

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WP(C).No. 19697 of 2015 (J)

PETITIONER(S):

ANAND JOHN AGED 28 YEARS
MALIAKKAL HOUSE, N. CHALAKKUDY, CHALAKKUDY PO
THRISSUR 680307

BY ADVS.SRI.K.P.SURAJ
SRI.K.S.RAJEEV (ALUVA)

RESPONDENT(S):

ZONAL MANAGER
BANK OF INDIA ZONAL OFFICE OF BANK OF INDIA
KERALA ZONE, K.K.ROAD, KALOOR TOWERS
COCHIN 682017

R1 BY ADV. SRI.JAWAHAR JOSE, SC, BANK OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 19697 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:TRUE COPY OF INTERVIEW DATED 19.08.2014

EXT.P2:TRUE COPY OF OFFER LETTER DATED 29.11.2014

EXT.P3:TRUE COPY OF REVOCATION LETTER DATED 07.02.2015

EXT.P4:TRUE COPY OF JUDGMENT OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
CHALAKKUDY IN CC.NO.4871/2013

EXT.P5:TRUE COPY OF JUDGMENT OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
CHALAKKUDY IN CCNO.2681/2013

EXT.P6:TRUE COPY OF POLICE CERIFICATION CERTIFICATE DTD. 20.04.2015

RESPONDENTS EXHIBITS:

EXT.R(A) TRUE COPY OF the APPLICATION DT 23.08.2013 SUBMITTED BY THE
PETITIONER

EXT.R(B): TRUE COPYOF THE AFFIDAVIT DT 5.12.2014 SUBMITTED BY THE
PETITIONER

EXT.R(C): TRUE COPY OF THE POLICE VERIFICATION REPORT DT 25.12.2014
SUBMITTED BY THE DISTRICT POLICE CHIEF, THRISSUR RURAL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 19697 of 2015

Dated this the 14th day of September, 2015

J U D G M E N T

The petitioner is aggrieved with the refusal of the respondent Bank, to appoint him despite his having been found qualified for such appointment. The petitioner had been working as a temporary hand in the respondent Bank as a Sepoy. The petitioner applied under a notification for regular appointment. The petitioner had been called for the interview as per Ext.P1. An offer letter was issued at Ext.P2. Subsequently on police verification the petitioner was found to have been involved in two offences one punishable under Section 118 (e) of the Kerala Police Act, 2011 r/w section 185 of the Motor Vehicles Act, 1988 and another under Section 118(a) of the Kerala Police Act. The convictions are evidenced by Exts.P4 and P5. On the basis of the Police verification

report, the Bank refused to appoint the petitioner to the post of Sepoy by Ext.P3 which is impugned herein.

2. The learned counsel for the petitioner submits that the action of the Bank is bad insofar as the convictions were entered subsequent to the application of the petitioner which is produced by the Bank as Annexure R1(a). The petitioner also relies on Pawan Kumar v State of Haryana and another (1996(4) SCC 17) which found that a conviction under Section 294 IPC per se would not establish moral turpitude unless the tests laid down in the policy decisions are satisfied. On such finding the termination of service effected on the employee therein was set aside.

3. The learned counsel appearing for the Bank would rely on State of Kerala and another v. Hamil Raphael (2014 (3) KLT 546) in which the finding of the learned Single Judge that the nondisclosure of involvement in a crime would not be fatal insofar as on appointment; was set aside by a Division Bench finding to the contrary.

4. In the present case, it is to be noticed that it is not a question of termination and the decision of the Hon'ble Supreme Court cited herein above would not be applicable. That was a case in which an employee when continued in ad-hoc employment was involved in a case charged under Section 294 IPC. On the ground of alleged moral turpitude, arising from the said conviction, his regularization was declined and he was terminated. The Hon'ble Supreme Court examined the conviction, entered on recording a plea of guilt, and the punishment imposed of Rs20/- as fine. Section 295, dealing with singing, reciting or uttering obscenity in public causing annoyance to others was held to cast no aspersion of moral turpitude, in the changing perspectives of the concept of morality. The conviction was found to be on a plea of guilt, which resulted in only a meagre punishment of fine of Rs.20/-.

5. The petitioner herein cannot, on the basis of an earlier temporary employment, claim that the refusal to appoint him would result in a termination of his earlier services.

Admittedly, the petitioner had applied under a notification and had filed an application, in which the undertaking given was that the petitioner was not convicted in any offences. The same was correct too, at that point of time. Subsequent to Ext.RA the petitioner having been selected, had given an undertaking at Ext.RB wherein it was stated that he has no criminal antecedents and that if an adverse report comes, on verification, the petitioner's appointment would be liable to be terminated.

6. The petitioner in fact, was never appointed and the conviction under Ext.P4 & Ext.P5 happened when proceedings were underway for the appointment of the petitioner. However, the offence was committed previous to the application and the conviction in any event was earlier to the undertaking given. In the affidavit filed as on 05.12.2014 after the conviction were entered, as is seen at Exts.P4 and P5; both the offences relating to drunken behavior; one in public and another driving a vehicle under the influence of alcohol. The question whether the offence

alleged or the conviction entered, on a plea of guilt, is secondary and what assumes significance is that the petitioner failed to disclose the same and filed a false undertaking. The Division Bench in Hamil Raphael (supra) relied on a Supreme Court decision in Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav (2003 (3) SCC 437) which held that suppression of material information and making a false statement has a clear bearing on the character and antecedents of an aspirant for public employment. The nature of the case or the outcome of the case, is immaterial, was the finding. In such circumstance, the action of the bank in refusing appointment cannot be found fault with. The nature of the offence, herein, is of significance since it related to drunken behaviour in public, in quick succession.

Writ petition would stand dismissed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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//true copy//

P.A to Judge