

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO.2848 OF 2013**

Mohammed Imran s/o Shabbir Daryawardi.] ... Petitioner

Versus

The State of Maharashtra & Ors.] ... Respondents

Mr. R. S. Apte, Senior Advocate a/w Mr. Afroz A. Siddiqui, Ansar Tamboli and Mr. Sajid Qureshi for Petitioner.

Mr. B. V. Samant, AGP for State.

Mr. Rajesh S. Datar for Respondent No.3.

**CORAM :- SMT. VASANTI A. NAIK &
SARANG V. KOTWAL, JJ.**

DATE :- 14 DECEMBER, 2017

P. C. :-

By this Writ Petition, the petitioner challenges the communication dated 04/06/2010 cancelling the selection of the petitioner for the post of Civil Judge Junior Division and Judicial Magistrate First Class ('CJJD and JMFC', for short).

In pursuance of the advertisement published by the Maharashtra Public Service Commission ('MPSC' for short) inviting applications for 200 posts of CJJD and JMFC, the petitioner had applied and was selected after he was interviewed by the Committee. The name of the petitioner was recommended by the MPSC for appointment to the said post. It is the case of the petitioner that to his surprise, the petitioner received the impugned communication dated 04/06/2010 informing him

that the police verification report was unfavourable to the petitioner. The petitioner has challenged the said communication by the instant petition.

Mr. Apte, the learned Senior Counsel appearing for the petitioner submitted that it is not a case where the petitioner has concealed the fact that he was prosecuted for the offences punishable under Sections 363 and 366 read with 34 of the Penal Code. It is submitted that despite the disclosure of the fact that the petitioner was tried and acquitted in the criminal case, the MPSC had recommended the case of the petitioner for appointment. It is submitted by placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Joginder Singh Vs. Union Territory of Chandigarh*¹ that the respondent no.1 could not have disqualified the petitioner for the post of CJJD and JMFC after the petitioner was acquitted in the criminal case. It is stated that in the judgment before the Hon'ble Supreme Court, the petitioner therein had applied for the post of Constable and since he was acquitted in the criminal case, the Hon'ble Supreme Court had directed the respondent to recruit him on the post of Constable. It is submitted that the law laid down by the Hon'ble Supreme Court would squarely applies to the case in hand.

Mr. Datar, the learned Counsel appearing for the respondent no.3 has supported the impugned communication. It is submitted that the police verification report was adverse to the petitioner and the petitioner was tried for serious offences involving moral turpitude. It is submitted that the post for which the petitioner has applied, would require appointment of persons with impeccable character and conduct. It is submitted that the antecedents of an applicant would surely be one of the

¹ 2015 (4) ALL MR 952

tests while appointing a candidate in the judicial services. The learned Counsel relied on the judgment of the Hon'ble Supreme Court in the case of *Delhi Administration and Others Vs. Sushil Kumar*² to substantiate his submission.

On hearing the learned Counsel for the parties, we find that the petitioner would not be entitled to the relief claimed. The petitioner had applied for the post of CJJD and JMFC. As rightly submitted on behalf of the respondent no.3, for appointment to the said post, the applicant should have had unblemished character and conduct and his antecedents need to be looked into before making the appointment. The respondents had made the appointment of a candidate to which a reference is made by the petitioner in the rejoinder but in his case, the offences for which he was tried and acquitted were not as serious as the offences that were registered against the petitioner and for which he was tried. We find from the judgment of the II Ad-hoc Additional Sessions Judge, Sangli in Sessions Case No.173 of 2000 that the petitioner was charged for the offences punishable under Sections 363 and 366 read with 34 of the IPC. According to the prosecution, the petitioner had facilitated the kidnapping of a minor girl who was allegedly raped by the accused no.1 in the said case. On a reading of the entire judgment of the sessions case, it appears that all the three accused were acquitted mainly because the prosecutrix had turned hostile and was declared as such. In the circumstances of the case, we do not find any illegality in the action on the part of the respondent no.1 of cancelling the selection of the petitioner by the communication dated 04/06/2010. The judgment in the case of *Joginder Singh* (*supra*) cannot be made applicable to the case in hand as in that case the offence for which

² (1996) 11 Supreme Court Cases 605

the petitioner was charged did not relate to moral turpitude like the case in hand. The judgment reported in the case of *Delhi Administration and others* (*supra*) would be helpful to the respondents in supporting the impugned communication dated 04/06/2010.

Since the relief sought by the petitioner cannot be granted in the circumstances of the case, we dismiss the Writ Petition with no order as to costs.

(SARANG V. KOTWAL, J.)

(SMT. VASANTI A. NAIK, J.)