the Court by order dated 11/02/2014 acquitted the petitioner from charges on the basis of compromise.

**Contention of petitioner :-**

4. Shri Prakash Upadhyay, learned counsel for the petitioner submits that the first objection raised by the opposite side is regarding delay in filing this petition. The rejection order was passed on 14/04/2014 (Annexure P/1) whereas this petition is filed on 24/07/2017. By placing reliance on the judgments of Supreme Court in **(1992) 2 SCC 598 M/s Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur and others, (2007) 9 SCC 274**

**Shiv Dass v. Union of India and others, (2007) 14 SCC 766  
Chairman, Food Corporation of India and others v. Sudarsan Das  
and (2010) 12 SCC 471 Shiba Shankar Mohapatra and others v.  
State of Orissa and others**, it is urged that delay is not fatal.

5. Learned counsel for the petitioner submits that there is no limitation prescribed for filing a petition under Article 226 of the Constitution. No straight jacket formula can be framed for measuring the delay. It depends on the facts and circumstances of each case whether delay is condonable or ignorable. The Apex Court opined that when no limitation is prescribed, the limitation to file a civil suit of similar nature can be the basis for measurement of delay. To challenge a termination order in the civil suit, limitation is three years. This petition is filed after three years few months and in the circumstances it is filed, delay may be ignored.

6. On merits, learned counsel for the petitioner submits that this Court on 13/10/2022 directed the respondents to file the relevant pages/decision of the Screening Committee. In turn, they have filed the 'compliance report' and the said documents. By taking this Court to the note-sheet of Screening Committee dated 19/03/2014, learned counsel for the petitioner submits that the offences aforesaid were treated to be involving 'moral turpitude' whereas offences under Sections 323 & 325 of IPC do not fall within the ambit of 'moral turpitude'. Reliance is placed on a Circular of State Government dated 24/07/2018 (Annexure P/6) wherein the list of offences involving 'moral turpitude' is prepared which does not contain the offences for which the petitioner was tried.

7. Shri Prakash Upadhyay, learned counsel for the petitioner placed reliance on the judgments of Supreme Court in **(2016) 8 SCC 471 (Avtar Singh Vs. Union of India)** and the recent judgment reported in **(2022) 1 SCC 1 (Union of India and others vs. Methu Meda)** to highlight the need of application of mind by the Screening Committee.

8. To elaborate, it is submitted that petitioner's candidature is rejected by holding that offences allegedly committed fall within the ambit of 'moral turpitude'. The Screening Committee was required to examine the factual matrix on which edifice of prosecution was founded upon, the nature of offences and other circumstances. Without minutely examining these aspects, the rejection order is passed which shows non-application of mind. Shri Upadhyay, referred the factual backdrop of the matter in which compromise was entered into between the parties which ultimately ended into acquittal based on compromise.

**Contention of respondents :-**

9. Sounding a *contra* note, Shri Deepak Sahu, learned Panel Lawyer for the State raised the question of delay in filing this petition. In addition, he submits that the petitioner's right of consideration was taken care of by the Screening Committee. He was given personal hearing. There is no flaw in the decision making process. The petitioner's claim was rejected on 14.4.2014 (Annexure P/1) and at the time of consideration, a circular of State Government issued in the year 2003 was applicable and as per the then existing circular, offences under Sections 323, 305, 294 and 506 Part-II of IPC etc.

were covered within the ambit of ‘moral turpitude’. The Circular dated 24.7.2018 (Annexure P/6) is not retrospective in nature. In support of his contentions, he placed reliance on a Division Bench judgment of this Court passed in **W.A. No.741 of 2023 (State of M.P. and others Vs. Santosh Kumar Baghel and others)**.

10. Learned counsel for the parties confined their arguments to the extent indicated above.

11. I have heard the parties at length and perused the record.

**Delay in filing W.P. :-**

12. So far the aspect of delay is concerned, a cumulative reading of the judgments cited by Shri Prakash Upadhyay, learned counsel for the petitioner shows that there cannot be any fixed formula for deciding the aspect of delay. It depends on the facts and circumstances of each case. In the case of **Sudarshan Das** (supra), even delay of thirteen years was ignored. In the case of **Shiba Shankar Mahapatra** (supra), the Apex Court held as under :-

“20. In *R.S. Makashi v. I.M. Menon* [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006] , wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured.

**(Emphasis supplied)**

13. A plain reading of above para makes it clear that measurement of delay can be based on the time limit prescribed for a civil suit, which can be filed for similar relief. It is not disputed by Shri Deepak Sahu, learned Panel Lawyer for the State that three years is the limitation to file a civil suit seeking annulment of an order like impugned one. In the instant case, delay is little more than three years. In the facts and circumstances of the present case, I am not inclined to dismiss the petition on the ground of delay and laches.

**Screening of petitioner :-**

14. Pursuant to the order of this court dated 13.10.2022, the respondents have filed the 'compliance report'. Alongwith the compliance report, the proceeding of Screening Committee is filed. The relevant entry against the name of the petitioner reads thus :-

"नैतिक अधोपतन की धारा होने एवं राजीनामा के आधार पर दोषमुक्त होने के कारण अयोग्य पाया गया ।"

15. The language of Sections 323, 325 and 294 of IPC as described in the IPC remained same right from the date of alleged offences committed by the petitioner. Different interpretations were given by the Department in 2003 and 2018 whereby similar offences were treated as 'moral turpitude' or otherwise.

16. It is clear that the nature of offence as described in the IPC will determine whether it is 'moral turpitude' or not. If department itself realized while issuing Circular dated 24.7.2018 that the aforesaid offences do not fall within the fore-corners of 'moral turpitude', merely because the previous circular took a different view to some extent will not improve the case of the employer. Curiously, in **AIR 1994 P & H**

**242 (Kuldip Singh vs. State of Punjab)**, the High Court opined that even offence under Section 302 of IPC does not fall within the ambit of ‘moral turpitude’. Relevant portion reads as under :-

“14. Act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta. Per se an act of murder will not come within the board concept of ‘moral turpitude’ as interpreted by Courts.....”

**(Emphasis supplied).**

**Judicial review :-**

17. The offences aforesaid, cannot be said to be attracting ‘moral turpitude’. It is trite that scope of judicial review in a case of this nature is limited. This court cannot sit in appeal and interfere into a plausible decision. What is required to be seen is whether the decision maker has taken into account the relevant aspects and whether has taken into account any irrelevant aspect which attracts *wednesbury principle*. (See :- (1948) 1 KB 223 : (1947) 2 ALL ER 680], **Union of India vs. G. Ganayutham, (1997) 7 SCC 463, Rameshwar prasad (VI) vs. Union of India, (2006) 2 SCC 1]**).

18. In the instant case, as noticed above, the Screening Committee went wrong in forming opinion that the offences fall within the ambit of ‘moral turpitude’. The Screening Committee record nowhere shows that the nature of allegations, factual foundation of the incident etc. were considered. Shri Prakash Upadhyay, learned counsel for the petitioner pointed out that offence was allegedly committed by the petitioner when he was employed in a colony as a Security Guard. He wanted to prevent complainant to enter the society unauthorizedly and

because of that a quarrel had taken place. The petitioner as a Security Guard was discharging his duties. All these aspects were required to be looked into by the Screening Committee.

**19.** In **Methu Meda** (supra), the Apex Court considered its previous judgment in **Avtar Singh** (supra) and opined that it is for the Screening Committee to examine the relevant aspects. The previous judgment in **Commr. of Police v. Mehar Singh, (2013) 7 SCC 685** was also considered and followed wherein it was held as under :-

“19. ....

23..... It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. **The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation** rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.”

**(Emphasis supplied)**

**20.** As noticed above, the Screening Committee has committed following mistakes :-

- (i) treated the aforesaid offences as ‘moral turpitude’,
- (ii) the nature and extent of involvement of petitioner was not considered.
- (iii) not examined whether there is any likelihood of committing similar crime in future by the petitioner.

**21.** So far judgment of Division Bench in the case of **Santosh Kumar Baghel** (supra) is concerned, a plain reading of Para-10 shows

that it was relating to a subsequent acquittal of the candidate from criminal case and, therefore, the Court opined that '*mere subsequent acquittal in the criminal case will not automatically entitle the candidate to seek appointment to the post in question*'. Thus, this judgment in **Santosh Kumar Baghel (supra)** cannot be pressed into service in a case of this nature.

**22.** In (2003) 2 SCC 111 **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. And others**, it was held that a singular different fact may change the precedential value of a judgment. It will not be out of place to mention here that this Court is also of the view that it is prerogative of the employer to examine the 'suitability' of an employee. This court is not giving any finding about the 'suitability' of the petitioner. The only reason for interference is because of the flaw in the 'decision making process' wherein the Screening Committee considered the certain offences as 'moral turpitude' whereas the said offences do not fall within the ambit of 'moral turpitude'. Secondly, the factual backdrop of the matter was not minutely considered. In this view of the matter, the impugned order dated 14.4.2014 (Annexure P/1) is **set aside**. The respondent no. 4 is directed to consider the claim of the petitioner afresh in accordance with law and take a fresh decision expeditiously, preferably within 90 days from the date of production of copy of this order.

**23.** The petition is **allowed** to the extent indicated above.

(SUJOY PAUL)  
JUDGE