

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12059 OF 2022

Chandrauday Bipinchandra Nerkar Petitioner

Vs.

The State of Maharashtra & Ors. Respondents

Ms.Shubhada D. Khot a/w Ms.Ameeta Kuthikrishnan for the
Petitioner

Mr.M.M.Pabale, A.G.P. for the State / Respondent nos.1 to 6

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : APRIL 5, 2023

P.C.

1. The Petitioner had applied for the post of Assistant Engineer (Civil) Grade --II, Group-B from SC category. After the ordeal of the oral and written examination, the Petitioner was recommended. Appointment was not issued to the Petitioner. The Petitioner approached the Maharashtra Administrative Tribunal (the **Tribunal**) by filing Original Application. The Original Application is dismissed. Aggrieved thereby, the present Writ Petition.

2. The learned Counsel for the Petitioner submits that the Petitioner had not suppressed the fact of pendency of criminal case against him. In the attestation form, he had specifically mentioned

that he was arrested and was facing prosecution. After considering the application of the Petitioner and his attestation form, he was allowed to appear for written and oral examination. The Petitioner succeeded in the selection. Eventually the MPSC recommended his name. The learned counsel submits that though the offence under section 376 of the Indian Penal Code was registered against the Petitioner, he was later acquitted in the criminal case by the Sessions Court under its judgment and order dated 26.10.2015. The learned counsel submits that the said acquittal is a clean acquittal and not an acquittal based on benefit of doubt.

3. The learned Counsel submits that in such a case, the Respondents ought to have considered the Petitioner for appointment. The learned counsel relies upon the judgment of the Apex Court in the case of *Mohammed Imran vs. State of Maharashtra delivered in Civil Appeal No.10571 of 2018 dated 12.10.2018*. The learned counsel submits that even the Apex Court in the said case considered that every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. According to the learned counsel, the Respondents may directed to appoint the Petitioner.

4. We have heard the learned A.G.P.

5. The Petitioner is not appointed on the ground that he was facing serious charges under section 376 of the Indian Penal Code. The name of the Petitioner was recommended in the year 2014. On the said date, the Petitioner was facing prosecution for the offence under section 376 of the Indian Penal Code. The Petitioner was acquitted on 26.10.2015. The Petitioner accepted the relationship with a married women (prosecutrix). It was the case of consensual relationship with a married women. The Petitioner is unmarried as contended by the learned Counsel for the Petitioner. The fact of the Petitioner acknowledging consensual relationship with a married women is a factor which certainly has weighed with the Respondents. The said factor cannot be said to be totally irrelevant for not considering the Petitioner for appointment.

6. In the case of ***Mohammed Imran*** (Supra), the Petitioner therein was not charged and was not a prime accused for an offence under section 376 of Indian Penal Code. The allegation against the said Petitioner was that he was travelling in an auto-rickshaw with another, following the auto-rickshaw in which the prime accused, charged for the offence under section 376 of the Indian Penal Code, was travelling with the girl in question.

7. In the present case, the fact of the consensual relationship of the Petitioner with a married women is accepted by him and the

same was his defence. The said defence was accepted and the case of prosecutrix of the Petitioner committing the offence under section 376 of the Indian Penal Code was not proved. The Petitioner was charged with a serious offence at the time when his case was under consideration. We do not find any error committed by the Tribunal while passing the impugned order.

8. Writ Petition is dismissed. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)