

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 915 OF 2024

DISTRICT : SATARA

Mr Vivek Rajendra Chavan,)
Occ-Nil, R/at Dhawadshi,)
Tal and Dist-Satara.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department,)
Madam Cama Road,)
Hutatma Rajguru Chowk,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Pimpri Chinchwad,)
Near Swatantraveer Sawarjar)
Garden, Premlok Park,)
Chinchwad, Pune-19.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Vinay Joshi (Member) (J)
Shri A.M Kulkarni (Member) (A)

DATE : 05.12.2024

PER : Justice Vinay Joshi (Member) (J)

J U D G M E N T

1. Rule made returnable forthwith. Heard finally with consent of both the parties

2. This is an application of successful candidate who has been selected for the post of Police Constable, however, his candidature has been cancelled on account of prior antecedents, namely, a criminal case. The Respondents vide communication dated 18.7.2022 informed to the applicant that though he was selected for the post of Police Constable, however, as a crime was registered against him for offence punishable under Sections 454, 457, 380, 427 and 34 of IPC, at Satara, his candidature was rejected. Though applicant was acquitted from the charges, however, on evaluation by the Committee, it was held that he cannot be appointed to the said post. Being aggrieved by the said communication, the applicant has preferred an appeal to the Government, i.e., Principal Secretary (Appeals and Security). After hearing both sides the Appellate Authority on evaluating the material on record, was pleased to uphold the decision regarding applicant's ineligibility for the post of Police Constable. Being aggrieved by the said decision and principally due to rejection of his candidature, the applicant is before this Tribunal.

3. Learned counsel appearing for the applicant has canvassed that the applicant has not suppressed the pendency of criminal case while applying for the post of Police Constable. After considering his application, Admit Card was issued and he was allowed to appear for the examination. In turn, he succeeded and included in the merit list. After selection the applicant has also undergone medical examination. In the meantime, the applicant was acquitted in the pending criminal case which he did inform. According, to the applicant there was no suppression of facts nor he was convicted from the charges. On these grounds the applicant would submit that the rejection of his candidature by the authority is wholly illegal and is against the law.

4. Learned P.O resisted this Original Application by contending that it is discretion of the employer to give an appointment on such a background. Irrespective of the acquittal by the Criminal Court, the authority bears the power to evaluate the material co-relating to the character and can take decision on the basis of facts. It is submitted that it was not a case of honorable acquittal but merely as the witnesses turning hostile to the prosecution, the criminal case ended into acquittal. Lastly, it is submitted that the applicant is aspirant for a post in Police Department and thus a person having antecedents of lurking house trespass and theft cannot be appointed in the disciplined force. Therefore, the impugned action is well justifiable. Both the learned counsel have relied on various

decisions to substantiate their respective contentions, to which we are coming after short while.

5. So far as factual aspect is concerned, there is no dispute between the parties. The applicant belonging to VJ (A) category has applied for the post of Police Constable in the recruitment held in the year 2019. A crime was registered against the applicant vide C.R No. 675/2018 for offences punishable under Sections 454, 457, 380, 427 and 34 of IPC, at Satara. The applicant has disclosed about the pendency of crime while applying for the post. It is not in dispute that the applicant was allowed to appear for the examination and stood in the merit list. The applicant has also undergone the medical examination. In the meantime, criminal case was tried and applicant was acquitted by the learned Chief Judicial Magistrate, Satara vide its judgment and order dated 23.2.2022 in RCC No. 497/2018. It is also not in dispute that in pursuance of Government Resolution a Special Committee has considered applicant's eligibility on the touchstone of pendency and result of criminal case, on which the Committee opined that the applicant is not fit to be appointed in Police Force. Later, the said decision was upheld by the Respondent-State in appeal. In the above background, the short question arises for consideration is whether the impugned decision of declining the applicant's candidature to the post of Police Constable is justifiable or maintainable within the four corners of law.

6. The applicant's learned counsel initially relied on the decision of the Hon'ble Supreme Court in the case of Brahma Chandra Gupta Vs. Union of India, AIR 1984 SC 380, to contend that in case of acquittal from criminal case, the employee was reinstated and was paid full salary for the period commencing from his acquittal. We find no relevance of these observations made by the Hon'ble Supreme Court in the facts of that case.

7. The next reliance is on the decision of the Hon'ble Supreme Court in the case of Ram Lal Vs. State of Rajasthan & Ors, Civil Appeal No. 7934/2023, arising out SLP (C) No. 33423/2018. Our attention has been invited to Para 26 of the decision to contend that when the charges are disproved, the applicant's candidature cannot be denied. In the said decision, on the given facts, it has been opined by the Court that the charges were not just "not proved", but "disproved". There is marked distinction between "disproved" and "not proved" as defined under Section 3 of the Evidence Act. In order to invoke the term "disproved" the Court shall come to the conclusion that the fact alleged does not exist.

8. In the light of the above decision, we have adverted our attention to the judgment delivered by Chief Judicial Magistrate, Satara in RCC No. 497/2018. It was a case of lurking house-trespass at night by entering into the shop premises on the basis of report lodged by the owner of the Shop, crime was registered

against unknown person. During the course of investigation, the role of the applicant and co-accused was unearthed which resulted into carrying further investigation and filing of charge sheet. During the course of investigation, the applicant while in Police Custody, gave memorandum statement and in pursuance to that stolen articles have been recovered. The said entire material was placed before the Trial Court in the form of charge sheet and the applicant was called upon to face the charges.

9. It reveals from the judgment of the Criminal Court that in order to establish the charges, the Court has endeavored into examining four witnesses, i.e., informant, two Pancha witness and the Investigating Officer. Reading of the judgment discloses that though particularly at the instance of the applicant stolen articles were recovered, however, both the Panch witnesses turned hostile to the prosecution, thereby rendering non assistance to the Criminal Court. It reveals that the Investigating Officer though stated that the applicant made disclosure statement pursuant to which the stolen article bicycle has been seized, however, the Criminal Court has not believed his evidence for want of corroborative material. In such a background, the applicant has been acquitted. Needless to say, that a very high standard of proof is required to be established the criminal charges, that is the proof beyond reasonable doubt, whilst on the touchstone of

preponderance of probabilities civil cases are decided. In substance, though it is a case of acquittal, we have gone through the entire material and noted that it is not a case of acquittal on merits, i.e., after considering evidence the applicant has been acquitted. Rather it reveals that since the material witnesses turned hostile, the Trial Court acquitted the applicant for want of adequacy of evidence. It is evident that both the independent Panch witnesses remained back footed and it has benefited the accused, i.e., the applicant in achieving the order of acquittal.

10. When a criminal case is pending or a candidate is having criminal background a mechanism is evolved that his case should be placed before a Special Committee to consider whether his candidature with such a background can be accepted. We have gone through the report of the Committee headed by the Divisional Commissioner, wherein the applicant's case was considered. The Committee has noted the nature of offence, particularly the applicant allegedly committed lurking house-trespass by breaking open lock and stolen the articles. The Committee took into account that while the applicant was in Police custody, he gave memorandum statement and in pursuance to which stolen articles have been recovered. The Committee was aware that the trial ended into acquittal. However, considering the gravity and nature of offence the Committee has declined his candidature.

11. The applicant carried the decision in appeal before the State Government. We are in advert age to see the decision in the appeal as to how the State Government has dealt with the matter. The Appellate Authority has passed exhaustive order and ultimately held that the applicant is not fit for appointment to the post of Police Constable. Particularly the Appellate Court has taken into account the high degree of proof required in the criminal case and the reasons assigned by the Court, mainly failure to establish seizure, due to hostile tendency of Panch witnesses.

12. Learned P.O while canvassing that mere acquittal does not confer any right to the applicant for appointment, has relied on the decision of the Hon'ble Supreme Court dated 26.4.2023, in the case of Union of India & Ors Vs. Santosh Kumar Singh, Civil Appeal No. 8889/2022, with special emphasis to para 10 of the decision which reads as follows:-

“10. Learned counsel for the respondent-Santosh Kumar Singh also relies on the judgment in Union of India & Ors Vs. Methu Meda, which, in fact, does not help and assist the respondent- Santosh Kumar Singh. This judgment holds that if a person is acquitted giving him the benefit of doubt or because the witnesses turned hostile, but was charged with an offence involving moral turpitude, it would not automatically entitle him for the employment, that too in disciplined force. Further the employer has a right to consider his candidature in terms of the circulars issued by

the Screening Committee. Further, mere disclosure of the offence (s) alleged and the result of the trial is not sufficient.”

13. Learned P.O has also attracted our attention to the decision of the Hon’ble Supreme Court in the case of Avtar Singh Vs. Union of India & Ors, (2016) 8 SCC 471, with special emphasis to the guidelines issued in para 3 of the decision. After taking review of the various decision in the field, the position has been summarized which guide us as to how such situation is to be dealt with. We could gather that if the offence is of trivial nature, the authority shall not take it seriously, but in case of moral turpitude it is for the employer to take decision based on the facts of the case.

14. Reverting to the facts of the criminal case, admittedly the applicant was arrested in Crime No. 675/2018 for the offence of lurking house-trespass and theft. The allegations are quite serious that during night hours he has broke open the show room and stolen the articles. Though, in the criminal case both the Panch witnesses turned hostile to the prosecution, however, after arrest, the applicant gave memorandum on the basis of which the stolen goods were recovered. We may reiterate that the standard of proof required to establish guilt in criminal case is quite distinct. Hence, the learned Criminal Court on said premises held that as both the Panch witnesses turned hostile, in his wisdom chose to grant benefit of doubt. There is no material to show that the applicant

has been falsely implicated. Rather it can be said that due to hostile tendency the applicant got benefit of the technicalities.

15. As detailed above, it is for the employer to take an appropriate decision. Mere acquittal in criminal trial does not confer any right to the applicant for seeking employment. The applicant is aspirant to be appointed in Police Force, for which considering the nature of duties and responsibilities a high quality of standard and honesty is imperative. Though applicant was acquitted, however, there was material that from his possession stolen articles have been seized. Certainly, the offence pertains to moral turpitude. In the wake of such a position, the decision taken by the authority for declining applicant's candidature despite acquittal is well justified.

16. Hence, application being devoid of merit stands dismissed.

Sd/-
(A.M Kulkarni)
Member (A)

Sd/-
(Vinay Joshi, J.)
Chairperson

Place : Mumbai
Date : 05.12.2024
Dictation taken by : A.K. Nair.