

The High Court Of Madhya Pradesh

WP-27779-2019

(ANIL BHARDWAJ Vs THE HONBLE HIGH COURT OF MADHYA PRADESH AND OTHERS)

Jabalpur, Dated : 06-01-2020

Per: Vijay Kumar Shukla, J.

Shri Brian D' Silva, learned senior counsel assisted by Shri Ishan Soni, learned counsel for the petitioner.

Shri Pranjal Diwaker, learned counsel for the respondent Nos.1 and 3.

Shri Himanshu Mishra, learned Government Advocate for the respondents/State.

Petitioner has prayed for quashing of the orders dated 14.9.2018, 18.7.2018 and 21.9.2018 whereby the petitioner has been held to be not suitable for being appointed to the post of District Judge (Entry Level). He has also prayed directions to declare him suitable/fit for the said post and the respondents be directed to issue appointment order in pursuance to his selection alongwith all consequential benefits including seniority/promotion and arrears of pay.

2. The facts adumbrated in nutshell is that petitioner being eligible for appointment for the post of District Judge (Entry Level), applied for the said post in pursuance to the advertisement and notification dated 9.3.2017 issued by the High Court of Madhya Pradesh inviting applications from eligible candidates in order to fill 42 posts of District Judge (Entry Level). The said posts were available to the candidates from the Bar. The petitioner participated in the selection and successfully qualified the Main Examination and was also called for interview on 15.9.2017. The petitioner was selected for the said post by securing 252.10 marks and found place in the list at serial No.13 for General Candidates.

3. According to the petitioner, a criminal case has been registered against him under Section 498A and 406 of the IPC vide FIR No.852/2014 at Police Station Vijay Vihar. The petitioner vehemently argued that he has not suppressed about the registration of the said criminal case and mentioned the

same in the form filled up for Preliminary Examination as well as for Main Examination. The petitioner has stated about the background of the aforesaid criminal case that he got married with Ms. Pooja Pathak on 10.3.2004. Initially, their relations were cordial and out of their wedlock, they had a child in the year 2005. Thereafter, differences arose between them and finally they filed an application for mutual divorce under Section 13B of the Hindu Marriage Act. However, the wife of the petitioner changed her mind and withdrew her consent, thereafter, she lodged a complaint against the petitioner and his relatives under the provisions of the Indian Penal Code for the offences punishable under Sections 498A and 406 of the IPC.

4. Submission of the learned counsel for the petitioner is that despite disclosure of the aforesaid criminal case, the petitioner has been held not suitable for being appointed to the post of District Judge (Entry Level). It is contended that the petitioner could not have been denied the appointment merely on the ground of pendency of criminal case. It is contended that as per notification and advertisement of M.P. Higher Judicial Service (Entry Level), 2017, the recruitment of these posts are governed by the provisions of Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994 and there is no clause in the aforesaid Rules of 1994 for rejecting the candidature of the selected candidate on the ground of registration of the criminal case.

5. Per contra, learned counsel for the respondents supported the order/decision of the respondents and submitted that the candidature of the petitioner was rightly rejected by the appointing authority. Mere selection does not confer any right to the petitioner for appointment.

6. We have heard the rival submissions and perused the material available on record and gone through the order of the respondents. We do not find any illegality in the decision taken by the respondents holding the petitioner not suitable for being appointed on the post of District Judge (Entry Level).

7. The law relating to right of a selected candidate is no longer *res integra*. It is a settled law that a candidate included in the merit list has no indefeasible right to seek appointment. In this regard, we may profitably refer to the judgment passed by the Apex Court in the case of **Shankarsan Dash vs. Union of India** (1991) 3 SCC 47. It is true that the petitioner has disclosed about the criminal case in the form but simultaneously, the law relating to verification of antecedents of the selected candidates is also no longer *res integra*. The selection of the candidate is always coupled with verification of antecedents of the selected candidates. In the case of **Union Territory, Chandigarh Administration vs. Pradeep Kumar**, 2018 MPLJ Online (S.C.) 41 = (2018) 1 SCC 797 the Apex Court held that mere acquittal in a criminal case does not confer any right on an individual to claim employment and in spite of such acquittal the employer has a right to take into consideration all aspects and reject the claim of the applicant on this ground.

8. The Supreme Court in the case of Pradeep Kumar (supra), while taking consideration and analysing the law on the subject specifically the previous decisions of the Supreme Court in the cases of **Joginder Singh vs. Union Territory of Chandigarh**, 2014 MPLJ Online (S.C.) 45 = (2015) 2 SCC 377, **Deputy Inspector General of Police vs. S. Samuthiram**, 2012 MPLJ Online (S.C.) 44 = (2013) 1 SCC 598, **Commissioner of Police, New Delhi vs. Mehar Singh**, (2013) 7 SCC 685, **State of M.P. vs. Parvez Khan**, 2015 (3) MPLJ 485 (SC) = (2015) 2 SCC 591 as well as a three-Judge Bench decision of the Supreme Court in the case of Avtar Singh (supra) has held in paragraphs 13 and 17 as under:

"13. It is thus well settled that acquittal in a criminal case does not automatically entitled him for appointment tot he 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 Parvej 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 also 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 care.

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."

9. In the case of [Sandeep Raikwar vs. High Court of Madhya Pradesh W.P. No.3828/2019, decided on 26-03-2019 \[2019 MPLJ Online 2\]](#) a Division Bench of this Court after referring to the judgments of the Apex Court on the point of suppression in the attestation form and its consequences, held that acquittal in criminal cases is not a certificate of good conduct and acquittal does not automatically entitle a candidate for appointment to the post.

10. A Full Bench of this Court in the case of [Ashutosh Pawar vs. High Court of M.P. and another, 2018 \(2\) M.P.L.J. \(F.B.\) 419](#) wherein the decision of another Division Bench of this Court granting relief and benefit to a petitioner who had been acquitted on the basis of a compromise has been set aside.

11. A Coordinate Bench of this Court has also taken the same view in the case of [Apoorva Pathak vs. Hon'ble High Court of M.P. and another 2019 \(4\) M.P.L.J. 400.](#)

12. The petitioner is an aspirant of judicial service for the post of District Judge (Entry Level) and for such appointment, a candidate must be of

impeccable character and integrity. Even otherwise, the petitioner is now about 45 years. In the light of the aforesaid facts and enunciation of law, we do not find any illegality in the decision taken by the respondents holding that the petitioner is not suitable for being appointed to the post of District Judge (Entry Level) on account of pendency of a criminal case under Sections 498A and 406/34 of the IPC.

13. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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