

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

WRIT PETITION NO. 14195 OF 2018

Vijay S/o. Ranu Bhoge ... Petitioner

Versus

Union of India & Ors. ... Respondents

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Shri. Ashutosh S. Kulkarni, Advocate for the petitioner
Shri. Bhushan B. Kulkarni, Advocate for respondents No. 1 to

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**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 18TH APRIL, 2019

ORAL ORDER:

1. The candidature of the petitioner has been rejected on the ground that the petitioner was involved in the criminal case and though acquitted, the acquittal was on account of either the witnesses turning hostile or not attending the court for leading evidence.

2. Shri. Ashutosh Kulkarni, learned counsel for the petitioner submits that, the post for which the petitioner had applied was a post of Driver/Constable with the respondent. Initially the candidature was rejected on the ground that the petitioner had tattoo mark. The petitioner approached this Court. This Court allowed the petition

and directed the respondents not to reject the candidature of the petitioner on the ground that the petitioner possesses tattoo mark. The learned counsel submits that, subsequently on the ground that the criminal case was filed the candidature of the petitioner is rejected. The acquittal in the criminal case is an honourable acquittal and not on the basis of benefit of doubt or on technical grounds. The judgment in the criminal case has not been read by the Committee in its proper perspective.

3. Shri. Bhushan Kulkarni, the learned counsel for respondents No. 1 to 3 submits that, the Committee has considered that the petitioner was charged for commission of a heinous crime and also the crime involving the moral turpitude. The acquittal is on the basis that the complainant had turned hostile. The Committee has considered this aspect and the memorandum dt. 01.02.2012 so also the judgment relied on by the learned counsel in the case of Avtar Singh Vs. Union of India & ors. reported in (2016) 8 SCC 471.

4. It appears that, the candidature of the petitioner is rejected as the petitioner was charged for the offences u/s 307, 324, 504, 506, 294 r/w 34 IPC. Subsequently the petitioner is acquitted of all the

charges under Judgment dt. 29.10.2016. It appears that, on the date the petitioner had filled in the application pursuant to the advertisement the petitioner was already acquitted.

5. It appears that, in the criminal case the witnesses were not examined and even the informant did not support the complaint. The employer is the best judge to consider the credentials of the candidate and whether in such case he would be suitable to be appointed. The parameters are laid down in such cases by the Apex Court in case of Avtar Singh's case (supra). It has been observed by the Apex Court in the said case 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 plain acquittal or benefit of reasonable doubt has been given, the employer may consider all the relevant facts available as to the antecedents and may take appropriate decision as to the continuance of the employee. In case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate.

6. This Court would not sit as an appellate authority over the decision taken by the Committee with regard to the suitability of the

petitioner for the said post vis-a-vis the criminal prosecution the petitioner had undergone for the charge u/s 307 of the IPC. The Committee has also observed that the petitioner is required to be deputed at sensitive places. The Committee has arrived at subjective satisfaction based on objective assessment.

7. The Writ Petition as such stands disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde