

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF AUGUST, 2023

WRIT PETITION No. 20686 of 2023

BETWEEN:-

**DEEPAK VISHNOI S/O SHRI MAHESH
VISHNOI, AGED ABOUT 30 YEARS,
OCCUPATION: STUDENT R/O WARD NO
2, VISHNOI MOHALLA, JHADPA
NIMGAON, DISTRICT HARDA (MADHYA
PRADESH)**

.....PETITIONER

***(BY SHRI AJAY MISHRA – SENIOR ADVOCATE WITH SHRI GAURAV
TIWARI - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH SECRETARY HOME
VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
- 2. THE DIRECTOR GENERAL OF
POLICE HEAD QUARTERS, BHOPAL
BHOPAL (MADHYA PRADESH)**
- 3. ASSTT. INSPECTOR GENERAL OF
POLICE SPECIAL BRANCH
(SECURITY) MADHYA PRADESH
(MADHYA PRADESH)**
- 4. SUPERINTENDENT OF POLICE,
DISTRICT HARDA (MADHYA
PRADESH)**
- 5. COMMANDANT 23 BATTALION SAF
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI G.P. SINGH – GOVERNMENT ADVOCATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

This Petition Article 226 of Constitution of India has been filed against order dated 16.03.2023 passed by Commandant, 23rd Battalion SAF, Bhopal in file No.23rd Battalion/SAF/Estt./P.741-A/2023 by which candidature of petitioner for the post of Constable has been rejected.

2. The facts necessary for disposal of present petition in short are that an advertisement was issued in the year 2017 for recruitment to the post of Constable in 23rd Battalion SAF, Bhopal. Petitioner appeared in said examination and was declared successful and accordingly, petitioner was allocated to 23rd Battalion SAF. In Character Verification Form, petitioner had specifically pointed out criminal cases, which were registered against him i.e. Criminal Case No.1368/2011 and Criminal Case No.713/2013 for offence under Sections 294, 452, 323, 325/34, 427, 506 Part-II of IPC, which was pending in the Court of JMFC Harda. Thereafter, by order dated 29.11.2018, petitioner was declared disqualified from Police Services. Accordingly, petitioner preferred W.P. No.2651/2019 before this Court and after considering submissions made by counsel for the parties, this Court passed an order dated 22.09.2022 thereby directing respondents to decide representation. In compliance of order passed by this Court, petitioner submitted a detailed representation. However, by impugned order dated 16.03.2023, representation has been rejected and as consequence thereof, candidature of petitioner for the post of Constable in SAF has been rejected.

3. It is submitted by counsel for petitioner that Apex Court in the case of **Pramod Singh Kirar Vs. State of Madhya Pradesh and Ors.**

decided on 02.12.2022 in **Civil Appeal No.8934-8935/2022** has held that since settlement had taken place between the parties, which resulted in acquittal of candidate, therefore, he cannot be denied appointment only on the ground that earlier he was prosecuted for offence under Section 498-A of IPC. It is further submitted that once petitioner has been acquitted, therefore, there cannot be any hurdle in appointment of petitioner specifically when there is a scarcity of government jobs. Merely because petitioner was prosecuted in two different criminal cases, same may not be hurdle for denying a government Job.

4. *Per contra*, petition is vehemently opposed by counsel for State. It is submitted that Supreme Court in the case of **Avtar Singh Vs. Union of India and others** reported in **(2016) 8 SCC 471** has also held that the employer can consider antecedents and cannot be compelled to appoint the candidate. It is submitted that for appointment in police force, a person of an impeccable character and utmost honesty is required. Two criminal cases were registered against petitioner and both the criminal cases resulted in acquittal only on the ground that in both criminal cases, complainant had decided to enter into a compromise. Therefore, it is clear that acquittal of petitioner was not honourable.

5. Heard learned counsel for the parties.

6. The moot question for consideration is that whether acquittal of petitioner on the basis of compromise can be said to be an honourable acquittal or not?

7. The case in hand is squarely covered by the judgment passed by the Supreme Court in the case of **State of Rajasthan and Others Vs. Love Kush Meena** reported in **(2021) 8 SCC 774**, wherein it has been held as under:-

“24. Examining the controversy in the present

case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.

25. We may also notice this is a clear case where the endeavour was to settle the dispute, albeit not with the job in mind. This is obvious from the recital in the judgment of the trial court that the compoundable offences were first compounded during trial but since the offence under Sections 302/34 IPC could not be compounded, the trial court continued and qua those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

26. The judgment in *Avtar Singh case* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.”

8. The Supreme Court in the case of **Avtar Singh (supra)** has held as under:-

"38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. 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.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of

suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

9. The Supreme Court in the case of **State of Madhya Pradesh and Others vs. Abhijit Singh Pawar**, passed in **Civil Appeal No. 11356 of 2018 (Arising out of SLP (c) No.17404 of 2016)** by judgment dated 26th November, 2018 has observed as under:-

14. In Avtar Singh (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this

Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the 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.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein 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 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set

aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."

10. The Supreme Court in the case of **Mohammed Imran Vs. State of Maharashtra and others** passed in **C.A. No. 10571 of 2018**, by order dated **12-10-2018** has held as under :-

"6. Employment opportunities is a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, albatross around the neck of the candidate, may not always constitute justice. Much will, however, depend on the fact situation of a case."

11. The Supreme Court in the case of **Union of Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Another**, reported in **(2018) 1 SCC 797** has held as under:-

"11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commissioner of Police, New Delhi and Another v. Mehar Singh* (2013) 7

SCC 685, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision.....

12. While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in Avtar Singh v. Union of India and Others(2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (38.5), (SCC p. 508)

"38.5. 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."

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust repose in it and must examine the candidate with utmost character.

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17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasized. As held in Mehar Singh case, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.

12. The Supreme Court in the case of **The State of M.P. and others Vs. Bunt** by order dated 14/3/2019 passed in Civil Appeal No.3046/2019 has held as under:-

“13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.”

13. The Full Bench of this Court in the case of **Ashutosh Pawar vs. State of M.P.** reported in 2018 (2) MPJR 178 has held as under:-

"Decision of Criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal

proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. Division Bench judgment of this Court in W.P.No.5887/2016 (Arvind Gurjar vs. State of M.P.) is overruled. Another Division Bench judgment in W.A. No.367/2015 (Sandeep Pandey vs. State of M.P. and others) is also overruled. Jurisdiction of the High Court in a writ petition under Art. 226 of the Constitution of India is to examine the decision-making process than to act as Court of appeal to substitute its own decision. In appropriate case, if the Court finds decision-making process is arbitrary or illegal, the Court will direct the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own.

The expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The standard of conduct in the case of Judicial Officer is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. The same must be in tune with the highest standard of propriety and probity."

14. This Court in the case of **Anil Kumar Balmik vs. State of M.P. and others** by order dated 02.09.2020 passed in **W.P.No.23104/2019(s)** has held as under:-

“Compounding of offence” is nothing but an undertaking by the victim to give up the prosecution of the offender.

15. This Court in the case of **Bhagwat Singh Vs. State of M.P. and others** decided on 08/12/2021 in **Writ Petition No.26996/2021** has held as under:-

“8. Although it is the case of the petitioner that he had not suppressed the factum of registration of criminal case and acquittal of the petitioner on the basis of compromise, but it appears that the screening committee after considering the case, found that the petitioner is not fit for police service.

9. By the impugned order, the candidature of the petitioner has been once again rejected on the ground that since the petitioner has been acquitted on the basis of compromise, therefore, it cannot be said to be an honourable acquittal. As already held by the Full Bench of this Court in the case of **Ashutosh Pawar (supra)**, an acquittal on the basis of compromise cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with a view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. Further, the Supreme Court in the case of **Pradeep Kumar (supra)** has held that entering into the police service requires good character, integrity and clean antecedents.

10. Undisputedly, it is for the employer to consider the suitability of a candidate. Eligibility and suitability are to different aspects and this Court cannot substitute its finding by holding that the candidate should be held to be suitable. This Court in the case of **Anil Kumar Balmik (supra)** has held as under:

“Suitability” cannot be confused with “Eligibility”. A coordinate Bench of this Court in the case of **Madhur Vs. State of M.P.** by order dated **17-4-2018** passed in **W.P. 21231 of 2017** has held as under :

The “suitability” cannot be confused with eligibility”. In the ‘Major Law Laxicon’ by P. Ramanatha Iyer about the word following view is expressed-”the word ‘suitable’ does not require a definition because any man of experience would know who is suitable. However, each case has to be viewed in the context in which the word “suitability” or “suitable” is used, the object of the enactment and the purpose sought to be achieved.” A constitution Bench of Supreme Court in *State of J & K vs. Trilokinath Khosa* (1974) 1 SCC 19 and another Bench in *State of Orissa vs. N.N. Swami* (1977) 2 SCC 508 opined that eligibility must not be confused with the suitability of the candidate for appointment. These judgments were considered 9 W.P. No.21231/2017 by Calcutta High Court in 2013 SCC Online 22909 (*All b. Ed. Degree Holders Welfare Association vs. State of West Bengal*). In (2009) 8 SCC 273 (*Mahesh Chandra Gupta vs. Union of India*) it was again held that suitability of a recommendee and the consultation are not subject to judicial review but the issue of lack of eligibility or an effective consultation can be scrutinized.. The Supreme Court in (2014) 11 SCC 547 (*High Court of Madras vs. R. Gandhi*) while dealing with appointment on a constitutional post opined that ‘eligibility’ is an objective factor. When ‘eligibility’ is

put in question, it could fall within the scope of judicial review. The aspect of 'suitability' stands excluded from the purview of judicial review. At the cost of repetition, the Apex Court opined that 'eligibility' is a matter of fact whereas 'suitability' is a matter of opinion. In this view of the matter, when Competent Authority has examined the suitability in the teeth of relevant enabling provision i.e. Rule 6 (3) of Rules of 1961, interference is totally unwarranted.

While exercising the power under Article 226 of the Constitution of India cannot act as an Appellate Authority and cannot substitute its own findings.

The Supreme Court in the case of **UPSC v. M. Sathiya Priya**, reported in **(2018) 15 SCC 796** has held as under :

18.....It is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints—selfimposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.””

16. Petitioner has filed a copy of judgment passed in criminal cases, which were registered against him. As per order dated 19.11.2011, it is

clear that a compromise application was filed and accordingly, petitioner was acquitted for offence under Sections 294, 323/34 and 506-B of IPC. From judgment dated 27.02.2018, it is clear that allegations against petitioner and co-accused were that on 06.04.2013 at about 15.00 hours, petitioner as well as co-accused persons used filthy language against complainant and forcibly entered inside the shop and assaulted complainant Prashant by fists and blows, which resulted in fracture as well as caused mischief by damaging shop. Thus, it is clear that in Criminal Case No.713/2013, allegations were that petitioner and co-accused persons were aggressors and they not only committed trespass but also assaulted complainant Prashant and caused damage to the property. Fracture was also caused to complainant Prashant. From paragraph 7 of the judgment, it is clear that application for compromise was filed and accordingly, petitioner was acquitted for offence under Sections 294, 323, 325/34, 427 and 506 part-II of IPC and since offence under Section 452 of IPC was not compoundable, therefore, evidence of witnesses was recorded. Complainant Prashant Bhardwaj was declared hostile for the purposes of offence under Section 452 of IPC. Similarly, another witness Abhishek was also declared hostile for offence under Section 452 of IPC. Under these circumstances, in paragraph 15 of the judgment, it was specifically held by trial Court that since complainant and witness Abhishek have compromised with petitioner and co-accused persons and therefore, they have already been acquitted for offence under Sections 294, 323, 325/34, 427, 506 Part-II of IPC and so far as offence under Section 452 of IPC is concerned, no evidence has come on record, therefore, petitioner and other co-accused persons were acquitted for offence under Section 452 of IPC. Complainant Prashant Bhardwaj as well as Abhishek have compromised the matter with

petitioner and co-accused persons and since petitioner and other co-accused persons were already acquitted for offence under Sections 294, 323, 325/34, 427 and 506 Part II of IPC, therefore, their evidence was recorded only for purposes of offence under Section 452 of IPC. Prashant Bhardwaj as well as Abhishek have specifically stated that Prashant Bhardwaj was beaten by petitioner and other co-accused persons but they turned hostile on the question of trespass and accordingly, petitioner and co-accused person were acquitted for offence under Section 452 of IPC. "Compromise" means complainant is not interested to proceed further. Merely because complainant had decided not to prosecute the accused would not mean that accused was being prosecuted falsely.

17. Furthermore, in the present case, complainant Prashant as well as witness Abhishek have specifically stated about assault was made by petitioner and co-accused persons but they were acquitted only on the ground that complainant as well as Abhishek had entered into a compromise with petitioner and other co-accused persons. Under these circumstances, this Court is of considered opinion that acquittal of petitioner was not honourable at all and in fact allegations were reiterated by witnesses before the Court and if respondents have held that petitioner is not fit for appointment, then said conclusion drawn by respondents cannot be said to be without any basis.

18. Accordingly, no case is made out warranting interference.

19. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Shanu