

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 708 OF 2015

DISTRICT : MUMBAI

Sahebrao s/o Rupla Rathod,)
Age: 41 years,)
Occu : Selected Candidate,)
R/o. Anjanwada, Tq. Aundha Nagnath)
Dist. Hingoli.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through the Secretary, Home Department,)
Mantralaya, Mumbai.)
2. The Police Commissioner,)
Mumbai.)...**Respondents**

Shri A.R. Rathod, learned Advocate for the Applicant.
Smt A.B. Kololgi, learned Presenting Officer for the
Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 15.11.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

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J U D G E M E N T

1. Heard Shri A.R. Rathod, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Chief Presenting Officer for the Respondents.


2. This O.A. has been filed by the Applicant challenging the communication dated 14.08.2015 issued by the Respondent No. 2 informing that the Applicant was ineligible to be appointed as Police Constable under Rule 5 of the Maharashtra Police Constable (Recruitment) Rules, 2011. The Applicant is also seeking appointment as Police Constable on the establishment of the Respondent No. 2.

3. Learned Counsel for the Applicant argued that in Maharashtra Police Recruitment - 2014, the Applicant was selected from Open - Part Time employee (अंशकालीन) category and was informed accordingly by the Respondent No. 2 by letter dated 07.08.2014. The selection of the Applicant was subject to verification of character and antecedents. The Applicant had faced trial in session case no. 10 of 1992 before Additional Sessions Judge, Hingoli, Dist. Parbhani under section 376, 341 etc. of I.P.C. However, by judgment dated 24.12.1993, the Applicant was acquitted. The Applicant was found innocent of crime of rape. Learned Counsel for the Applicant argued that the Applicant cannot be denied appointment only on the fact that he was tried for rape, though he was found innocent. Learned Counsel for the Applicant argued that the date of birth of the Applicant is

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05.11.1974 and he was a juvenile under the provision of the Juvenile Justice (care and Protection of Children, Act, 2000 (and the Juvenile Justice Act of 1986), when the alleged offence took place on 10.09.1991. The Applicant could not have been tried in a sessions trial as an adult.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was provisionally selected as Police Constable in Maharashtra Police Recruitment – 2014 by the Respondent No. 2. This selection was subject to verification of character & antecedents. As per Rule 5 of the Maharashtra Police Constable (Recruitment) Rules, 2011, case of a candidate, who had faced criminal trial before recruitment, has to be placed before the High Power Committee of the Government. As the Applicant was an accused **inter-alia** under section 376 of I.P.C. in Sessions Case No. 10/92 in the Court of Additional Sessions Judge, Hingoli, his case was referred to the High Powered Committee, who found him unfit for appointment to the post of Police Constable. The Respondent No. 1 informed the Respondent No. 2 by letter dated 30.07.2015 and the Applicant was informed accordingly. Learned P.O. argued that a person aspiring to be appointed in the Police force must be worthy of confidence and must have impeccable character and integrity. The Applicant was acquitted in the criminal case as the witness turned hostile. Considering the fact that the Applicant was accused of a heinous crime of rape, and he was acquitted as witness turned hostile, he was




vaguely not found suitable for appointment as Police Constable.

5. It is seen that the High Powered Committee in its meeting held on 29.06.2015 has found the Applicant not suitable as he did not disclose the information about the criminal case, which was filed against him and in which he was acquitted, in the attestation Form. First, let us examine whether the Applicant was found innocent as claimed by him. In the Judgment dated 24.12.1993 delivered by learned Additional Sessions Judge, Hingoli, regarding rape on the prosecutrix, learned Additional Sessions Judge has recorded as follows.

“But, the Medical Officer, also negated theory of the prosecution, because in the certificate itself, M.O. opines that there was no any sign of rape on the said lady. No any injuries were found on the private part of the said lady. Hymen was also found intact and there was no sign of violence on the private part of the said lady. Accordingly certificate was issued. So, medical evidence is also not supporting the case of prosecution in respect of commission of said rape.”

6. It is clear that medically the offence of rape was not proved. Main witness i.e. prosecutrix did not support the case of prosecution. Considering these facts, it is quite clear that the Applicant was innocent, in so far as the crime of rape is concerned. Regarding other offences also, no evidence



was found. In the attestation form submitted by the Applicant on 11.08.2014, he did not disclose the information that he was arrested in a case of rape and also did not disclose the details of the Sessions case in which he was tried. He was, held ineligible for the post as he did not disclose full facts truthfully in the attestation form. In the case of **Avtar Singh v/s. Union of India and others in Special Leave Petition No. 20525/2011, Hon'ble Supreme Court** has held that while deciding fitness for appointment under the state, the following principles will apply, viz.:

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

- (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.
- (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 sub information.”

In Sub para (4), Hon'ble Supreme Court has observed:



“(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 recourse appropriate to the case may be adopted.

(C) 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 continue of the employee.”

7. In the present case, ~~there was~~ no evidence was found against the Applicant of offence of rape. In fact, medical evidence was quite clear that the offence of rape has not taken place at all. In our opinion, the case of the Applicant comes under clean acquittal and not on the technical ground or on benefit of doubt. This case is, therefore, required to be

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considered under sub para 4 (c) of the para 30 of the judgment of Hon'ble Supreme Court. The Applicant, therefore, deserved to be considered for appointment as a Police Constable. As held by Hon'ble Supreme Court in the aforesaid judgment that the false information can be ignored in a case of conviction for an offence of '**trivial**' nature, in the case of clean acquittal in any case, whether heinous or trivial, the same criterion will have to be applied.

8. Having regard to the aforesaid facts and circumstances of the case, communication dated 14.08.2015 from the Respondent No. 2 is quashed and set aside. Also, the decision of the High Powered Committee in its meeting held on 29.06.2015 to hold the Applicant ineligible for appointment to the post of Police Constable is quashed and set aside. The Respondents are directed to appoint the Applicant as Police Constable, if he is otherwise found fit, within a period of one month from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)
15.11.2016

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
15.11.2016

Date : 15.11.2016

Place : Mumbai

Dictation by : NMN

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