

***IN THE HIGH COURT OF BOMBAY AT GOA***  
**WRIT PETITION No.573 OF 2014**

Netajirao Sanjay Prabhudessai,  
s/o Sanjay Krishnarao Prabhudesai,  
major of age, Indian National  
resident of House No.22, Virnoda,  
Bhaukadeviwada, Pernem, Goa.

..... **Petitioner**

***Versus***

1. The State of Goa,  
Through Chief Secretary,  
Government of Goa,  
Secretariat, Porvorim,  
Bardez, Goa.
2. Director General Of Police,  
Goa Police, Government of Goa,  
Police Headquarters,  
Panaji, Goa.
3. The Goa Police Department,  
represented herein by  
Director General of Police,  
Goa Police, Government of Goa,  
Police Headquarters,  
Panaji, Goa.
4. Superintendent of Police (HQ),  
(Staff Recruitment Officer)  
Goa Police, Government of Goa,  
Police Headquarters,  
Panaji, Goa.
5. Kiran Gopal Naik,  
major of age, resident of  
House No.21, Madhalawada,  
Ibrampur, Pernem, Goa.

6. Vikas Molu Deykar,  
major of age, resident of  
House No.708, Assoldem,  
Barcem, Quepem, Goa.
7. Utkranrao Uday Singh Desai,  
House No.24, resident of  
Merces Chapel, Vaddem,  
Vasco da Gama, Mormugao,  
Goa.

..... Respondents

Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondent No.1.

Mr. J. J. Mulgaonkar, Advocate for the Respondent No.5.

Mr. Parikshit Sawant, Advocate for the Respondent No.6 and 7.

**Coram:- M.S. SONAK &  
BHARATI H. DANGRE, JJ.**

**Reserved on:-20<sup>th</sup> January, 2021**

**Pronounced on:- 27<sup>th</sup> January, 2021.**

***JUDGMENT: (Per Bharati H. Dangre, J.)***

1. “We are products of our past, but we don't have to be prisoners of it”.

What Rick Warren, a Christian pastor said, may not hold true in all circumstances and the present case before us, is one such circumstance.

On being dejected by his non-selection to the post of Police Sub-Inspector in Goa Police from the category of Children of Freedom Fighters on the ground that 3 criminal cases are registered against him and in ignorance of his acquittal in all these cases, the petitioner has invoked the writ jurisdiction of this Court. He seek a relief of revoking the impugned letter communicating him the decision of his non-selection and seek a mandatory direction to issue an appointment order in favour of the petitioner. The petitioner also pray for quashing and setting aside the appointment order in favour of respondents no.5, 6 and 7 to the post of Police Sub-Inspector of Goa Police since, it is the case of the petitioner that, in the similar circumstances the appointment orders have been issued in their favour. At the outset, the learned counsel for the petitioner Mr. Ryan Menezes state that he is instructed not to press prayer clause (aa) to the petition.

2. On 24.08.2012, the Goa Police Department issued an advertisement in local daily newspapers and also on its website inviting applications from eligible candidates for appointment by direct recruitment to the post of Police Sub-Inspector, in the Pay Band of ₹9300-34800 + Grade Pay of ₹4200/- alongwith the permissible allowances. Total 105 posts were advertised which included two posts reserved for the Children of Freedom Fighters. The advertisement set out the essential qualifications both

educational as well as the physical parameters and contemplate undergoing of physical efficiency test which was a qualifying criteria for selection.

3. The petitioner, being qualified as per the essential qualifications of the advertisement, filed his application from the category of ward of Freedom Fighters since his father has been a freedom fighter during Goa struggle for liberation. For the said category, age relaxation of 5 years was permissible. Since the petitioner met with the prescribed requisite parameters he was allowed to participate in the selection process and received a call letter for verification of his documents and undergoing the physical efficiency test. Since he met the necessary requirements and also cleared the physical efficiency test, he was permitted to appear for the written examination and was called for an oral interview at Police Headquarters, Panaji-Goa. On the process being completed, on 20.01.2013 the select list of candidates was published and the name of the petitioner featured in the said list from the category of Children of Freedom Fighter. By memorandum dated 23.09.2013, an offer letter for appointment as Police Sub-Inspector was issued to the petitioner which was however subject to verification and genuineness of the certificates produced by the candidate regarding his educational qualifications, age, caste, category, etc.

4. The petition state that when 87 selected candidates were

directed to report for training by letter dated 25.10.2013 and even one contemporary of the petitioner came to be appointed against one post reserved for Children of Freedom Fighters, the petitioner was not issued an order of appointment and he was eagerly awaiting in anticipation for the order of appointment. Pertinent to note that the character verification of the candidates who were offered letter of appointment was a part of the selection process and by letter dated 30.09.2013, a reference was sought qua the petitioner to the effect that in view of the past criminal cases where the petitioner was discharged/acquitted, whether he can be considered for appointment. The 3 criminal cases were referred against the name of the petitioner. The petitioner, thereafter, refer to heap of correspondence made by him as well as his father by making repeated representations to the Authorities seeking his appointment in light of his selection. All these representations form part of the writ petition. It is only on 16.07.2014, it was informed to the petitioner that a decision has been taken not to appoint the petitioner and the case of the petitioner rest on the unreasoned decision communicated to him and the learned counsel would revolve his arguments around the discriminatory approach of the respondent Authorities in selecting some candidates in spite of criminal antecedents and a decision by the Director General of Police without reflection of his mind.

5. The learned counsel Mr. Ryan Menezes would question the decision of the respondent Authorities and would urge before us

that though the petitioner had brush with law in the past in the form of 3 criminal cases registered respectively in the year 2003, 2005 and 2011, he has been acquitted in 1 case and has been discharged in the other and in the third case of the year 2005, there was a compromise effected and, therefore, the prosecution did not proceed. The learned counsel has invited our attention to the noting of the Home Department which form part of the petition and he would urge that, the only reason of his dejection is to be contained in the said noting and it is recorded that though he has been acquitted/discharged, there are 4 matters indicating violence and since in of the cases against him, he was charged relating to morality, his candidature was not worth consideration. The learned counsel urge, perusal of the FIRs in all the cases would disclose that the incident had occurred at the spur of the moment and he is not, in any case, a hardened criminal but only a candidate with criminal antecedents.

He place reliance on the judgment of the Apex Court in the case of *Commissioner Of Police And Ors vs. Sandeep Kumar*<sup>1</sup> where it has been held that young people often commit indiscretion and such indiscretion can often be condoned since it is the age which has to be taken into account rather than to brand them as criminals for rest of their lives. He would also rely upon the judgment of the Apex Court in the case of *Mohammed Imran vs. State of Maharashtra and Others*<sup>2</sup> to substantiate his arguments that there

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<sup>1</sup> 2011 4 SCC 644

<sup>2</sup> AIR 2018 (SC) 4895

cannot be any mechanical or rhetorical incantation of moral turpitude to deny any appointment and every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement.

6. We have also heard the learned Additional Government Advocate, Mr. Sagar Dhargalkar for respondent no.1. Inviting our attention to the notings appended to the writ petition he would submit that it is the criminal cases registered against the petitioner which render him unfit for being appointed to a disciplined force like the Police Department and he would urge that in order that a candidate is recruited to the Police Department, he must be worthy of confidence, of impeccable character and integrity. He would further submit that verification of character and antecedents is one of the important criteria to assess the suitability of the candidate and since the petitioner had cases registered against him and in spite of the fact that they had either resulted into acquittal or his discharge, it cannot be presumed that he was completely exonerated. He would take his submission further and urge that the persons who are likely to erode the credibility of the Police ought not to enter police force and he relied upon the following judgments of the Supreme Court in support of his contention:

(i) *State of Madhya Pradesh and Others vs. Parvez Khan*<sup>3</sup>;

(ii) *Commissioner of Police, New Delhi And Another vs.*

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<sup>3</sup> (2015) 2 SCC 591

*Mehar Singh*<sup>4</sup>;

*(iii) Union Territory, Chandigarh Administration And Others vs. Pradeep Kumar And Another*<sup>5</sup>.

7. The facts not being in dispute, we proceed to deal with the neat issue on the ground of criminal antecedents of a candidate, who is either acquitted or discharged from the criminal case would deserve an appointment in the police force, which is one of the disciplined force and which is responsible for shouldering the responsibility of maintaining law and order.

8. The impediment in the wake of the petitioner gaining entry in the police force is the registration of 3 offences against him. In the year 2003, criminal case no.33/S/2003 came to be registered against him for the offences punishable under Section 332, 353, 504 and 506(ii) of the IPC. The prosecution case before the JMFC at Pernem was that on the given date, the accused (petitioner) was coming from a no entry road and when questioned by the complainant, a police constable, refused to give his name and when asked to accompany him at the Police station, he hurled abuses at him and also inflicted blows by means of fists and kicks resulting into injuries of simple nature. On being chargesheeted he pleaded not guilty. On appreciation of the evidence placed before the Court, the Court tried him for the offences with which he was charged. Section

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<sup>4</sup> (2013) 7 SCC 685

<sup>5</sup> (2018) 1 SCC 797

353 prescribe penalty for assaulting or using criminal force to deter public servant from discharge of his duty. Section 332 make the act of voluntarily causing hurt to deter a public servant from discharging his duty a punishable offence. The charge was also framed under Section 504 and 506 which prescribe punishment for criminal intimidation. The learned Magistrate on appreciation of the evidence recorded that in the absence of sufficient material evidence on record the accused cannot be held guilty of offence under Section 353 and 332 of the IPC. As far as Section 506 is concerned, the Court recorded that PW-2 had stated that the accused threatened the complainant with dire consequences but there was no recording in the police dairy to show that PW-2 was on duty at the time when the incident took place and further, there was no corroboration to his version and particularly when there was a huge crowd in the market when the incident took place. Thus, by concluding that all the evidence brought on record by the prosecution is not sufficient to prove the guilt of the accused beyond reasonable doubt, he was acquitted by judgment dated 29.09.2003. Another criminal case no. 6/S/2005, where Section 341, 504 and 506(ii) of IPC is invoked, the applicant who was arraigned as accused came to be acquitted on account of the application filed under Section 320 of the Cr.P.C. for compounding the matter was allowed. The third case registered against the petitioner is criminal case no.43/S/2011 and charge was framed under Section 354, 384, 425 of IPC. The JMFC Pernem discharged the applicant alongwith the co-accused since it was

revealed that the complaint was filed against two unknown persons alleged to have committed the offence but in the identification parade the victim had identified only accused no.1(petitioner) and in the absence of material on record to show involvement of accused no. 2 and 3, they came to be discharged.

9. In the backdrop of these orders the petitioner has canvassed before us that he is not a hardened criminal and after 2011 has not indulged in any act warranting registration of an offence. His acquittal in the 3 cases has attained finality and grave injustice has been caused to him by attributing criminal antecedents to him.

10. The Hon'ble Apex Court in *Commissioner of Police, New Delhi And Another vs. Mehar Singh* (supra) was dealing with the case of a candidate who was ousted from the selection process in the backdrop of his criminal antecedents. The candidate Mehar Singh had indulged in an act of assaulting a bus conductor with iron chains, lathis, danda and stones and of causing injuries which, according to the Screening Committee, was a depiction of his violent nature and scant respect for law of the land. On consideration of the arguments and by referring to Standing Order determining the policy for deciding cases of a candidate provisionally selected in Delhi Police (facing trial or acquittal) whether certain offences involving moral turpitude were categorised in annexure 'A' and on examining the judgment of acquittal, the Apex Court observed as under:-

*'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.'*

In a subsequent judgment in the case of *State of Madhya Pradesh And Others vs. Parvez Khan* (supra), a case of denial of compassionate appointment of a candidate in police force with criminal antecedents and who claim parity with other candidates who came to be recruited in spite of the criminal cases being registered

against them and being appointed on compassionate ground, the Apex Court relying upon the judgment in the case of *Mehar Singh* (supra) observed as under:-

*'13. From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have 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 completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational. There is no material to show that the appellant was falsely implicated. Basis of impugned judgment is acquittal for want of evidence or discharge based on compounding.'*

Further, on the plea of parity with two other persons who were recruited, was also dealt with in paragraph 14 and the same is reproduced as under:-

*'14. The plea of parity with two other persons who were recruited can also not help the respondent. This aspect of the matter was also gone into by this Court in Mehar Singh (supra) and it was held: (SCC p. 704, para 36)*

*"36. The Screening Committee's proceedings have been assailed as being arbitrary, unguided and*

*unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (Fuljit Kaur (2010 (11) SCC 455). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”*

Another judgment on which Mr. Dhargalkar has placed reliance in the case of *State of Madhya Pradesh and Ors. vs. Abhijit*

*Singh Pawar*<sup>6</sup>, which involve the aspect of character verification of candidates. An application was filled up by the respondent and when he participated in the selection process, as mandated he tendered affidavit disclosing the information that a case was registered against him in the year 2006 and it was pending on the date when the affidavit was tendered. However, within 4 days a compromise was entered into between the complainant and the respondent (accused) and the application for compounding of offence was filed under Section 320 of Cr.PC. The respondent was selected in written examination and called for medical examination. On consideration of character verification report, his candidature was rejected by the Additional Director General of Police and this is how the controversy landed before the Apex Court on an appeal being filed by the State of Madhya Pradesh wherein the High Court had directed that the petitioner shall be appointed as he was entitled for the appointment to the post on the basis of his merit. While dealing with the factual aspects involved and after making reference to the earlier judgments in the case of *Mehar Singh* (supra), the Apex Court held as under:-

*'15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be*

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<sup>6</sup> 2018 (15) SCALE 154

*well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.'*

11. Reliance was sought to be placed on the judgment of the Apex Court in the case of *Mohammed Imran* (supra), and the ratio of the said judgment came to be distinguished in paragraph 16 and 17 of the said law report which read as under:-

*'16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohammed Imran (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohammed Imran (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Mehar Singh (supra), Parvez Khan (supra) and Pradeep Kumar (supra).*

*17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the*

*question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs.'*

12. Lately, the apex court while dealing with an appeal filed by the *State of Odisha and Others vs. Gobinda Behera*<sup>7</sup>, was dealing with a situation of the respondent applying for appointment to the post of Constable in the Odisha State Police and specifically stating that he was not involved in any criminal case, he came to be appointed and on verification of his character and antecedents, he was found to be involved in a criminal case. On seeking explanation, he was discharged from service. The Tribunal rejected the original application on the ground that a false declaration was submitted by him. The High Court set aside the order of the Tribunal holding that the criminal proceedings have already been quashed and that the suppression was of a trivial nature. Relying upon the earlier judgments in the case of *Avtar Singh vs. Union of India*<sup>8</sup>, Their Lordships held as under:-

*'7. The respondent was seeking public employment in the State police service. His duties, on appointment to the service, would be of a responsible character, bearing intrinsically on the maintenance of law and order and with consequences for personal liberty of citizens. To expect that an applicant for such a position would be*

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<sup>7</sup> 2020 SCC OnLine SC 199

<sup>8</sup> (2016) 8 SCC 471

*truthful in the disclosure of information sought about the antecedents is a justifiable basis for assessment of personality and character. The employer can legitimately conclude that a person who has suppressed material facts does not deserve to be in its employment.*

*8. In the present case, the case against the respondent cannot be regarded as being trivial in nature. That apart, it is evident that, despite being involved in the criminal case, the respondent suppressed these facts from the authorities while applying for the post of a Constable in the State Police. The criminal case was quashed in exercise of the jurisdiction under Section 482 of CrPC on the basis of a compromise between the parties much after the order of discharge. Hence, the view which has been taken by the High Court is palpably unsustainable. The Tribunal was justified in rejecting the application.'*

13. From the aforesaid authoritative pronouncements from the apex court, the position of law emerge in a luculent manner. The cases registered against the petitioner in which he had a tiff with law is reflective of his errant, unruly, rebellious behavior demonstrating no respect for law. Though the justification offered by the petitioner that the incident had occurred at the spur of the moment, in the background of such a nature of the petitioner and which has been recorded in the noting to be a violent behavior would not justify his appointment in a disciplined force. The police force which is expected to be in control of law and order and at a situation a police personnel would have to retain his poise and stature even if he is dealing with the most heinous and cantankerous criminal, the nature of hostility is not affordable to a police personnel. The verification of

character and the antecedents is one of the important criteria to test whether the candidate is suitable for appointment in police department. Just because he was acquitted or discharged in a criminal case, and since we have exhaustively referred to the reasonings of the trial courts acquitting him, do not exonerate him completely but on the benefit of doubt he has secured acquittal.

14. Criminal behavior, particularly violent and antisocial behavior is considered to be a major social problem with complex causes. Interrelated factors including, low educational level, social inequality, poverty, low self-esteem and impulsivity. The peak of offending behaviour is in the teenage years and most of these young lads in the group 'grow out of' crime. Criminal behavior itself may not be indicative of any sort of mental illness and, if it was so, it could have been treated medically. The study of criminology over the globe reveal that some of the traits of the said behaviour are related to factors like impulsiveness, temperamental issues, including hostility resulting into aggression. The future influences the present just as much as the past.

As a concern has been expressed by the Hon'ble Apex Court in case of *Mehar Singh* (supra), in paragraph 35, in recent times when the image of police force is at stake and the instances of police personnel behaving in a wayward manner by misusing the powers conferred on them is a matter of concern, the apprehension of the selecting authority that a candidate like the petitioner would only

strengthen that image and if the employer do not consider his candidature worthy of confidence and find him not suitable to be appointed, we do not think that we can exercise our judicial discretion and issue a writ in the nature of mandamus.

15. The petitioner, therefore, is not successful in making out a case for interference and the writ petition deserve to be dismissed and is accordingly dismissed. Easy on costs.

*BHARATI H. DANGRE, J.*

*M. S. SONAK, J.*

msr.