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WP-18623-2017

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 4<sup>th</sup> OF OCTOBER, 2024WRIT PETITION No. 18623 of 2017*AKENDRA RAGHUWANSHI**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Rajeev Upadhyay, Advocate for the petitioner.

Shri S.S. Kushwah, Government Advocate for respondents/State.

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ORDER

With the consent of both parties, matter is finally heard.

2. Petitioner has preferred this petition under Article 226 of the Constitution of India seeking following reliefs:-

"(i) That, the order dt. 04-09-2017 (annexure P/1) may kindly be quashed.

(ii) That, the order dated 25-09-2017 (annexure P/2 may kindly be quashed.

(iii) That, it may be held that the petitioner is eligible and qualified to appoint on the post of Constable (Driver) and consequently the respondents may kindly be directed to appoint/join the petitioner on the post of Constable (Driver) and accordingly all the benefits be given to the petitioner.

(iv) That, the other relief doing justice including cost be



awarded."

3. Brief facts of the case are that the petitioner has submitted his candidature for the post of Police Constable in the respondent department. Result of written examination was declared and petitioner was found qualified for second stage. He also qualified in the physical test. He has furnished all the information and stated in column 12 that two cases were instituted against him, in which he has been acquitted in both the cases by the competent Courts. Nothing has been suppressed by him. Respondent vide impugned order dated 04.09.2017 (Annexure P-1) has declared unfit/disqualified the petitioner for police services as his acquittal is not found in the category of clean or hon'ble acquittal. He has been acquitted in one criminal case on the basis of compounding offence and in other matter, the concerned Court has passed the judgment under Section 232 of CrPC and on the basis of non-availability of any evidence against him, he has been acquitted. Being aggrieved by the aforesaid, petitioner has preferred this petition.

4. Per contra, learned counsel for the respondents/State, in their written submission, submitted that as per the law laid down by the Hon'ble Apex Court in the case of **Avtar Singh Vs. Union of India and others** reported (2016) 8 SCC 471, it is a discretion of an employer to decide whether the appointment of the petitioner is suitable in public interest or not, which has been duly decided by the respondent in accordance with law. Petitioner's acquittal cannot be considered as beyond reasonable doubt and hon'ble acquittal, therefore, the petitioner is not entitled for any relief and



petition deserves to be dismissed.

5. Learned counsel for both the parties heard at length and perused the documents filed by them carefully.

6. Jurisdiction of the High Court in the writ petition under Article 226 of the Constitution of India is to examine the decision-making process, than to act as Court of Appeal to substitute its own decision. In appropriate cases, if the Court finds that decision-making process is arbitrary or illegal, the Court will direct the authority for consideration rather than to substitute the decision of the competent authority with that of its own. In the case at hand, as evident petitioner has fairly disclosed the fact about the criminal cases, wherein he was acquitted. This information apparently is the foundation of passing of the impugned order dated 04.09.2017 (Annexure P-1). It is admitted position that only Crime No.359/2015 at Police Station Mungawali, District Ashoknagar, for offence under Sections 323, 341, 506 (Part-II) read with Section 34 of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, has been registered against the petitioner and vide order dated 14.06.2017 under Section 232 of CrPC, he has been acquitted from the aforesaid charges. Another matter, i.e., Crime No.360/2013 at Police Station Isagarh, District Ashoknagar for offence under Sections 147, 294, 323, 325, 341 and 506-B of IPC has been registered against the petitioner and on the basis of compounding the offence under Section 320(2) of CrPC, he has been acquitted vide judgment dated 08.04.2017.

7. The Hon'ble Apex Court in the case of **Avtar Singh (supra)** held as



under:-

"Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. In the concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. 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."

8. The Hon'ble Apex Court in the case of **State of Madhya Pradesh and others Vs. Parvez Khan** reported in (2015) 2 SCC 591, it has been observed in Paras 10 to 13 that:-

"Person having criminal antecedents would not fit into said category since even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated - Persons likely to erode credibility of police ought not to enter police force - On



facts held, in absence of any allegations of mala fides against the SP who was the appointing authority, or any perversity or irrationality in his decision finding respondent ineligible for compassionate appointment because of his implication in two criminal cases, impugned judgment directing reconsideration of respondent's case unsustainable"

9. Learned counsel for the petitioner placed reliance upon the order of this Court in the case of **Bhupendra Yadav Vs. State of Madhya Pradesh and others** [W.A. No.46/2018 order dated 24.01.2018], order passed by the Division Bench of this Court in the case of **Pankaj Singh Tomar Vs. State of Madhya Pradesh and others** [W.A. No.723/2021, order dated 09.09.2024] and judgment passed by Division Bench of this Court in the case of **Monu Singh Vs. State of Madhya Pradesh and others** [W.A. No.55/2023, judgment dated 24.07.2024] but facts and circumstances of all citations are distinguishable with the facts of the present case, therefore, these citations are not applicable in the instant matter.

10. In view of the law laid down by the Apex Court in the cases of **Avtar Singh (supra)** and **Parvez Khan (supra)**, this Court is of the considered opinion that acquittal in a criminal case does not automatically entitle the petitioner 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 Hon'ble Apex Court in the case of **Parvez Khan (supra)**, it is clear that a candidate to be recruited to the police service must be 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 hon'ble acquitted or completely exonerated. The decision of the Screening Committee must be taken as a final unless it is shown to be malafide and decision of criminal Court on the basis of compromise cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence, whereas the appointment to the civil post is in view of his suitability to the post, whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters, therefore, acquittal in a criminal case is not a certificate of a good character to a candidate. There is no allegation of malafide against the person taking said decision nor the decision is shown to be perverse or irrational. There is no material to show that the petitioner was falsely implicated.

11. The Hon'ble Apex Court in the case of **Parvez Khan (supra)**, it is also held in Para 35 that:-

"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....."

12. In view of the aforesaid, this Court is of the considered opinion that the impugned order dated 04.09.2017 (Annexure P-1) passed by the Screening Committee rejecting the claim of the petitioner for recruitment to the police service is just and proper, therefore, no case is made out warranting interference in this matter.

13. Accordingly, this petition being devoid of merit and substance is hereby **dismissed**.

(ANIL VERMA)  
JUDGE