IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1277 OF 2015

Shri Vithal Waman Shelke ... Petitioner
v/s
The High Court of Bombay,
through registrar General and another ... Respondents

Mr Vivek V. Salunke for Petitioner.
Mr Amit B. Borkar for Respondent No.1.
Ms Sushma Bhende, AGP for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 14TH OCTOBER 2016.

JUDGMENT: [PER B. P. COLABAWALLA J.] :-

1. The present Petition is filed under Article 226 of the Constitution of India seeking a suitable writ, order or direction to quash and set aside the order / opinion dated 25th June, 2012 recorded by Respondent No.1 and thereafter for a direction that the Petitioner be appointed to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. It is the Petitioner's case that despite the Petitioner being a recommended candidate at Sr.No.41

in the merit list, Respondent No.1 has recorded that having regard to the nature of allegations leveled against the Petitioner, the reasons stated in the judgment and the nature of duties to be entrusted to him, the Hon'ble Administrative Judges' Committee has decided not to recommend the name of the Petitioner for judicial service.

2. The facts on the basis of which the challenge is made by the Petitioner, are as follows:-

(a) The Petitioner is an individual who has passed his LL.B. Degree in the year 2004 and thereafter was enrolled as an Advocate with the Bar Council of Maharashtra and Goa. He is a practicing Advocate in the District Court at Nanded. Respondent No.1 is the High Court of Bombay through the Registrar General and Respondent No.2 is the State of Maharashtra through the Department of Law and Judiciary.

(b) It is the case of the Petitioner that the Maharashtra Public Service Commission (for short, the **"MPSC"**) had

issued an advertisement dated 11th April, 2011 for recruitment to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. As the Petitioner was eligible, the Petitioner applied for the said post pursuant to the aforesaid advertisement. Thereafter, the Petitioner appeared in the preliminary examination and after having qualified in the same, the Petitioner appeared in the written examination held on 21st August 2011.

(c) It is the case of the Petitioner that he successfully passed the said written examination. In view of his passing the written examination, the MPSC called the Petitioner for viva voce. Thereafter, the MPSC, on the basis of the marks secured by the candidates, prepared an order of merit of the candidates eligible for appointment. The name of the Petitioner was at Sr.No.41 in this order of merit.

(d) The MPSC thereafter also addressed a letter dated 31st January, 2012 to the Petitioner intimating him that his name is recommended to Respondent No.2 for the

aforesaid post. By the said letter, the Petitioner was further called upon to fill in the attestation form with the requisite information. This was duly done by the Petitioner on 8th February 2012. Clause 11 of the attestation form required the Petitioner to furnish information as to whether he has been arrested / prosecuted / kept under detention or bound down / fined / convicted by a Court of Law. Accordingly, the Petitioner supplied the particulars of the criminal case lodged against him which had resulted finally in an acquittal vide its judgment dated 29th May, 2002.

(e) Thereafter, the Petitioner received a letter from Respondent No.2 specifically intimating him that the MPSC has recommended the Petitioner's name for the said post and accordingly called upon the Petitioner to submit his medical certificate. Accordingly, the medical examination of the Petitioner was fixed on 12th March, 2012 and the Petitioner underwent the necessary medical examination. Thereafter, the list of appointed candidates was declared vide a Notification dated 7th December, 2012 wherein the name of the Petitioner was

not mentioned / included. It is in these circumstances that the Petitioner applied under the Right to Information Act, 2005 when he was furnished a copy of the order/opinion rendered by the Hon'ble Administrative Judges' Committee of this Court on 25th June, 2012 (the impugned opinion). It is in these peculiar facts and circumstances that the opinion of the Hon'ble Administrative Judges' Committee dated 25th June, 2012 has been assailed in the present Writ Petition.

3. In this factual background, Mr Vivek Salunke, learned counsel appearing on behalf of the Petitioner, submitted that on a perusal of the said opinion, it was clear that the Petitioner's appointment has been rejected only in view of the criminal case filed against the Petitioner. He submitted that this criminal case against him was a completely frivolous one and was instituted due to a previous enmity between the Petitioner and the complainant in the said case. He submitted that the Petitioner was finally acquitted of all charges in the said case and no appeal was filed therefrom and has therefore attained finality. This being the case, it was totally incorrect on the part of the Hon'ble Administrative

Judges' Committee to reject the appointment of the Petitioner solely on the ground that a criminal case was filed against him and which had subsequently resulted in his acquittal.

4. According to Mr Salunke, the Maharashtra Judicial Service Rules, 2008 and more particularly Rule 7 thereof, provide for disqualification for appointment. This rule inter alia stipulates that no person shall be eligible for appointment to judicial service if he has been convicted of an offence involving moral turpitude or he is or has been permanently debarred or disqualified by the High Court or the Union Public Service Commission or any State Public Service Commission from appearing for examinations or selections conducted by it. He submitted that in the facts of the present case, the Petitioner had not been convicted as contemplated under the said Rules and was acquitted of all charges and therefore did not invite any disqualification as contemplated under Rule 7. This being the case, his appointment could not have been denied, was the submission. For all the aforesaid reasons, Mr Salunke submitted that we should exercise our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India and quash and set aside the order / opinion dated 25th June, 2012. In support of his arguments, Mr. Salunke relied upon the

following decisions:-

(1) Avtar Singh v. Union of India.[1]

(2) Manoj Vs. Union of India & Ors.[2]

5. On the other hand, Mr Amit Borkar, learned counsel appearing on behalf of Respondent No.1, submitted that on a perusal of the judgment delivered in the criminal case filed against the Petitioner, it was clear that the Magistrate had not held that the accusations against the Petitioner were entirely baseless or malafide. The learned Magistrate acquitted the Petitioner by granting him the benefit of doubt. This was therefore not a case of a clean acquittal, was the submission. In this regard, he brought to our attention the findings of the learned Magistrate and which have been more particularly set out in paragraph 3 of the affidavit in reply filed on behalf of Respondent No.1. He submitted that the offences alleged against the Petitioner were under sections 324 and 504 r/w 34 of Indian Penal Code, 1860 (for short **"the IPC"**). He submitted that section 324 of the IPC deals with voluntarily causing hurt by dangerous weapons or means. Similarly, section 504 deals with intentional insult with intent to provoke breach of the peace.

1 (2016) 8 SCC 471 : AIR 2016 SC 3598
2 2016 (4) SLR 731 : 2016 (158) DRJ 442

He submitted that looking to these sections, it can hardly be disputed that the charges leveled against the Petitioner were of a very serious nature and which have to be taken into consideration whilst considering him for appointment as a judicial officer.

6. Placing reliance on Rule 8 of the Maharashtra Judicial Service Rules, 2008, Mr Borkar submitted that the same mandates that no person selected for nomination shall be appointed unless the Appointing Authority is satisfied that he is of good character and is in all respects suitable for appointment to the service. It is in these circumstances that a request was made by the Government to the Hon'ble High Court of Bombay on its administrative side for offering its views in respect of suitability or otherwise of the Petitioner who was on the merit/select list for appointment to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. After considering the criminal case filed against the Petitioner and the serious charges leveled against him, as well as the antecedents of the Petitioner, the Committee came to the conclusion that the Petitioner was not suitable for being appointed to the aforesaid post.

7. Mr. Borkar submitted that when a person is being

recruited in judicial service, the recruiting authority, as the custodian of public interest in the fair dispensation of justice, was entitled to scrutinize the reasons which weighed in the judgment of acquittal. They have an important bearing on the conduct and antecedents of the Applicant. In the present case, this is exactly what has been done and the Hon'ble Administrative Judges' Committee, after considering all the relevant material, including the reasons for acquittal, has taken the decision of not appointing the Petitioner. He submitted that it is not even the case of the Petitioner that the decision is actuated for any extraneous reasons or is tainted with bias or malafides. The Petitioner, having no fundamental right for being appointed but merely being considered in a fair manner, the decision of the Hon'ble Administrative Judges' Committee could not faulted. He therefore submitted that no interference was required by us in our equitable, extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India and the Writ Petition be dismissed with costs.

8. We have heard the learned counsel for the respective parties at length and have also perused the papers and proceedings in the Writ Petition along with the annexures thereto. Before we deal with the rival contentions, we would like to state that it is now

well settled that in service jurisprudence a candidate in the select list / merit list has no fundamental right to be appointed. His only right is to considered for appointment and in a fair manner. If any authority is required for this proposition the Supreme Court in the case of **Union Territory of Chandigarh v. Dilbagh Singh**[3] has succinctly set it out at paragraphs 11 and 12, which read thus:-

> ***"11.*** *In Shankarasan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : JT (1991) 2 SC 380] a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the question in the negative by enunciating the correct legal position thus: (SCC pp. 50-51, para 7)*
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> "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Neelima Shangla (Miss) v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] ."
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> ***12.*** *If we have regard to the above enunciation that a candidate*

3 (1993) 1 SCC 154

who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected."

(emphasis supplied)

9. This proposition has also been made expressly clear by Rule 6(7) of the Maharashtra Judicial Service Rules, 2008 which reads thus:-

"(7) Candidates whose names are included in the list prepared under clause (a) of sub-rule (6) above shall be considered for appointment in the order in which their names appear in the list and subject to rule 8, they may be appointed by the appointing authority in the vacancies notified under clause (a) of sub-rule 1 above. Candidates whose names are included in the wait list shall be considered for appointment after the candidates whose names are included in the list published under sub-clause (a) of sub-rule (3) above have been appointed and have not joined or have not been

appointed for any reason. Inclusion of the name of a candidate in any list prepared under clause (3) shall not confer any right of appointment on such candidate."

(emphasis supplied)

10. At this very moment, we must note that the reference *"clause (a) of sub-rule (6)"* as well as to *"clause (3)"* in the aforesaid provision is a typographical mistake and should be read as *"clause (a) of sub-rule (3)"* and *"sub-rule (3)"* respectively.

11. Be that as it may, this being the position in law, we shall now examine the contentions of both the parties. In the facts of the present case, it is not in dispute that the Petitioner had applied to join judicial service to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. It can hardly be disputed that a member of the judicial service is a very important person who dispenses justice to the citizens even in the most remote areas in the State. The ordinary citizen is not always in a position to approach the superior Courts for justice and very often his fate is decided by the Judges of the lower judiciary. This, therefore, clearly indicates that a Judge of the lower judiciary clearly plays a very important and pivotal role in the administration of justice and which is one of the great pillars of our vibrant democracy.

Considering the functions that a member of the judicial service is require to carry out, he has to be one who is balanced, has a sense of fairness, has a decent knowledge of the law and his character is unblemished. These characteristics, in our view, are extremely vital when choosing a candidate for judicial service. It is only in such circumstances that a perception would be created in the mind of the litigant that not only is justice done but also seen to be done.

12. Coming to the facts of the present case, it is admitted that a criminal case was filed against the Petitioner. The charges leveled against him were under sections 324, 504 r/w section 34 of the IPC. Once can hardly dispute that the charges leveled against the Petitioner were extremely serious and not of a petty nature such as shouting slogans, stealing bread or such which did not involve moral turpitude, such as cheating, misappropriation etc. In fact, one of the serious charges leveled against the Petitioner was for voluntarily causing hurt by dangerous weapons or means (section 324 of the IPC). True it is, that he was finally acquitted of all the aforesaid charges but on perusing the judgment of acquittal, it can be seen that it was not a clean acquittal but on the ground of reasonable doubt. On perusing the judgment of acquittal what we find is that there was only one independent witness examined by

the prosecution who turned hostile during the trial and did not support the case of the prosecution. Other than this witness, no other independent witness was examined to prove the guilt of the accused. In fact, the prosecution did not even examine the Investigating Officer. It is in these circumstances that the Trial Court came to the conclusion that all this creates a doubt about the guilt of the Petitioner. It therefore held that the prosecution had failed to prove its case beyond reasonable doubt which itself created a doubt about the guilt of the Petitioner. Hence the benefit of doubt was given to the Petitioner.

13. Looking at all this, can it be said that the opinion / order of the Hon'ble Administrative Judges' Committee dated 25th June, 2012 was perverse and/or so unreasonable that it would shock the conscience of the Court? Our answer would be an emphatic NO. In fact, far from this, we are of the opinion that the decision of the Hon'ble Administrative Judges' Committee was fully justified. Looking to all these factors, the said Committee felt that the Petitioner would not be a suitable candidate to be appointed in judicial service. His character was certainly not one that could be characterized as unblemished. To an average citizen in a remote area, a Court of Law is a temple of justice and the persons

dispensing it are looked upon with the highest regard and respect. Therefore, when being selected for judicial service, a candidate like the Petitioner, would have to live up to and meet even higher standards than any other candidate applying for a job with the Government or other civil services. We, therefore, are unable to agree with the submissions of Mr Salunke that there is any infirmity in the order / opinion dated 25th June, 2012 that would require our interference under Article 226 of the Constitution of India.

14. Even the decisions relied upon by Mr Salunke do not carry the case of the Petitioner any further. The first decision relied upon by Mr Salunke was a decision of the Supreme Court in the case of **Avtar Singh v. Union of India.**[1] Mr Salunke laid great stress on paragraph 31 of the aforesaid decision (SCC Report), which reads thus:-

> ***"31.*** *Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form*

1 (2016) 8 SCC 471 : AIR 2016 SC 3598

opinion as to fitness on the basis of material on record. In case offence is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects."

(emphasis supplied)

15. What we must at once note is that this was not a case of a candidate applying for a post in judicial service. Be that as it may, we fail to see how this decision supports the case of the Petitioner. In fact, far from supporting the Petitioner, the ratio laid down in the aforesaid case, clearly supports the view we have taken earlier. The Supreme Court has clearly stated that though the candidate may have been acquitted of the charges, the employer is bound to consider the grounds of acquittal and various other aspects such as overall conduct of the employee including the accusations which have been leveled. The employer has to verify the antecedents of the Applicant and after considering all the aspects, notwithstanding the acquittal in a case / cases, it would be open to the employer to form an opinion as to the fitness on the basis of the material on record. We therefore find that the reliance placed on this decision, far from supporting the Petitioner, in fact takes the same view that

we have taken earlier. Similar is the situation with the decision of the Delhi High Court in the case of **Manoj Vs. Union of India & Ors.**[2] The Delhi High Court has pointed that a brush with the law should not disqualify a recruit of police or civil services unless accusation relates to higher degree of crime. It may be a serious violation of the constitutional right of a citizen to be fairly treated in matters of public employment if trivial offences committed by a citizen would justify the State denying employment. Even if we were to apply the ratio laid down by Delhi High Court to the facts of the present case, we do not think that the same would support the arguments canvassed on behalf of the Petitioner. As noted earlier, the charges leveled against the Petitioner were of a serious nature and not that could be classified as being petty. In these circumstances, even the reliance placed on the decision of the Delhi High Court does not carry the case of the Petitioner any further.

16. In views of the foregoing discussion, we have no hesitation in holding that the order / opinion of the Hon'ble Administrative Judges' Committee dated 25th June, 2012 does not suffer from any infirmity and can neither be termed as perverse or suffering from any error apparent on the face of the record

2 2016 (4) SLR 731 : 2016 (158) DRJ 442

requiring our interference under Article 226 of the Constitution of India. Consequently, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)**