

Imtiyaz Ahmad Malla vs The State Of Jammu And Kashmir on 28 February, 2023

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 678 OF 2021

IMTIYAZ AHMAD MALLA

.... PETITIONER

VERSUS

THE STATE OF JAMMU AND KASHMIR
AND OTHERS

.... RESPONDENTS

JUDGMENT

BELA M. TRIVEDI, J.

1. The instant special leave petition is directed against the Judgment and Order dated 09.08.2019 passed by the High Court of Jammu and Kashmir at Srinagar in LPASW No. 71 of 2018, whereby the High Court has dismissed the appeal filed by the petitioner-

appellant and confirmed the order dated 14.05.2018 passed by the Single Bench dismissing the SWP No. 1766 of 2017.

2. Briefly stated, the petitioner had successfully participated in the selection process conducted in 2008-2009 for the post of constable in the Jammu and Kashmir Executive Police, and he was issued an appointment letter dated 20.08.2009. The petitioner thereafter was deputed to the Police Training School, Manigam for undergoing the nine months BRTC course. It appears that thereafter the search slips of the ten newly recruited constables including the petitioner, were sent to the Director, Finger Print Bureau (CPPB) and NCRB East, New Delhi, for record and reference purpose, and the said Bureau vide the letter dated 07.12.2009 responded that the petitioner was involved in a case registered as FIR No. 52/2007 under Section 379 of Ranbir Penal Code (RPC) and Section 6 of Forest Act, at the Police Station, Kralgund. The said case was stated to be pending before the Chief Judicial Magistrate, Handwara. The matter was taken up with the Deputy Inspector General of Police, NKR, Baramulla, by the Police District Headquarter, Handwara, for cancellation of the

selection of the petitioner. During the course of inquiry, a summary of allegations and charge-sheet were served to the petitioner. It was alleged that in the said criminal case, the petitioner was released on bail after four days of his arrest, and therefore the petitioner had good knowledge of his involvement in the criminal case and that he had consciously concealed the said information. It was also found during the course of inquiry that the petitioner had shown his residence at village Gundchobotra instead of Pakhribal in order to get a clean chit at the time of police verification. Under the circumstances, the appointment order dated 20.08.2009 of the petitioner was cancelled by the order dated 01.03.2010.

3. The petitioner challenged the said order of cancellation of his appointment by filing the writ petition being SWP No. 2616 of 2011 in the High Court. In the meantime, the petitioner was tried and acquitted in the criminal case by the Court of Chief Judicial Magistrate, Handwara vide the Judgment dated 26.04.2011. The said petition therefore came to be disposed of vide the order dated 18.05.2016 whereby the impugned order dated 01.03.2010 was set aside by the High Court. It was directed to the concerned respondent to take further action in view of the communication dated 27.02.2012 which in respect of the other persons similarly situated as the petitioner. On the reconsideration, the Director General of Police, Jammu and Kashmir, Srinagar, passed the order dated 31.07.2017 stating inter alia that in view of the criminal background of the petitioner, he was found unsuitable for the post of constable in the disciplined force.

4. Being aggrieved by the said order dated 31.07.2017, the petitioner filed the writ petition being SWP No. 1766 of 2017 seeking reinstatement with consequential benefits. The said writ petition came to be dismissed by the Single Bench vide the judgment and order dated 14.05.2018, whereby the Single Bench placing reliance on the decision of Union Territory, Chandigarh Administration And Others Vs. Pradeep Kumar And Another 1, held that the decision of the Director General of Police, the highest functionary in the hierarchy of police department, to consider the suitability of the appellant for induction into police force, could not be called into question. The aggrieved petitioner therefore filed the LPA, which came to be dismissed by the Division Bench vide the impugned order.

5. Though the matter was argued at length by the learned counsels for the parties, the precise question that falls for consideration before this Court is whether the Director General of Police, Jammu & Kashmir, Srinagar, who after examining the record of the petitioner had come to the conclusion that the petitioner was not a fit person to hold the post into the police force in view of his criminal background, could be compelled to reinstate the petitioner on his acquittal in the criminal case.

6. It was sought to be submitted by the learned counsel for the petitioner that in the criminal trial proceeded against the petitioner, the prosecution had failed to examine the investigating officer and also failed to bring home the charges levelled against him, and therefore his acquittal in the said case was required to be treated as an honorable acquittal. He further submitted that the very basis for presuming that the petitioner had a criminal background was no 1 (2018) 1 SCC 797 more available to the respondents, on his having been acquitted by the competent criminal court.

7. In order to appreciate the said submission made by the learned counsel for the petitioner, it would be relevant to reproduce the relevant part of the judgment dated 26.04.2011 passed by the Court of Chief Judicial Magistrate, Handwara, whereby the petitioner was acquitted from the charges levelled against him.

“That the I.O. has not been produced and examined which is legal infirmity in the prosecution case as material contradictions have not been answered nor the site plan has been proved. Further, the seizure of timber has not been proved by the witnesses. None of witnesses has deposed that accused committed theft in the forest and willow trees were found in possession of the accused persons. On the basis of contradictory evidence accused cannot be convicted, as benefit of doubt goes to the accused.

Prosecution has miserably failed to fulfill the ingredients of section 379 RPC, 6 F.Act against the accused persons. So, prosecution case fails. Challan is dismissed. Accused are acquitted of the charges for the commission of offence under section 379 RPC 6 F.Act.

Accused are on bail. Their bail bonds and personal bonds stand discharged. Since the confiscation proceedings were initiated by the Forest department, timber has been disposed of. Challan be consigned to records after due completion.”

8. Apart from the fact that the phrase “honourable acquittal” has not been defined anywhere in the Criminal Procedure Code, as transpiring from the afore-stated order passed in the criminal case for which the petitioner was tried, the petitioner was afforded a benefit of doubt in view of the contradictory evidence which had come on record, also as the investigating officer was not examined by the prosecution.

9. In case of Commissioner of Police, New Delhi and Another Vs. Mehar Singh², this Court on similar issues as involved in the present case observed as under:

“25. The expression “honourable acquittal” was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]* . 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 [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]* , 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.

2 (2013) 7 SCC 685

26. In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge, but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.”

10. It was further observed therein that if the Screening Committee’s decision was not mala fide or actuated by extraneous considerations, then the same could not 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.

36. The Screening Committee's proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not

envisage negative equality (Fuljit Kaur [Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455]). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so.

Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”

11. The expression “honourable acquittal” had also come up for consideration in other cases namely, Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal 3; and in R.P. Kapur Vs. Union of India and Another 4 whereby it was held inter alia that the mere acquittal does not entitle an employee to the reinstatement in service. The acquittal, it was held, has to be honourable. As such, the expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, and it is difficult to define precisely what is meant by expressions “honourable acquittal”.

12. In Pradeep Kumar’s case (supra) also it was reiterated that if a person is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents.

The precise observations made therein are re-produced hereunder:

“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. 3 (1994) 1 SCC 541 4 AIR 1964 SC 787 Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24) “24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully

exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

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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 [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] 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 reposed in it and must examine the candidate with utmost character.”

13. As regards the suppression of relevant information or false information with regard to the criminal prosecution, arrest or pendency of criminal case against the candidate, a three-judge Bench of this Court in Avtar Singh Vs. Union of India and Others⁵ has laid down the precise guidelines. Para 38.5 thereof reads as under:

“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.”

14. In all the above cases, the requirement of integrity and high standard of conduct in police force has been highly emphasised.

The High Court in the impugned judgement has also elaborately dealt with each and every aspect of the issues involved, while upholding the order of the Single Bench to the effect that the Director General being the highest functionary in the police hierarchy, was the best judge to consider the suitability of the petitioner for induction into the police force. The impugned order being just and proper, we are not inclined to interfere with the 5 (2016) 8 SCC 471 same in exercise of our jurisdiction under Article 136 of the Constitution of India.

15. It is well settled position of law that though the scope of Article 136 of Constitution of India is very wide, the power conferred thereunder being a very special and extraordinary power, it has to be exercised in rare and exceptional cases. Since, we do not find any infirmity or illegality in the impugned order passed by the High Court, the present petition deserves to be dismissed and is accordingly dismissed.

..... J.

[AJAY RASTOGI]J. [BELA M. TRIVEDI] NEW DELHI;

28.02.2023