

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE
OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 29178 OF 2017

Between:

K.Moulali

... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
(Home-III) Services Department,
A.P. Secretariat, Velagapudi,
Amaravathi, Guntur District, and others

... Respondents

Date of Order Pronounced : 05-09-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

GUDISEVA SHYAM PRASAD, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+WRIT PETITION No. 29178 OF 2017

%Dated: 05-09-2017

#K.Moulali,

S/o K.Hydervali, 28 years, Un-employee,

R/o Nallagutta Village, Molakalacheruvu Mandal,

Chittoor District

... Petitioner

VERSUS

\$The State of Andhra Pradesh,

Rep. by its Principal Secretary,

(Home-III) Services Department,

A.P. Secretariat, Velagapudi,

Amaravathi, Guntur District, and others

... Respondents

!Counsel for the petitioner : Sri K.Narsi Reddy

^Counsel for the respondents : G.P. for Services (A.P.)

<GIST :

>HEAD NOTE :

?Cases referred :

1. (2013) 7 SCC 685
2. AIR 1996 SC 3300

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 29178 OF 2017

DATED 05TH SEPTEMBER, 2017

Between:

K.Moulali

... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
(Home-III) Services Department,
A.P. Secretariat, Velagapudi,
Amaravathi, Guntur District, and others

... Respondents

Counsel for the petitioner

:

Sri K.Narsi Reddy

Counsel for the respondents

:

G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for *certiorari* to quash order dated 19-07-2017 in O.A.No. 2594 of 2014 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal') and also proceedings *vide* C.No. A2/6598/89/2011 dated 14-11-2013 of respondent No. 3 canceling the petitioner's provisional selection as Stipendiary Cadet Trainee Police Constable (A.R.) (Men) (for short, 'SCTPC').

2. We have heard Sri K.Narsi Reddy, learned counsel for the petitioner, and learned Government Pleader for Services (A.P.) appearing for the respondents.

3. The petitioner applied for the post of SCTPC in pursuance of notification issued by respondent No. 2. He was provisionally selected for the said post in the year 2011. By proceedings C.No. A2/6598/89/2011 dated 14-11-2013, respondent No. 3 cancelled the petitioner's provisional selection as he was allegedly convicted for the offence under Section 34 (G) of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act'), on 06-03-2010 and imposed a fine of Rs.200/- by the Judicial Magistrate of I Class, Thamballapalle of Chittoor District (for short, 'J.F.C.M., Thamballapalle').

4. Feeling aggrieved by the said order, the petitioner filed O.A.No. 2594 of 2014. The petitioner pleaded before the Tribunal that crime No. 26 of 2009 of Molakalacheruvu Police Station was numbered as C.C.No. 41 of 2009 on the file of the Court of J.F.C.M., Thamballapalle; that learned Assistant Public Prosecutor filed a memo before the Court seeking permission to withdraw prosecution and that on 06-03-2010, the Court allowed the said memo permitting learned Assistant Public Prosecutor to withdraw prosecution against all the accused including the petitioner who was shown as accused No. 1. As regards

the payment of fine of Rs.200/-, the petitioner pleaded that after collecting a sum of Rs.200/- from each person, the excise officials compounded the offence and filed a memo for withdrawal of prosecution. The petitioner specifically pleaded that he was not convicted by the Court and that therefore the ground on which respondent No. 3 cancelled the provisional selection of the petitioner, viz; that the case ended in conviction is absolutely incorrect and false.

5. On behalf of the respondents, Additional Director General of Police (C.I.D.) holding additional charge of the post of Chairman, State Level Police Recruitment Board, Andhra Pradesh, Hyderabad, filed a counter affidavit. He *inter alia* averred therein that the petitioner was arrayed as accused in crime No. 26 of 2009 registered for the offence under Section 34 (G) of the Act of Molakalacheruvu Police Station for possessing liquor without proper license during 2009 General Assembly Elections and he was arrested on 19-04-2009 at 2.30 p.m.; that the petitioner was released on bail on 19-04-2009; that charge sheet was filed on 20-04-2009 before the jurisdictional Court; that the petitioner was convicted with a fine of Rs.200/- on 06-03-2010 vide order in C.C.No. 41 of 2009 on the file of the Court of J.F.C.M., Thamballapalle, and that the criminal charge framed against the petitioner is grave involving moral turpitude. The deponent has relied on Rule 12 (1) (a) (ii) of the Andhra Pradesh State and Subordinate Service Rules, 1996, and Rule 3 (G) (v) of the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules, 1999 (for short, '1999 Rules'), as per which a candidate, who has been convicted for any offence in any Court of law, shall be disqualified for appointment. It is further stated that discharge or acquittal in criminal offence or actual result of criminal case is not a relevant criterion to be looked into and what would be relevant is conduct and character of the candidate and not the actual result thereof and that in view of the

petitioner's antecedent record, the selecting as well as the appointing authority found that it is not desirable to appoint a person of such record as a Police Constable to a disciplined force like Police Department. The deponent placed reliance on the judgment of the Supreme Court in **Commissioner of Police, New Delhi and others Vs. Mehar Singh and others**¹. On these premises, the respondents opposed the relief claimed by the petitioner.

6. By the impugned order, the Tribunal observed that there is no dispute that the petitioner was convicted by the jurisdictional Court and was sentenced to pay a fine of Rs.200/-. It has placed reliance on Rule 3 (G) (v) of 1999 Rules which envisaged that a candidate, who has been convicted for any offence in any Court of law, is disqualified for appointment. Referring to the judgment in **Pawan Kumar Vs. State of Haryana**² relied upon by learned counsel for the petitioner, the Tribunal observed that the candidate in the said case was convicted in a summary trial of offence under Section 294 of Indian Penal Code and that the offence under Section 34 (G) of the Act being in the nature of a summons case under the Code of Criminal Procedure, 1973, and punishable with imprisonment for one year and fine of Rs.10,000/-, the said offence is neither a petty offence nor a summary trial case. The Tribunal accordingly dismissed the O.A.

7. Learned counsel for the petitioner has taken us through the relevant material, a perusal of which discloses the following facts. On 19-04-2009, the police seized six white plastic bags containing 122 bagpiper whisky quarter bottles which were allegedly being carried by six persons including the petitioner at Tomato Market Yard, Molakalacheruvu. The petitioner allegedly confessed that 22 quarter bottles of bagpiper 180 ml were purchased by him from Sai

¹ (2013) 7 SCC 685

² AIR 1996 SC 3300

Wines, Molakalacheruvu at a cost of Rs.51/- per bottle. Similarly, the remaining bottles were seized from the other five persons and they were arrested and released on the same day. Crime No. 26 of 2009 was registered for the offence under Section 34 (G) of the Act. A charge sheet was filed on the same day before the J.F.C.M., Thamballapalle, which was taken on file as C.C.No. 41 of 2009 on 09-06-2009.

8. The material placed before us by learned Government Pleader for Services (A.P.) shows that a letter was addressed by the Sub Inspector of Police, Molakalacheruvu Police Station, to the Prohibition & Excise Superintendent, Chittoor, wherein it is stated that the quantity of IML seized in the case is within the legal possession limits specified under the Act and that the accused came forward and remitted Rs.200/- each towards compounding fee and requested to drop further action against them. He accordingly requested the Prohibition & Excise Superintendent, Chittoor, to drop further action. On 10-12-2009, the Prohibition & Excise Superintendent, Chittoor, issued proceedings *vide* R.C.No. 41/2009/A1 referring to the aforementioned letter of the Sub Inspector of Police, Molakalacheruvu Police Station, and approved collection of compounding fee dropping further action. In his report addressed to the J.F.C.M., Thamballapalle, a copy of which has been placed by learned Government Pleader before us at the hearing, the Sub Inspector of Police, Molakalacheruvu Police Station stated as under:

"In this regard I have sent a requisition along with FIR details to Proh. & Excise Superintendent, Chittoor dated 13-11-2009 and accord dropping of further action in this case, as the liquor is within permissible quantity. I received proceedings from him R.C.No. 41/2009/A1 dated 10-12-2009 in which he is (sic) permitted to compound the case and to drop further action." (Emphasis added).

The Assistant Public Prosecutor has filed a criminal miscellaneous petition in C.C.No. 41 of 2009, wherein he referred to the report of the Sub Inspector of Police, Molakalacheruvu Police Station, to the effect that the quantities of IML seized from the possession of the petitioner and others were within the legally permissible limits under the Act; that the accused came forward to pay compounding fee and accordingly remitted Rs.200/- each and that the Sub Inspector of Police also recommended to compound the case. Learned Assistant Public Prosecutor accordingly prayed for permission to withdraw prosecution against the petitioner and other accused. Based on the said memo, learned J.F.C.M., Thamballapalle, passed an order on 06-03-2010 which reads as under:

"Heard that the learned A.P.P., on considering the facts and circumstances of the case this petition is allowed."

9. The aforementioned facts unerringly reveal the following things:
- (i) Certain quantities of IML bottles were seized from the possession of the petitioner and five others;
 - (ii) A criminal case was registered, in which a charge sheet was filed;
 - (iii) The Sub Inspector of Police, Molakalacheruvu Police Station, who investigated the crime, reported to the excise officials as well as the jurisdictional magistrate that the quantities of liquor seized from the possession of the accused were within the permissible limits under the Act;
 - (iv) On the petitioner and others agreeing for compounding the alleged offence, compounding fee was collected and the offence compounded;
 - (v) Learned Assistant Public Prosecutor filed a miscellaneous petition before the jurisdictional magistrate seeking permission to withdraw prosecution; and

- (vi) The jurisdictional magistrate allowed the request and accordingly passed orders permitting withdrawal of prosecution.

10. Under Section 34 (G) of the Act, an act of possession of any intoxicant in contravention of the Act constitutes an offence. Indeed, once the petitioner and others were found in possession of liquor within the permissible quantities under the Act, the same does not constitute an offence. From the report of the Sub Inspector of Police referred to above, it is evident that the petitioner was in possession of intoxicant within the permissible limits. Therefore, the said act of his possessing liquor does not constitute an offence at all. Nevertheless, obviously on account of fear of facing the criminal case registered against them, the petitioner and others appeared to have agreed for compounding of a non-existing offence.

11. Be that as it may, under Section 47 (2) of the Act, on the payment by the person, the sum of money or the value or both of the intoxicant, a person in custody shall be set at liberty and all the property seized may be released and no proceedings shall be instituted or continued against such person in any Criminal Court. It is specifically envisaged therein that the acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings be taken against such person or property with reference to same act. Thus, once the alleged offence against the petitioner was allowed to be compounded as was done in the instant case, Section 47 (2) of the Act comes into play and the petitioner is deemed to have been acquitted. As noted above, by order dated 06-03-2010, the jurisdictional magistrate permitted learned Assistant Public Prosecutor to withdraw prosecution. Therefore, respondent No. 3 has committed a palpable error in observing in his endorsement dated 14-11-2013 impugned before the Tribunal that the criminal case against the petitioner

ended in conviction on 06-03-2010. He also committed a further error in disqualifying the petitioner by relying on Rule 3 (G) (v) of 1999 Rules. Under the said provision, a person, who has been convicted for any offence in any Court of law, is disqualified for being appointed. The prosecution against the petitioner as noted hereinbefore was withdrawn and therefore respondent No. 3 proceeded on a wholly incorrect premise that the petitioner was convicted by the jurisdictional magistrate.

12. Coming to the plea in the counter affidavit that the petitioner is guilty of committing an offence which involves moral turpitude, the same is wholly misconceived. This plea has overlooked the material on record which clearly shows that the petitioner was found in possession of liquor within the legally permissible limits. Therefore, the question of the petitioner committing an offence involving moral turpitude does not arise. In our opinion, the Tribunal has got swayed away by the stand taken by the respondents in a superficial manner without looking into the actual record and finding out the real truth in the allegations on which the petitioner's provisional selection was cancelled.

13. In **Commissioner of Police** (1st *supra*), the Supreme Court held that as per clause (6) of Standing Order No. 398/2010, the screening committee has discretion to take appropriate decision in such cases where candidates disclosed their involvement in criminal cases and were subsequently acquitted and that if the acquittal or discharge is not honourable, but based on benefit of doubt, appointment can be denied. The ratio of this judgment does not apply to the present case for two reasons, viz; (1) the petitioner was found in possession of liquor within the permissible quantity which did not constitute an offence and (2) the alleged offence was compounded, which under the Act amounts to acquittal.

At any rate, the petitioner's provisional selection was cancelled on a totally erroneous premise that he was convicted and not on the ground that though he was acquitted, the offence involved moral turpitude which ground is taken only in the pleadings.

14. For all the aforementioned reasons, the action of the respondents in canceling the provisional selection of the petitioner based on thoroughly incorrect premises is manifestly illegal and patently arbitrary. Therefore, the endorsement dated 14-11-2013 of respondent No. 3, canceling the petitioner's provisional selection, is set aside. The respondents are directed to process the petitioner's case for appointment to the post of SCTPC. If the petitioner is otherwise fit for being appointed, he shall be appointed as SCTPC by according notional seniority with effect from the date on which he would have been appointed had his provisional selection not been set aside. The respondents shall complete this exercise within three months from the date of receipt of a copy of this order.

15. The Writ Petition is accordingly allowed with costs of Rs.10,000/-.

16. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 36317 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

GUDISEVA SHYAM PRASAD, J.

Date: 05-09-2017.

Note: L.R. Copies to be marked.

B/O

JSK