

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.21575 OF 2019

Date: 14-10-2019

Between:

Samala Anjaneyulu, S/o.S.Muthaiah,
Aged about 31 years, R/o.2-28/1, Chitryala,
Chandampet Mandal, Nalgonda District.

.....Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Home Department, Secretariat Buildings,
Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

On 31-12-2015 recruitment notification was issued to recruit candidates to the post of SCTPC AR in police department. The scheme of examination comprises of Preliminary Written Test, Physical Measurement Test, Physical Efficiency Test and final selection based on written examination. Petitioner applied for the said post. Petitioner was successful in the written examinations as well as physical efficiency test and based on his performance, he was selected provisionally. After including his name in the provisional selection list, show cause notice was issued on 06-04-2017 to the petitioner alleging that during verification it was found that Cr.No.82 of 2013 was registered against him and later charge sheet was filed and criminal Court took cognizance as SC.No.107 of 2016. Petitioner submitted written explanation explaining about pendency of crime and that he did not suppress the fact of his involvement in criminal case. Against cancellation of provisional selection by order 03-07-2017, petitioner filed WP.No.28456 of 2017. This writ petition along with few other writ petitions were considered and by common judgment dated 06-12-2017 allowed the writ petitions directing the respondents to consider the case of petitioner in terms of guidelines laid down by Supreme Court in **Avatar Singh v. Union of India**¹. In W.A.No.833 of 2018, the Division Bench slightly modified the order of learned Single Judge. After the judgment by Division Bench, the case of the petitioner was considered and by order dated 31-07-2019 his provisional

¹ (2016) 8 Supreme Court Cases 471

selection as Stipendiary Cadet Trainee police constable in Armed Reserve was cancelled. Reason assigned for cancelling provisional selection was that he was acquitted on benefit of doubt in the criminal case and therefore it is not a clean acquittal and petitioner is not entitled to be appointed as Cadet Trainee.

2. According to learned counsel for the petitioner, the impugned decision to cancel the provisional selection is erroneous. It is not the case of suppression of material fact. Petitioner disclosed his involvement in criminal case and ultimately said criminal case ended in acquittal and therefore, 3rd respondent-board erred in cancelling his provisional selection. She would submit that since petitioner was acquitted it cannot be said any more that he was involved in case of moral turpitude. She would further submit that it is not correct to contend that petitioner was acquitted on benefit of doubt. On thorough assessment of evidence on record, the finding was recorded holding that petitioner is not guilty of charges levelled against him and was discharged.

3. According to learned Standing Counsel petitioner's involvement was in grave offence and subsequent acquittal is of no relevance as he was involved in crime attracting moral turpitude. Thus as per the recruitment notification and Rule 3 (G) it is a disqualification and therefore, Board has taken right decision in disqualifying the petitioner. Moreover as acquittal was not on merits but only on benefit of doubt, his involvement in a case of moral turpitude cannot be ruled out. He would submit that as held by Division bench in W.A.No.833 of 2018 respondent board is competent to

consider the scope of Rule 3(G) read with directions/conclusions recorded by Supreme Court in **Avatar Singh** and accordingly petitioner is not entitled to be appointed.

4. Learned Standing Counsel fairly submitted on instructions that as question involved in this writ petition is a legal issue on interpretation of Rule 3 (G) and directions of Hon'ble Supreme Court in **Avatar Singh** and directions issued by Division Bench in WA.No.833 of 2018, the writ petition can be finally disposed of considering his submissions.

5. On the issue of involvement in criminal case by a candidate seeking recruitment to police force, his acquittal and entitlement was considered in catena of cases. Few relevant decisions of Hon'ble Supreme Court are noted here under.

6. In **Avatar Singh**, Supreme Court recorded its conclusions in paragraph 38. It reads as under:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. *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.*

38.5. *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.*

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

(emphasis supplied)

6.1 In Commissioner of Police, New Delhi Vs Mehar Singh²,

Supreme Court observed:

“34. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. ***At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand.***”

(emphasis supplied)

6.2 In Union Territory, Chandigarh, Administration Vs Pradeep Kumar³ also identical issue was considered by the

² (2013) 7 SCC 685

³ (2018) 1 SCC 797

Supreme Court. The candidature of successful applicants was cancelled on the ground that their acquittal was not honourable. Following the decision in Mehar Singh, Supreme Court held as under :

“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in *Inspector General of Police v. S. Samuthiram* [*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24)

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* [*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and *Parvez Khan* [*State of M.P. v. Parvez Khan*, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. ***The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.***

(emphasis supplied)

7. **Mehar Singh** and **Pradeep Kumar** noted above concern recruitment to police force. Similar issue was also considered in **State of M.P. Vs Abhijit Singh Pawar⁴** and **In State of M.P. Vs Bunty⁵**. From these decisions, it is apparent that Hon'ble Supreme Court emphasizes that a person seeking recruitment to police force must have impeccable character, integrity and high standard of conduct. Once a candidate is involved in a criminal

⁴ (2018) 18 SCC 733

⁵ 2019 SCC Online 430

case, mere acquittal does not absolve him of his criminal background and strict scrutiny is required. The appointing authority/recruiting agency has to verify the antecedents, nature of crime, nature of acquittal, whether it is based on benefit of doubt; witnesses turning hostile; was a compromise resulted in not deposing against accused; offence compounded etc. It is thus apparent that only a narrow window is available to a candidate to seek employment in police force if he was involved in a crime but acquitted. Greater latitude is given to appointing authority/recruiting agency in clearing a candidate on antecedent verification.

8. Having regard to the principles laid down by Supreme Court, within the narrow window of consideration the claim of petitioner in the instant writ petition is considered.

9. The gravamen of the allegations in the charge sheet filed by the police would disclose that mob of 38 people came from another village to the house of PW.1, used filthy language, beat PW.1 mercilessly and that they were armed with sticks and axes and threatened them with dire consequences. Petitioner was shown as A-6. From the assessment of evidence by the trial Court, it is seen that according to PW.1 accused came along with other villagers and beat him and caused injuries to his head. It is significant to note from the deposition as recorded in paragraph No.11 of the judgment that he did not notice as to who hurled axe on him. He also stated that he signed on a white paper provided by Police. Further in his cross-examination he deposed that all the accused did not come to his house armed with sticks, did not pick-up

quarrel with him and that none of the accused hurled axe on him and he did not sustain injuries. Similarly other witnesses have also deposed that they did not identify the persons who went to the accused house or who threw the axe and deposed that none of the accused quarreled with PW.1

10. It is useful to extract the observations and findings of criminal Court in Paragraphs 11 and 22, which reads as under :

“11. PW.1 who is injured cum eye witness, during his chief examination he deposed that the *accused came along with other villagers* to the house of P.W.1 armed with sticks and axes and that *one among the mob threw the axe on him* as a result, caused injuries to head. P.W.1 further deposed that, *he did not notice as to who hurled that axe on him*. P.W.1 further during his chief examination, he deposed that he signed on a white paper. But, surprisingly during the cross examination, *P.W.1 deposed that all the accused did not come to his house armed with axes, sticks and did not pick up quarrel with him and that none of the accused hurled axe on him* and he did not sustain injuries because of the same and that he deposed in his chief examination as if one among the accused hurled axe on him because the police directed him to give evidence or otherwise they will register the case against him also. So it is clear that, P.W.1 gave contradictory evidence during his chief and cross examination. PW.1 deposed against the accused during chief examination and deposed favourable evidence to accused during his cross examination. Two views are possible from the evidence of P.W.1 and it is settled principle of law that when two views are possible, the view which is favourable to the accused shall be taken into consideration. Further, the evidence of PW.1 is self contradictory appearing to be highly doubtful and for the above reasons, the evidence of P.W.1 cannot be based to convict the accused.

22. In this case, the evidence of P.Ws.1, 3 to 8 is inconsistent each other and their evidence is self contradictory. ***Absolutely there is no sufficient material to P.Ws.1, 3 to 8 and attempted to kill the P.W.1 or any other injuries. The evidence of P.Ws.1, 3 to 8 is self contradictory; therefore, the accused cannot be made convicted basing on the above evidence. Except that there is no other material on record to prove that accused committed the above evidence/offence. Therefore, in view of the above discussion and for the reasons stated above, this Court held that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt that the accused are committed the offence.*** Thus, the prosecution failed to prove the guilt of accused for the offence punishable under Sections 147, 148, 307, 324 r/w.149 of IPC ***beyond all***

reasonable doubt and the benefit of doubt shall goes to accused and accused are entitled for acquittal. Point is answered accordingly.”

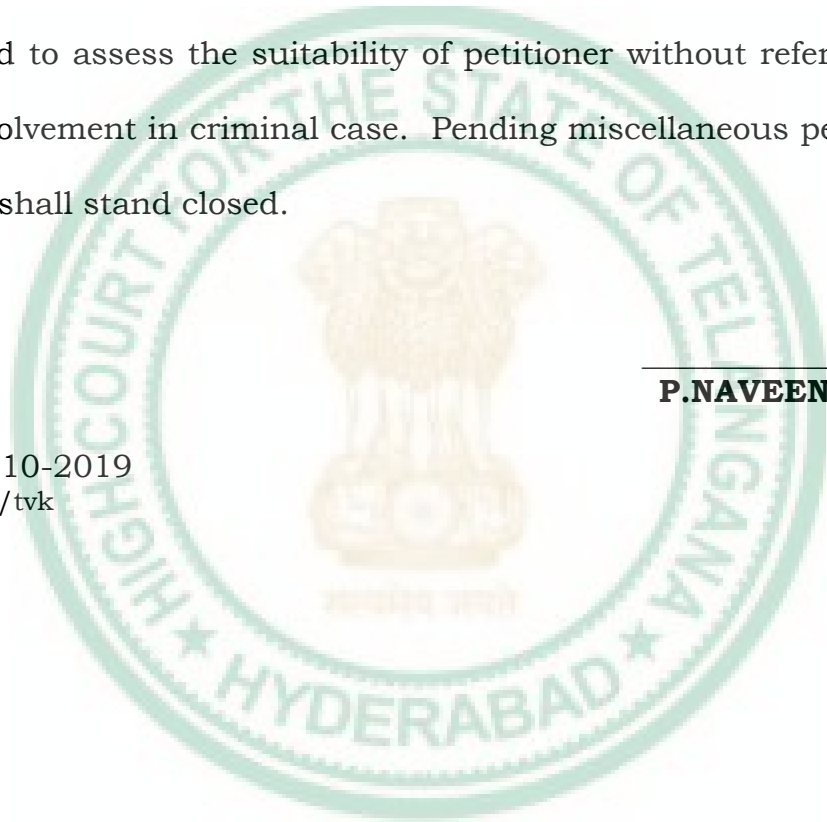
11. It is significant to note that according to some of the witnesses, mob of 200 to 300 gathered in front of the house of PW.1 and some of them hit him on his back with stick and out of them who hit PW.1 is not known and cannot be identified. It is not known why the crime was registered against 38 persons only, when according to deposition of the witnesses including P.W.1, the mob compromised of 200 to 300 persons. Thus leaving aside the alleged incident and gathering large number of people in front of the house of PW.1, the fact remains that no one has identified culprit. Presence of petitioner at the scene of offence and his involvement in the incident in any manner is not stated anywhere. If that is so, it is not known how petitioner was implicated. Having found that evidence of prosecution witnesses was contradictory, learned judge observed that the accused cannot be convicted by relying on such evidence and therefore, held that prosecution failed to prove guilt of accused beyond all reasonable doubt. Having regard to the assessment of evidence, briefly extracted above, the observation of learned Assistant Sessions Judge that accused are entitled to benefit of doubt cannot be seen in isolation but has to be seen on over all assessment of evidence and the conclusion is irresistible that it is a case of clean acquittal.

12. Having regard to these findings of the trial Court, the decision of respondent-board holding that petitioner was involved in criminal case attracting moral turpitude and that acquittal was given only on benefit of doubt is erroneous. Though no motive is

attributed to the decision of respondent Board, but it is apparent that the Board mechanically assessed the suitability of petitioner without looking into the judgment of criminal Court in toto. In the guise of exercising discretion and that it has greater latitude to decide suitability of a candidate involved in criminal case, in the facts of this case, its decision caused greater injustice to petitioner. It has mechanically proceeded to assess the suitability of petitioner and there was no application of mind. The impugned decision is set aside. The writ petition is allowed. The Respondent Board is directed to assess the suitability of petitioner without reference to his involvement in criminal case. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Dt.:14-10-2019
Nvl/Rds/tvk



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