

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 290 OF 2018

MUKUND BALCHANDRA NAIK.,

... Petitioner

Versus

STATE OF GOA, THR. THE CHIEF
SECRETARY AND 2 ORS.,

... Respondents

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioner.

Mr. A. Gomes Pereira, Additional Government Advocate for
Respondent no. 1.

***Coram:- N. M. JAMDAR &
PRITHVIRAJ K. CHAVAN, JJ.***

Date:- 28 February 2018

P. C.

By this petition, the Petitioner has sought writ of mandamus directing the Respondent no. 2-Goa Shipyard Limited to forthwith revoke the letter dated 11 August 2016 and directing the Respondent no. 2 to permit the Petitioner to join duties as Office Assistant.

2. The Petitioner had applied for the post of Office Assistant, pursuant to the advertisement issued by the Respondent

no. 2-Goa Shipyard Limited. It is his case that he was given appointment letter on 20 June 2016. However, when the Petitioner went to join duties it was informed to him that he cannot do so and by order dated 11 August 2016, he was not allowed to join the duties and his appointment was withdrawn and the order was issued to that effect on 11 August 2016. It was stated in the order dated 11 August 2016 that the police verification report revealed that 3 criminal cases were pending against the Petitioner. The Petitioner thereafter was acquitted from the criminal cases and thereupon the Petitioner addressed letter and notice to the Respondent no. 2 to permit to join the duties. Since his request was not accepted, the present petition seeking a writ of mandamus is filed.

3. Mr. J. J. Mulgaonkar, the learned Counsel for the Petitioner submitted that though it is correct that there were 3 criminal cases as stated in the order dated 11 August 2016, subsequently, on 7 January 2017, the Petitioner was acquitted from the criminal case no. 128 of 2015, and in the other two criminal cases also reports were filed disclosing no case against the Petitioner. He submitted that the post is still vacant and now that there is nothing against the Petitioner, the Respondent no. 2 be directed to take the Petitioner in service. Mr. Mulgaonkar relied on the decisions of the Apex Court in the case of *Commissioner of Police And Others*

v/s. Sandeep Kumar¹ and Ram Kumar v/s. State of Uttar Pradesh And Others². Mr. Mulgaonkar submits that lenient view needs to be taken in the Petitioner's case in view of the observations of the Apex Court in the above cases.

4. We have considered the submissions. As is seen from the order dated 11 August 2016, the Petitioner was given an appointment subject to police verification. It was one of the conditions for grant of appointment that the candidate will not be eligible if there are criminal cases pending against the candidate. Therefore, once it was noticed that there were three criminal cases, which were admittedly pending on 11 August 2016, the authorities rightly passed the order of not permitting the Petitioner to join the duties. There is, therefore, no error in the order passed on 11 August 2016.

5. The contention of the Petitioner is that this court should issue writ of mandamus in view of subsequent acquittal of the Petitioner is concerned. We have gone through the judgment passed by the learned Judicial Magistrate. The Petitioner was accused in a case filed under section 353, 504 r/w section 34 of the IPC where it was alleged that the Petitioner created public disorder by throwing

1 (2011) 4 SCC 644

2 (2011)14 SCC 709

stones and engaging in brawl in public place in a drunken state. The learned Magistrate acquitted the Petitioner by giving him the benefit of doubt. It is well settled that the degree of proof required in the criminal cases, is high. But when called upon to exercise our equity jurisdiction, we have to consider the totality of the circumstances and one of the questions is whether the acquittal has been honourable, which is not. The Petitioner has applied for a public post and merely because the Petitioner is acquitted by giving him the benefit of doubt, a mandamus cannot be issued to now appoint the Petitioner after a lapse of one and half year. In the decision of *Sandeep Kumar*, the candidate was acquitted prior to his application and he had forgotten to mention that in the past there was a criminal case against him. It is in this context the Apex Court observed that lenient view should be taken. In the case of *Ram Kumar*, the candidate was dismissed on the ground of his failure to correctly state the relevant information in the application. The Apex Court held that the suppression of fact should not be held against the applicant therein in the facts of the case.

6. Taking overall view of the matter and the parameters of the writ jurisdiction, we do not find that a case is made out to set aside the order dated 11 August 2016 and to direct the authorities to appoint the Petitioner. The Petitioner can always apply in the regular

course as and when the post is advertised again, if he is eligible. The Writ Petition cannot be entertained and is accordingly rejected.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.