

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 11692 OF 2018

Santosh Prakash Sonawane

..... Petitioner

Versus

Union of India & Ors.

.... Respondents

.....

Appearance :-

Shri. Mrigesh D. Narwadkar, Advocate for the petitioner

Shri. Ravi R. Bangar, Advocate for respondent No. 1

.....

CORAM : S. V. GANGAPURWALA
AND
ANIL S. KILOR, JJ.

DATE : 07TH OCTOBER, 2019

PER COURT:-

1. It is submitted by the respondent that, the petitioner is not suitable for the appointment in the CISF as per the recommendation of the Scrutiny Committee.

2. The petitioner is acquitted in the criminal case in the year 2012. The selection process was of the year 2016.

3. The Apex Court in the case of **Avtar Singh Vs. Union of India & Others** [(2016) 6 Mh.L.J. 484] observed as under : -

30(4)(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

30(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

4. It appears that the petitioner initially had not declared of the criminal case pending against him but, within seven days thereafter, on his own volition declared the criminal case filed against him and his acquittal.

5. The recommendation of the Scrutiny Committee shows that, the petitioner is not suitable for the appointment in CISF. However, there is nothing on record to show, how the acquittal of the petitioner has been considered by the Scrutiny Committee.

6. We had asked the learned counsel for the respondent as to whether any notings have been made by Scrutiny Committee and has considered the manner of acquittal so also the nature of case involved. Nothing has been placed on record in that regard.

7. The apex Court has observed in the case of Avtar Singh (supra), that if acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee.

8. Certainly the appointing authority cannot be compelled to appoint the candidate. However, it is also necessary for the appointing authority to consider all the relevant aspects of the matter upon acquittal of a candidate in the criminal case. It does not appear that the respondents had considered all these aspects at least from the material placed before us.

9. In light of the above, we direct that, respondents shall reconsider about the suitability of the petitioner for the post of Driver in CISF on account of the acquittal in the criminal case. In the light of the observations made by the Apex Court as reproduced above, while reconsidering the same, the impugned order would not be an impediment. The same be considered on its own merits, expeditiously, preferably within four months from today.

10. The Writ Petition is accordingly disposed of. No costs.

[ANIL S. KILOR]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde