

The State Of Madhya Pradesh And Ors. vs Abhijit Singh Pawar on 26 November, 2018

Equivalent citations: AIR ONLINE 2018 SC 407

Author: Uday Umesh Lalit

Bench: Dhananjaya Y. Chandrachud, Uday Umesh Lalit

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11356 OF 2018
(Arising out of SLP(C) No.17404 of 2016)

State of Madhya Pradesh and others

.....Appell

VERSUS

Abhijit Singh Pawar

..... Res

JUDGMENT

Uday Umesh Lalit, J.

1. Leave granted. This appeal challenges correctness of the judgment and order dated 22.09.2015 passed by the High Court of Madhya Pradesh at Indore in Writ Appeal No.132 of 2015.

2. In 2012, the Professional Examination Board, Madhya Pradesh invited applications for filling up the posts of Subedars, Platoon Commanders and Inspectors of Police. Clause 1.13 of the advertisement dealt with character verification of the candidates. True translation of said clause 1.13 along with Note appended thereto was to the following effect:

“1.13 Appointment: The character verification shall be carried out about the selected candidates and the appointment only of the candidates found in the selection list upon finding them fit in character. The medical examination of the candidates also

shall be conducted. The candidate to be medically fit for the entitlement of the appointment is also required.

Note: To save time and for the convenience, the verification form is sent earlier to the candidates declared fit to sit in the physical fitness examination, which the candidates have to submit after filling up and the character and earlier verification of all the candidates to appear in interview is made. The candidate who is not selected, his form will not be used further. The candidates should fill up full and correct information in the character verification form. They should not provide any false information, incomplete information and semi true information. They should not conceal any information as well. Particularly it is required to fill up the correct information in column no.12. Now according to the new guidelines of Madhya Pradesh Government regarding character verification, to give the undertaking to this effect is required that he has not concealed any fact in the details given by him earlier about the criminal cases.”

3. The respondent participated in the selection process and as mandated, tendered an affidavit on 22.12.2012 disclosing following information:

“I affirm on oath that Case No.592/06 under Sections 323, 325, 506, 34 was registered in Police Station Madhav Nagar against me the deponent. I the deponent myself had come to the court. I was never arrested. The aforesaid case is pending in the Court. In addition no criminal record is registered in any police station anywhere in India, nor has the deponent convicted by the Court in any criminal case.”

4. According to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered. However, it appears that within four days, a compromise was entered into between the original complainant and the respondent and an application for compounding the offences was filed under Section 320 Code of Criminal Procedure. True translation of relevant portions of the proceedings dated 26.12.2012 before the Judicial Magistrate, First Class, Ujjain, M.P. is as under:

“The case was perused. This case is listed for the presence of the accused. The accused was taken in judicial custody.

The bond forfeiture amount on behalf of the accused was deposited in compliance with the order, vide receipt No.85. The receipt was given to the accused....

At this very stage, Rajiv Rawat submitted an application for compromise under Section 320(2) Cr.P.C. and expressed that a compromise has been made between him and the accused persons so the permission for compounding be granted. Copy of the application was given to ADPO. The remaining accused persons with Sashank Advocate are present. I heard the matter regarding compromise. The case was perused.

It is clear from perusal that the case being of offences under Sections 294, 325/34, 323, 506 Part-2, IPC is fit for compromise. The present complainant is a competent party for the compromise. Hence, the permission for compounding can be granted.

The parties submitted a deed of compromise, jointly signed having photographs. The parties were identified by their counsel. Both the parties have stated that the compromise was arrived at voluntarily without any fear and pressure. Hence, the application for compounding was allowed after verification. As a result of the composition, the accused persons are acquitted of the charges under Sections 294, 325/34, 323, 506 Part-2 IPC.

The bail bonds of the accused persons are discharged.”

5. The proceedings, thus, indicate that the amount of bond submitted on the earlier occasion had been forfeited for non-compliance; that the respondent was taken in judicial custody and that after the compromise was entered into between the parties, the application for compounding of the offences was allowed.

6. The respondent was selected in the written examination and was called for medical examination. Around the same time, his character verification was also undertaken. After due consideration of character verification report, the candidature of the respondent was however rejected vide order dated 19.07.2013 passed by the Additional Director General of Police (Selection/Recruitment), Police Headquarters, Bhopal. Said order observed as under:-

“3-B The services of the persons seeking uniform service/employment comes under the category different from other services and candidates. The duty of the candidates selected is to maintain law and order of the State and to protect the life and property of the public. The high moral conduct and not to be involved in the criminal activities is required for the police service.

3-C According to the principles about the excellent conduct with the Government in respect of the Government Servants, the Government Servants should be of high character. Since the officers of the Police Department are responsible to control the persons of criminal nature, it is not proper to appoint the persons of criminal record in public interest.”

7. The respondent being aggrieved, filed Writ Petition No.9412 of 2013 before the High Court of Madhya Pradesh at Indore challenging the aforesaid order dated 19.07.2013. A Single Judge of the High Court allowed said writ petition and directed as under:

“... The petitioner shall be appointed in case his name finds place in the merit list and is entitled to be appointed as per merit. The petitioner shall be entitled for all consequential benefits, except back wages.”

8. The State challenged the decision of the Single Judge by filing Writ Appeal No.132 of 2015, which challenge was found to be without any merit by the Division Bench. The view taken by the Single Judge was thus affirmed by the Division Bench vide its judgment and order dated 22.09.2015 which decision is presently under challenge.

9. Since the respondent, despite being served in the matter had chosen not to enter appearance, this Court requested Mr. Siddhartha Dave, learned Advocate to assist as Amicus Curiae and appear on behalf of the respondent. We heard Mr. Rajesh Srivastava, learned Advocate for the State and Mr. Siddhartha Dave, learned Amicus Curiae for the respondent.

10. It was submitted by Mr. Rajesh Srivastava, learned Advocate that in terms of Rule 12(3) of M.P. Police Executive (Non-Gazetted) Services Recruitment Rules, 1996, inclusion of a candidate's name in the list would not confer any right to appointment and that a candidate had to be found suitable in all respects before he could be appointed. Relying on the decisions of this Court in Commissioner of Police, New Delhi and another v. Mehar Singh¹, State of Madhya Pradesh and others v. Parvez Khan² and Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another³ he submitted that the candidature of the respondent was rightly rejected and there being no allegation of mala fides, no interference with the decision in question was called for. Mr. Siddhartha Dave, learned Amicus Curiae, on the other hand, submitted that by virtue of Section 320(8) of Cr.P.C. composition of an offence would have the effect of an acquittal. He further submitted that the respondent had not suppressed any information and he having been acquitted, the High Court was right in accepting his challenge. (2013) 7 SCC 685 (2015) 2 SCC 591 (2018) 1 SCC 797 Mr. Dave further relied upon the decisions of this Court in Avtar Singh v. Union of India and others⁴ and In Mohammed Imran v. State of Maharashtra and others⁵.

11. In Mehar Singh (supra) the selection in question was for the post of Constable (Executive). The offences alleged against Mehar Singh were under Sections 341, 323 and 427 of the IPC. He had arrived at a compromise with the complainant and in terms of the compromise, Mehar Singh and other co-accused were acquitted of the offences under Sections 323, 341 and 427 of the IPC on 30.01.2009. In the selection which was undertaken thereafter, said Mehar Singh had disclosed the factum regarding his involvement and his acquittal. His candidature was, however cancelled in terms of the concerned Standing Order. The challenge raised by him was accepted by the Administrative Tribunal and the Delhi High Court. But this Court reversed said decisions and the observations in paragraphs 23, 24, 25, 33 to 35 of the decision of this Court are quite relevant for the present purposes:-

“ 23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights (2016) 8 SCC 471 In Civil Appeal No.10571 of 2018, decided on 12.10.2018.

to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. 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.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India*⁶ this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

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25. The expression "honourable acquittal" was considered by this Court in *S. Samuthiram*⁷. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal*⁸, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain (2013) 1 SCC 598 (1994) 1 SCC 541 integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

12. The conclusions in Mehar Singh (supra) have been followed and the principles reiterated by this Court in later decisions, namely in State of M.P. v. Parvez Khan (supra) and in Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another (supra).

13. A three Judge Bench of this Court in Avtar Singh v. Union of India (supra) was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

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 recourses 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.”

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.

18. Before we part, we must record our appreciation for the efforts put in by Mr. Siddharth Dave, learned Amicus Curiae and the assistance rendered by him.

.....J. (Uday Umesh Lalit)J. (Dr. Dhananjaya Y. Chandrachud) New Delhi, November 26, 2018