

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.P. No.27419/2018

Deep Narayan Tiwari
-Versus-
State of M.P. and others

W.P. No.28141/2018

Nand Kishore Sahu
-Versus-
The High Court of M.P. and others

Shri K.C. Ghildiyal, Advocate for the petitioners.
Shri Shivendra Pandey, Govt. Advocate for the respondents/State.

CORAM :

Hon'ble Shri Justice S.K. Seth, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

ORDER
(Jabalpur, dtd.11.12.2018)

Per : Vijay Kumar Shukla, J.-

In both the writ petitions, challenge has been made to the order passed by the respondents whereby the selection of the petitioners for appointment on the post of District Judge (Entry Level) pursuant to the process of selection conducted by the High Court for M.P. Higher Judicial Service (Entry Level) Direct Recruitment from Bar, Examination 2017 has been cancelled. Therefore, both the petitions are being disposed of by a common order. For the sake of clarity and convenience the facts of the case in W.P. No.27419/2018 are noted.

2. The petitioner has challenged the order dated 17.09.2018 issued by the respondent no.1 whereby selection of the petitioner in the Judicial Services Examination, 2017 conducted by the respondent no.2 for appointment on the post of District Judge (Entry Level) has been cancelled. It is contended that the name of the petitioner was included in the final select list dated 21.11.2017 at Sl. no. 37 under the Unreserved Category candidates. However, by the impugned order the name of the petitioner has been deleted from the select list and his selection has been cancelled.

3. It is argued that the order dated 17.09.2018 passed by the respondent no.1 does not spell out the reasons for declaring the petitioner ineligible for appointment. However, on the basis of the information received by the petitioner under the Right to Information Act, it is revealed that the selection of the petitioner has been cancelled taking into consideration the pendency of a criminal case under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Hereinafter referred to as the "Act, 1989").

4. The petitioner filed a minute of the Joint Meeting of Administrative Committee (Higher Judicial Services) and Examination -cum- Selection and Appointment Committee held on 18.07.2018. The relevant extracts of the minutes in respect of the petitioner Deep Narayan Tiwari reads as under:

“Shri Deep Narayan Tiwari :

After due consideration resolved that though a case against Shri Deep Narayan Tiwari, Crime No.541/2003, Case No.1528/2005 under sections 354/34, 186, 294 and 506-BB read with Section 34 of IPC resulted in acquittal and in SST No.57/2015, he has been discharged under section 305/34 Indian Penal Code and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is still pending before Special Judge (SC/ST), Shahdol.

The candidature of the candidate is not recommended for appointment in view of reasons recorded while considering Agenda No.5 above.”

5. Counsel for the petitioners argued that while filling up the verification form, the petitioner had duly and correctly reflected the fact that two criminal cases were registered against him in the past. He also submitted that after the decision by the Committee, the charge in the pending criminal case has been quashed by the High Court in **Criminal Appeal No.5351/2018 [Deep Narayan Tiwari vs. State of M.P., dated 10-8-2018]** and he has been discharged from the offence under sections 506 and 385 of the Indian Penal Code and under sections 3(1)(r) read with 3(2)(v)(a) of the Atrocities Act, 1989. It is pertinent to mention that the meeting of Joint Committee was held on 18.07.2018 whereas the order in Criminal Appeal No. 5351/2018 was passed on 10.08.2018 discharging him from offences under Sections

500, 385 of Indian Penal Code and Section 3(1)(r) and 3(2)(v)(a) of the Act, 1989 subsequent to the consideration of character verification.

6. The learned counsel for the petitioners referred to the judgment passed by the Apex Court in the case of **Mohammed Imran vs. State of Maharashtra, 2018 SCC OnLine SC 1943 [Civil Appeal No.10571 of 2018, dated 12-10-2018]** and also referred para 38.8 of the order passed by the Supreme Court in **Avtar Singh vs. Union of India and others, (2016) 8 SCC 471**.

7. In another connected **W.P. No.28141/2018 (Nand Kishore Sahu Vs. The High Court of M.P.)**, in the petitioner's own representation which is placed on record as Annexure-P/13 at page No.66, it is axiomatic that the petitioner had not furnished complete information in the verification form.

8. Counsel for the State submitted that the cases of the petitioners have been considered and on the date of consideration admittedly, the criminal cases were pending against them. It is strenuously urged by him that the petitioners had no right to get appointment only because they have made truthful disclosure about the criminal cases in the verification forms. He referred to the judgment passed by the Apex Court in the case of **State of M.P. and others vs. Abhijit Singh Pawar [Civil Appeal No.11356 of 2018, decided on 26-11-2018]**.

9. Regard being had to the submissions advanced on behalf of the parties, we do not find any merit in the writ petitions. Admittedly, on the date of consideration of the cases of the petitioners for appointment, there were criminal cases pending against them and mere selection would not confer any right as appointment is always subject to character verification of a selected candidate.

10. The Full Bench of this Court in the case of **Ashutosh Pawar vs. High Court of M.P. and another, 2018(2) MPLJ 419** where a question was referred – whether acquittal in criminal cases is a proof of good conduct. The Court after referring to the judgment of the Apex Court rendered in the case of **Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another, (2018) 1 SCC 797** held that mere acquittal in a criminal case would not be sufficient to infer that a candidate possesses a good character.

11. In para 44 the Full Bench further held that the High Court could not issue any direction for appointment of a candidate from the date the other candidates were appointed as such is not the jurisdiction vested in the High Court under Article 226 of the Constitution of India.

12. Further, reliance placed in the case of **Mohd. Imran (supra)** by the petitioner would not render any assistance in the facts of the present case and also in the light of subsequent judgment.

Subsequently, in the case of **State of M.P. and others vs. Abhijit Singh Pawar** [Civil Appeal No.11356 of 2018, decided on 26–11-2018] the Supreme Court held that an 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.

13. In para 16 of the judgment the Apex Court has considered the judgment passed in the case of **Mohammed Imran (supra)** and held that the said case was decided taking into consideration the allegations levelled against the said petitioner wherein the only allegation against the appellant 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 of the IPC was travelling with the prosecutrix in question and all accused were acquitted as the prosecutrix did not support the prosecution case. The decision in **Mohammed Imran (supra)**, turned on individual facts and cannot, in any way, be said to have departed from the line of decisions rendered in the cases of **Commissioner of Police, New Delhi and another vs. Mehar Singh, (2013) 7 SCC 685**; **State of Madhya Pradesh and others vs. Parvez Khan, (2015) 2 SCC 591**; and **Pradeep Kumar and another (supra)**.

14. In view of the judgement passed by the Apex Court in **Abhijit Singh Pawar (supra)** subsequent to the judgement rendered in the case of **Mohammed Imran (supra)**; and the judgement passed by the Full Bench of this Court in **Ashutosh Pawar (supra)** we do not find any merit in the present writ petitions and the same are hereby **dismissed**. No order as to costs.

(S.K. Seth)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.