

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3889 OF 2015

(Ishwar Arun Kholi vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri S.D. Harode, Advocate for petitioner.

Shri N.R. Patil, Assistant Government Pleader for
respondent nos.1 and 2.

CORAM : B.P. DHARMADHIKARI AND
KUM. INDIRA JAIN, JJ.

DATED : JULY 5, 2016

Heard Adv. Harode for petitioner and
Shri Patil, learned Assistant Government Pleader for
respondent nos.1 and 2.

Adv. Harode for petitioner is relying upon
vigilance enquiry report in the case of petitioner to
show that uncle of petitioner has been given validity
as "Tokre Koli" (Scheduled Tribe). This vigilance
report was furnished on 15/12/2010. The petitioner
thereafter had approached Division Bench of this
Court at Aurangabad in Writ Petition No.7935/2011
and Division Bench there on 13/10/2011 directed
respondent employer to forthwith issue provisional
appointment order to him. This direction has not

been complied with and, therefore, present petition has been filed.

Adv. Harode for petitioner submits that in view of validity given to uncle of petitioner, which is not in dispute, caste claim of petitioner must be deemed to have been validated and, therefore, he should be appointed forthwith.

Shri Patil, learned Assistant Government Pleader, however, has pointed out that a criminal offence was registered against petitioner on 31/12/2008 and this was not disclosed by the petitioner when he applied in response to advertisement published in 2009. The selection was in April 2010. As this material fact was not disclosed, according to him, no relief can be given to the petitioner.

Adv. Harode has relied upon judgment of Hon'ble Apex Court in **Commissioner of Police and others vs. Sandeep Kumar** (2011 (4) SCC 644) to urge that in identical circumstances, Hon'ble Apex Court has found that after subsequent acquittal, that aspect being looked into by employer loses its relevance.

We have perused that judgment. The judgments of Hon'ble Apex Court delivered before that judgment, which have got bearing on the

controversy and which learned Assistant Government Pleader is pressing into service are not looked into by Hon'ble Apex Court here. The facts show that application for post of Head Constable was submitted by Sandeep Kumar in 1999. First Information Report for the offences under Section 362 and 325 read with Section 34 of Indian Penal Code was registered before that and it was compromised on 18/1/1998 and Sandeep and his family members were acquitted on 18/1/1998. While furnishing information against Clause 12(a), which reads "Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any Examination, rusticated by any University or any other education Authority/Institution ?", Sandeep Kumar wrote "No".

The technical information submitted by Sandeep Kumar after compounding and acquittal on 18/1/1998 against said column could not have been viewed as false. Thus, Hon'ble Apex Court has taken a particular view only in the facts presented there.

In this situation, we are not inclined to direct respondents to issue any appointment order

provisionally to petitioner.

However, it is surprising that caste claim of petitioner has been kept pending even after 2011 by respondent no.3. We, therefore, direct respondent no.3 to complete verification and to pass suitable orders at the earliest and in any case, within a period of three months from the date of communication of this order.

The petitioner to communicate this order to respondent no.3.

The petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

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