



IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

WP (C) No. 02 of 2019

Mr. Tara Prasad Sharma,
Aged about 33 years,
Son of Shri Bhagirath Sharma,
Resident of Village-Deythang,
P.O. Sribadam, P.S. Soreng,
West Sikkim.
At present residing at Gyalshing,
C/o Mrs. Sabita Sharma,
Advocate, District Court, Gyalshing,
West Sikkim.

... Petitioner

Versus

1. The State of Sikkim,
Through Chief Secretary,
Manan Kendra, Development Area,
East Sikkim at Gangtok.
2. Department of Personnel, Administrative
Reforms, Training and Public Grievances (DoPART),
Government of Sikkim, Gangtok,
Through the Commissioner-cum-Secretary.
3. The Registrar General,
Hon'ble High Court of Sikkim.
4. Shri Jabyang Dorjee Sherpa,
S/o Nawang Rapgay Sherpa,
Resident of Angel Lodge, Holding No.10 (625),
Chota kak Jhora,
Darjeeling, West Bengal,
Ld. Judicial Magistrate, under
Sikkim Judicial Service.

... Respondents

BEFORE
HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.

For the Petitioner : Petitioner-in-person.

For Respondents No. 1 and 2 : Dr. Doma T. Bhutia,
Addl. Advocate General with
Mr. S.K. Chettri, Govt. Advocate.

For Respondent No. 3 : Mr. A. Moulik, Sr. Advocate assisted by
Mr. Ranjit Prasad, Advocate.

For Respondent No.4 : Mr. A.K. Upadhyaya, Sr. Advocate assisted
by Mr. Thupden Bhutia and Mr. Sonam R.
Lepcha, Advocate.



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Date of hearing : 07.04.2021

Date of judgment : 10.05.2021

JUDGMENT

Invoking the jurisdiction under Article 226 of the Constitution of India, challenging the resolution dated 11.08.2017 of Full Court of the High Court of Sikkim recommending to withdraw the appointment of the petitioner made by previous resolution of the Full Court dated 05.07.2017 on the post of Civil Judge-cum-Judicial Magistrate, and to challenge the appointment of respondent no.4 made in place of the petitioner based on the same resolution and vide Office Order dated 08.02.2018 on the same post, this petition has been filed.

2. The facts unfolded of the case are that an advertisement was issued by the High Court of Sikkim on 24.02.2017 inviting applications from the eligible and interested candidates to fill up three vacant posts of Civil Judge-cum-Judicial Magistrate (First Class) in the Cadre of Sikkim Judicial Service, as per Annexure P-9. The petitioner submitted his application form and appeared in the written test. He found place in the list of successful candidates as per notification dated 14.06.2017 and called for the interview. The petitioner appeared in the Viva Voce Test and found place in the Merit List at Sl.No.2 of the selected candidates published on 05.07.2017. As per the resolution dated 05.07.2017 of Full Court of the High Court of Sikkim, the name of the petitioner and others were recommended for appointment to the State Government for the post of Civil Judge-cum-Judicial Magistrate. After appointment, the Joint Secretary, Department of Personnel, Administrative Reforms, Training, Public Grievances (DoPART), Government of Sikkim, vide letter dated 10.08.2017 informed to the Registrar General, High Court of Sikkim that



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one of the selected candidates, Shri Tara Prasad Sharma (petitioner) was found involved in Police Case No. 24/2012 registered by P.S. Sadar on 28.02.2012 under Section 420/468/471 of IPC, though acquitted by the Court of Judicial Magistrate, East Gangtok, vide judgment dated 30.04.2016. The letter of DoPART was placed before the Full Court. The Full Court in its Meeting held on 11.08.2017, after examining all materials, unanimously resolved that the conduct of the petitioner is not free from the element of doubt, thus, he may not be given the assignment of administration of justice and recommended to withdraw the previous resolution dated 05.07.2017 with respect to appointment of the petitioner to the post of Civil Judge-cum-Judicial Magistrate. In furtherance thereto his services has been dispensed with and vide Office Order dated 08.02.2018 the respondent no.4 was directed to be appointed on the said post.

3. The petitioner present in-person contended that he was acquitted from the charge levelled against him under Section 468 of the IPC vide judgment dated 30.04.2016. On receiving the offer of appointment vide Memorandum dated 03.08.2017 he submitted his attestation form on 04.08.2017 specifying the details of the criminal case and its result. He has urged, it is not a case of concealment of material facts, as he has disclosed the details of criminal case and its result acquitting him in the attestation form. Being candidate of merit as per the resolution of the Full Court dated 05.07.2017 he had rightly been appointed by the State Government. Merely registering a criminal case in which he was acquitted by the Court, may not debar him from the appointment as Civil Judge. The referred resolution dated 11.08.2017 recommending to withdraw his appointment is unjust, arbitrary that too without affording due opportunity of hearing and also contrary to the law laid down by the Hon'ble Apex



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Court. Reliance has been placed by him on the judgments of ***Joginder Singh vs. Union Territory of Chandigarh and Others*** reported in ***(2015) 2 SCC 377***, ***Avtar Singh vs. Union of India and Others*** reported in ***(2016) 8 SCC 471***, ***Mohammed Imran vs. State of Maharashtra and Others*** reported in ***(2019) 17 SCC 696*** to substantiate the contentions.

4. On the other hand, respondent no.3 has filed the counter-affidavit inter alia stating that in furtherance to the notice inviting application to fill up the post of Civil Judge-cum-Judicial Magistrate, First Class in the Cadre of Sikkim Judicial Service, the petitioner submitted his application. In the Column 11 of the application form, other relevant information which applicant deems fit were required to be furnished. In the said column, petitioner has not furnished the information regarding registration of the criminal case and his acquittal. In absence of the said information at the time of scrutiny the Registry permitted the petitioner to appear in the written examination and called for Viva Voce Test on qualifying written test. It is said even before the Selection Committee information regarding criminal case has not been furnished by the petitioner. In case, the said information would have made available, the application form itself might be rejected *in limine* at the time of scrutiny by the High Court. In absence of having the material information by the previous resolution of the Full Court dated 05.07.2017, the name of petitioner with others was recommended for appointment. In furtherance to the said resolution, vide Office Memorandum dated 03.08.2017 he was appointed subject to the Police Verification and suitability on the post of Civil Judge. As the petitioner divulged the fact of registration of FIR and acquittal which came to the knowledge by the letter of DoPART dated 10.08.2017, however, the Full Court vide resolution dated 11.08.2017 withdrawn the previous



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recommendation dated 05.07.2017 because the conduct of the petitioner was not found free from element of doubt. It is opined by the Full Court that such a person may not be assigned the work of administration of justice. On submitting the representation by the petitioner, it was rejected by the Full Court on 20.02.2018. In the above mentioned fact, all the adverse allegations made in the writ petition are denied for all practical purposes and submitted no relief as prayed can be granted. Learned Sr. Counsel placed reliance on the judgments of ***State of M.P. and Others vs. Nandlal Jaiswal and Others*** reported in **(1986) 4 SCC 566**, ***C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and Others*** reported in **(1995) 5 SCC 457**, ***Syed T.A. Naqshbandi and Others vs. State of Jammu & Kashmir and Others*** reported in **(2003) 9 SCC 592**, ***Rajendra Singh Verma(Dead) Through Lrs. and Others vs. Lieutenant Governor (NCT of Delhi) and Others*** reported in **(2011) 10 SCC 1**, ***R.C. Chandel vs. High Court of Madhya Pradesh and Another*** reported in **(2012) 8 SCC 58**, ***Deputy Inspector General of Police and Another vs. S. Samuthiram*** reported in **(2013) 1 SCC 598**, ***Commissioner of Police, New Delhi and Another vs. Mehar Singh*** reported in **(2013) 7 SCC 685**, ***Union Territory, Chandigarh Administration and Others vs. Pradeep Kumar and Another*** reported in **(2018) 1 SCC 797** and ***Ram Murti Yadev vs. State of Uttar Pradesh and Another*** reported in **(2020) 1 SCC 801**.

5. Learned Senior Counsel appearing on behalf of respondent no.4 has *inter alia* contended that it is a case in which petitioner was not acquitted honourably but acquitted giving benefit of doubt. After taking note of the same, the appointing authority has rightly exercised its discretion to discontinue the petitioner and to appoint Respondent No.4 on the said vacant post. If the High Court has applied its mind on the materials placed



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and opined that the conduct of the petitioner is not free from doubt and resolved to discontinue the petitioner from the work of administration of justice. Such discretion is not assailable until questioned on the ground of mala-fide, therefore, interference in exercise of power under Article 226 of the Constitution of India is not warranted. In reply, respondent no.4 has made similar contentions as raised by respondent no.3 in addition that he was already appointed in State Judicial Services, West Bengal. But due to his appointment, he joined his duties in the State of Sikkim leaving his job in the State of West Bengal. Thus, in alternative, looking to the hardship, prayer is made that if the petitioner succeeded and allowed to continue; one post may be created or may be accommodated against the existing vacant posts. Learned Sr. Counsel placed reliance on the judgments of ***P.S. Sadasivaswamy vs. State of Tamil Nadu*** reported in ***(1975) 1 SCC 152***, ***Ramana Dayaram Shetty vs. International Airport Authority of India and Others*** reported in ***(1979) 3 SCC 489***, ***Ashok Kumar Mishra and Others vs. Collector, Raipur and Others*** reported in ***(1980) 1 SCC 180***, ***Smt. Sudama Devi vs. Commissioner and Others*** reported in ***(1983) 2 SCC 1***, ***R & M Trust vs. Koramangala Residents Vigilance Group and Others*** reported in ***(2005) 3 SCC 91***, ***Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and Others*** reported in ***(2011) 5 SCC 607***, ***Vijay Kumar Kaul and Others vs. Union of India and Others*** reported in ***(2012) 7 SCC 610***, ***Commissioner of Police vs. Mehar Singh*** (supra), ***State of Madhya Pradesh and Others vs. Parvez Khan*** reported in ***(2015) 2 SCC 591***, ***Avtar Singh*** (supra), ***Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and Another*** (supra) and ***State of Madhya Pradesh and Others vs. Abhijit Singh Pawar*** reported in ***(2018) 18 SCC 733***.



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6. Learned Additional Advocate General appearing on behalf of respondents no. 1 and 2 contended that the petitioner has been acquitted from the charge, however, at this stage it is the discretion of the recommending authority to appoint him on the post of Civil Judge-cum-Judicial Magistrate or not. The State Government has only acted upon the recommendation of the High Court, therefore, they have not much to say in the present case except awaiting the verdict of the Court for compliance.

7. Upon hearing, the petitioner and learned counsels representing the parties on the basis of the submissions made, in the opinion of this court, following questions arises for consideration in the present case.

- (i) Whether acquittal vide judgment dated 30.04.2016 in a criminal case bearing G.R. Case No. 644/2013 may lead to the conclusion that petitioner is entitled to continue on the post of Civil Judge-cum-Judicial Magistrate?
- (ii) Whether in the facts and circumstances of the case, the Full Court resolution of the High Court of Sikkim dated 11.08.2017 withdrawing the previous recommendations of appointment of the petitioner from the post of Civil Judge-cum-Judicial Magistrate is justified or can it be interfered with in the facts of the case in exercise of power under Article 226 of the Constitution of India?

Reference Question No. (i):

8. In reference to question no.1, the issue regarding acquittal of petitioner in criminal case may have bearing to appoint the petitioner on the post of Civil Judge-cum-Judicial Magistrate. In this respect, in the context of settled legal position, it is required to be seen what is the effect of "honourably acquitted" or "acquitted giving benefit of doubt" by the



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Court. The elucidation of the aforesaid issue may have material bearing to reference Q. No.1 which can be understood by various precedents of Hon'ble the Apex Court and High Courts.

9. The issue regarding 'honourable acquittal', 'acquitted of blame' and 'fully acquitted' are unknown to the Code of Criminal Procedure or the Indian Penal Code. It has been developed by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. The guidance may be taken from the case of **State of Assam vs. Raghava Rajgopalachari**, reported in MANU/SC/0460/1967. In the said case, the employee was dismissed on account of his conviction under Sections 161/467/120B of IPC and under Rule 81(4) read with Rule 121 of the Defence of India Rules. The issue regarding his continuation in service and payment of subsistence allowance during the period of suspension brought under consideration in the context of Assam Fundamental Rules (FR) 54. As per FR 54(a), if the employee is honourably acquitted he would be entitled to full pay and allowances in case he had not been dismissed, removed or otherwise it may be payable in such proportion as revising and appellate authority may prescribe. In the said case Hon'ble the Apex Court has referred the judgment of **Robert Stuart Wauchope vs. Emperor** reported in **(1934) 61 ILR Cal. 168**, in the context of expression 'honourably acquitted', Lord Williams, J. observed as thus:

"The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the Appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate., Further we decided that the Appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the Appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted."

The reference to the case of **R.P. Kapur vs. Union of India** reported in **AIR 1964 SC 787** has also made, referring the observations of Hon'ble Wanchoo, J. as he then was reproduced, as thus:



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“Even in case of acquittal, proceedings may follow where the acquittal is other than honourable.”

Therefore, in conclusions, where the acquittal is not “honourably” ordered by the Court, such acquittal is other than “honourable”, and may follow the proceedings.

10. In the case of **S. Samuthiram** (supra), the Hon’ble Apex Court has considered the judgment of **Reserve Bank of India vs. Bhopal Singh Panchal** (supra) and also the judgment of **R.P. Kapur** (supra), **Raghava Rajagopalachari** (supra) and referred the expression “honourably acquitted” as used in the case of **Robert Stuart Wanchope** (supra); it is observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt to the accused is on the prosecution, until proved beyond reasonable doubt. The Court observed that the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile, thus acquittal of the accused is by giving benefit of doubt. In that situation, the respondent was not honourably acquitted by the criminal court. While in a case of departmental proceedings, the guilt may be proved on the basis of preponderance and probabilities. It is observed that there may be cases where the service rules provide that in spite of domestic enquiry, if criminal court acquits an employee honourably, he could be reinstated. It is said that an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement as a matter of right otherwise on acquittal giving benefit of doubt would not automatically lead to a conclusion for the reinstatement of the candidate.



11. Recently, the Apex Court in the case of **Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and Another** relying upon the judgment of **S. Samuthiram** (supra) held that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned, the acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The issue of honourable acquittal was further considered by the Apex Court in the case of **Mehar Singh** (supra), relying upon the judgment of **S. Samuthiram** (supra), **Bhopal Singh Panchal** (supra) observed that the acquittal because of non-examination of key witnesses is not honourable, in fact, it is by giving benefit of doubt.

12. Hon'ble the Apex Court in the case of **Parvez Khan** (supra) has observed that on the ground of criminal antecedents of candidate who was acquitted for want of evidence or was discharged, shall not be allowed to presume that he was completely exonerated. In the case of **Mehar Singh** (supra), the Court observed that the nature of acquittal is necessary for core consideration, whether acquittal is on technical ground or honourable. It is held that the candidates whose acquittal is not honourable are not suitable for Government service and are to be avoided. The relevant factors and the nature of offence, the extent of his involvement, whether acquittal was a clean acquittal or acquittal by giving benefit of doubt, propensity of such person to indulge in similar activities in future, are the aspects relevant to consider by the Screening Committee who is competent to decide all these issues.

13. In view of the forgoing legal position, the expression 'honourably acquitted' may lead to the conclusion when all the material evidence has been duly considered, even charge as alleged against the accused could not prove holding him guilty. Otherwise on account of technical flow or



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due to non production of important witnesses or the witnesses turned hostile or due to settlement between the parties or otherwise prosecution has failed to prove the charge beyond reasonable doubt may not come within the purview of 'honourably acquitted' and such acquittal is otherwise than "honourable" to which the proceedings may be followed. The discretion of such proceedings would lay on the appointing authority to take decision looking to the nature of job and suitability of propriety and probity of the candidate.

14. In the context of the above legal position, if we see the judgment of acquittal passed by the Judicial Magistrate, East Sikkim, Gangtok in G.R. Case No. 644 of 2013 decided on 30.04.2016 then it reveal that petitioner approached to the office of the Directorate of Fisheries to check the file pertaining to appointment of the Fisheries Block Officers. As alleged, with criminal intent to tamper the marks awarded to his sister, Narmada Sharma, who was one of the participants for the post of Fisheries Block Officer, he had fraudulently tampered with the public document converting numerical 1 into numerical 9 by adding an oval part in the original mark. The sister of the accused demanded document in RTI, however, on coming to know the fact, the notice was send to the petitioner and the report of forensic experts were called. The offence was registered against him under Section 420/468/471/34 of the IPC and filed the Challan. The trial court had framed the charge only under Section 468 of the IPC but not of other offences. After trial, the court acquitted the accused because the plausible explanation of belated FIR is not brought on record. It is not explained why the document Exhibit-A 19 (Document 'Y') was alleged to have been made on 27.01.2011 and signed by PW-3, though he was promoted on the said post on 11.03.2011. Why the specimen of the handwritings or signature of the accused was not taken by the I.O. for



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examination though it is required to deal with the accused for the purpose of cheating. As per the report of CFSL, Kolkata, it is found prove that interpolation in the marks awarded by PW-3 is there but it is not sufficient to convict the accused, looking to the above lacunas of the prosecution. Therefore, said prosecution has failed to prove the case against accused beyond reasonable doubt however, acquitted the petitioner. Thus, looking to the reasoning of the trial court, it is clear, the acquittal of accused (petitioner) is not honourable but giving him benefit of doubt.

15. On analyzing the case of prosecution and the reason of acquittal as recorded vide judgment dated 30.04.2016, it is luculent like a day light that petitioner has not been honourably acquitted but his acquittal is giving benefit of doubt. In the light of the legal and factual position as discussed hereinabove, as the acquittal of petitioner is other than honourable, the proceedings of the Department may follow to judge his suitability looking to the credibility of the post meaning thereby the petitioner would not ipso facto entitled to continue to hold the post of Civil Judge-cum-Judicial Magistrate merely because he was acquitted. The question no.1 is answered accordingly.

Reference Question No. (ii)

16. In the present case, the applications were invited to fill up the post of Civil Judge-cum-Judicial Magistrate (First Class) in the cadre of Sikkim Judicial Service vide Employment Notice dated 24.02.2017. The petitioner applied for the post and appeared in the written examination. On declaring him successful, he was called for the oral interview. The Final Merit List was prepared and placed before the Full Court on 05.07.2017. The Full Court on the same date passed a resolution making recommendation for appointment, in absence of the details of the criminal



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case of the petitioner. The offer for appointment was issued vide Memorandum dated 03/08/2017, subject to Police Verification with regard to suitability, asking Attestation Form in duplicate. In the said Attestation Form in Column No.12, the details of criminal case and the date of acquittal was mentioned by the petitioner. On Police Verification vide letter Ref. No.14900/G/DOP dated 10.08.2017 addressed to the Registrar General, it was reported that the Sadar Police registered a case against petitioner at Crime No.24/2012 dated 28.02.2012 U/s 420/468/471/34 of the IPC and tried for the charge U/s 468 of the IPC, in which he has been acquitted on 30.04.2016 by the Judicial Magistrate, East, Gangtok. On receiving the said information, the matter was placed before the Full Court alongwith relevant material. The Full Court on consideration passed the resolution dated 11.08.2017 and decided to withdraw the previous resolution dated 05.07.2017. The decision of the Full Court is relevant however, reproduced as thus:

"1. To further consider the letter bearing No.14900/G/DOP dated 10.08.2017 received from the Department of Personnel (DOPART), Government of Sikkim, in regard to the matter of appointment of Mr. Tara Prasad Sharma, in the post of Civil Judge-cum-Judicial Magistrate in response to this Registry letter No. V(13)Confdl/3467 dated 05.07.2017.

1. On verification it was found that Mr. Tara Prasad Sharma was charge-sheeted for interpolation with official records. However, he was acquitted on the ground that the prosecution has failed to prove the case beyond reasonable doubt.

We have examined all the materials and are of the considered view that as the conduct of the candidate is not free from an element of doubt, he may not be given the assignment of administration of justice. Thus, it is unanimously resolved to withdraw the recommendation made in favour of the above candidate on 05th July 2017 to the State Government for appointment in the post of Civil Judge-cum-Judicial Magistrate.

Further, the fourth candidate, namely, Mr. Jabyang Dorjee Sherpa in the merit list be recommended for appointment on the post of Civil Judge-cum-Judicial Magistrate."

17. In view of the aforesaid, it is clear that the Full Court unanimously was of the opinion that the acquittal of the petitioner was giving him benefit of doubt as the prosecution has failed to prove the case beyond reasonable doubt. The Full Court has examined all the material and of the view that the conduct of the petitioner is not free from an element of



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doubt, therefore, he may not be given the assignment relating to administration of justice. Thus, resolved to withdraw the recommendation made earlier in favour of the petitioner on 05.07.2017 for his appointment as Civil Judge-cum-Judicial Magistrate. It was further resolved that the next candidate in the Merit List, Mr. Jabyang Dorjee Sherpa (Respondent No.4) be recommended for appointment on the said post. Thus, it is clear that withdrawal of the previous recommendation is because his acquittal other than honourable, and his conduct was found under cloud to assign the work of judicial administration, or as a Judge. From the above and in conspectus of undisputed fact that High Court of Sikkim is the only competent to make the recommendation for appointment to the post of Civil Judge, but the discretion has not exercised in favour of petitioner looking to the conduct and probity of petitioner for holding the post of Judicial Officer.

18. In the said sequel of facts, the arguments advanced by the petitioner-in-person and the counsel for the respondents are required to be adverted to. The petitioner has placed reliance on the judgments of **Joginder Singh** (supra), **Avtar Singh** (supra) and **Mohammed Imran** (supra) while the counsel for the respondent no.3 has relied upon the judgments of **Nandlal Jaiswal** (supra), **C. Ravichandra Iyer** (supra), **Syed T.A. Naqshbandi** (supra), **Rajendra Singh Verma(Dead) Through Lrs.** (supra), **R.C. Chandel** (supra), **S. Samuthiram** (supra), **Mehar Singh** (supra), **Pradeep Kumar** (supra) and **Ram Murti Yadev** (supra) and the counsel for respondent no.4 has relied upon the judgments of **P.S. Sadasivaswamy** (supra), **Ramana Dayaram Shetty** (supra), **Ashok Kumar Mishra** (supra), **Smt. Sudama Devi** (supra), **R & M Trust** (supra), **Shankara Co-op. Housing Society Ltd.** (supra), **Vijay Kumar Kaul** (supra), **Mehar Singh** (supra), **Parvez Khan** (supra),



Avtar Singh (supra), ***Pradeep Kumar*** (supra) and ***Abhijit Singh Pawar*** (supra).

19. The legal position in the matter of appointment of a Judicial Officer on acquittal from a criminal case may be considered in the said facts and the law laid down by Hon'ble the Apex Court. The two-Judge Bench of Hon'ble the Apex Court in the case of ***Joginder Singh*** (supra), as relied by the petitioner has considered the issue in the context of the post of a Constable in the Police Department. In the said case, a criminal case was registered against the Constable under Sections 148/149/323/325/307 of the IPC; in which he was honourably acquitted because the prosecution had miserably failed to prove the charges leveled against the complainant as the injured eyewitness had failed to identify the assailants. Therefore, Hon'ble the Apex Court has upheld the judgment of the Central Administrative Tribunal, setting aside the order of the High Court directing to issue the order of appointment. In the facts of the present case, the judgment of ***Joginder Singh*** (supra) having no application because the petitioner was not honourably acquitted, in fact, he was acquitted giving benefit of doubt, therefore, the said judgment is of no avail to him.

20. The petitioner and respondent, both have relied upon the judgment of ***Avtar Singh*** (supra). The three-Judge Bench of Hon'ble the Supreme Court has an occasion to crystallize the law with respect to concealment of material facts in the Attestation Form as well having criminal antecedents, conviction or acquittal of the selected candidate in the context whether they are entitled for appointment. The conclusion drawn in this regard is in paragraph 38 of the judgment; the relevant conclusion applicable to the facts of the present case is in sub paragraphs 38.4.3 and 38.5, for ready reference, it is reproduced as under:

“38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it



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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.

38.5 In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.”

From the above, it is clear that on recording acquittal in a case involving moral turpitude on technical ground in absence of clean acquittal, the employer may consider all relevant facts as to antecedents and may take appropriate decision as to continuance of the employee. It is further clear that even on giving truthful declaration by the employee regarding a concluded criminal case, the employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate.

21. The petitioner has placed heavy reliance on the judgment of **Mohammed Imran** (supra). In the said case, Hon'ble the Apex Court in paragraph 8 has taken the plea of discrimination because one person acquitted has been appointed following the same process of examination while the petitioner in that case was discriminated in the matter of appointment and also observed that mechanical or rhetorical incantation of moral turpitude may not be applied to deny appointment in judicial service, however, the court directed for appointment of the petitioner in that case.

22. It is not out of place to mention here that the judgment of **Avtar Singh** (supra) is the law on the subject and holds the field. The said judgment has been considered by the Full Bench of the Madhya Pradesh High Court in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and Another** reported in **2018 (2) MPLJ 419 (2018 SCC Online MP 72)**. The Full Bench observed that the expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate



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who seeks appointment as Civil Judge. The personal conduct of a candidate who may be appointed as Judicial Officer has to be free from any taint. The same must be in tune with highest standard of propriety and probity. The standard of conduct is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. It is stated that mere acquittal in a criminal case would not be sufficient to infer that candidate possess a good character. The Competent Authority has to take a decision in respect of the suitability of candidate to discharge the function to a civil post.

23. Hon'ble the Apex Court in the case of **Anil Bhardwaj vs. High Court of Madhya Pradesh and Others** reported in **2020 SCC Online SC 832** decided on 13.10.2020, observed that a candidate wishing to join the police force must be a person having impeccable character and integrity. The said principle applies with greater force to the judicial service. Even in case of acquittal, it ought to be examined as to whether the person was completely exonerated in the case. The acquittal in criminal case did not furnish sufficient ground to the appellant for appointment. Hon'ble the Apex Court in the case of **State of Odisha and Others vs. Gobinda Behera** reported in **2020 SCC Online SC 199** also rely upon the judgment of **Avtar Singh** (supra), and in paragraph 7 observed that the employer can legitimately conclude that a person who has suppressed material facts does not deserve to be in its employment.

24. Recently, Hon'ble the Supreme Court in the case of **State of Rajasthan and Others vs. Love Kush Meena** reported in **2021 SCC Online SC 252** has considered all the aforementioned judgments including the judgment of **Mohammed Imran** (supra) relied by the petitioner, and in paragraph 23, the court observed as thus:



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“23. Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.”

In view of the above concepteurs, it is important to note that the view of the Court may be depend on the nature of offence charged and its result. Mere acquittal would not sufficient but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, and the accused granted benefit of doubt but the role assigned to the accused may be relevant to consider. The Apex Court in reference to the relevant parameters extracted in the judgment of **Avtar Singh** (supra) observed where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of doubt cannot make the candidate eligible for appointment. While dealing the case of police personnel, it is held that even circular issued by the Department contrary to the ratio of **Avtar Singh** (supra) cannot give any benefit to the respondent and accordingly the judgment of the High Court directing to appoint the respondent was set aside.

25. In view of the forgoing discussions it is clear that even acquittal of the petitioner giving benefit of doubt, in a case involving moral turpitude, is not sufficient to grant employment until he is acquitted clearly. The employer is having right to consider all relevant facts available and as to antecedents and may take appropriate decision as to continuation of the employee in the employment looking to the standard of propriety and probity. The employer cannot be compelled to appoint the candidate for holding the civil post, if not acquitted clearly.



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26. In the present case as noted above and on reading the resolution of the Full Court it is crystal clear that the Full Court has considered the interpolation of marks pertaining to appointment of the Fisheries Block Officer in the official record. As per judgment, petitioner was acquitted giving benefit of doubt because the prosecution has failed to prove the case beyond reasonable doubt. On examination of the material, the Full Court was unanimously of the view that the conduct of the petitioner is not free from an element of doubt, therefore, he may not be given the assignment of administration of justice to continue on the post of Judicial Officer. The said decision was on due considerations of the material placed with a view that petitioner is not suitable for the post of Civil Judge-cum-Judicial Magistrate. The conduct of the petitioner was not found of impeccable character, looking to the standard of the propriety and probity for the post. In such a decision the scope of interference is limited to the extent if it is aspired by mala fide, or suffer from bias of arbitrariness, or established that the decision taken by the appointing authority is based on perversity or irrationality. It is not a case of the petitioner that the decision taken by the Full Court is mala fide or on any extraneous consideration or on irrationality. In absence of the above said grounds, the scope of interference by the High Court is very limited to which the guidance may be taken from various pronouncements of Hon'ble the Supreme Court, i.e. **Raghava Rajgoplalachari** (supra), **Robert Stuart Wauchope**(supra), **R.P. Kapur** (supra), **Bhopal Singh Panchal** (supra), **Joginder Singh** (supra), **Avtar Singh** (supra), **Mohammed Imran** (supra), **S. Samuthiram** (supra), **Mehar Singh** (supra), **Pradeep Kumar** (supra), **Parvez Khan** (supra), **Ashutosh Pawar** (supra), **Anil Bhardwaj** (supra), **Govind Behra** (supra) and **Love Kush Meena** (supra). As the petitioner has failed to make out a case within the



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parameters set out in the above cases, therefore, interference to the decision of the Full Court of Sikkim dated 11.08.2017 is not warranted.

27. In view of the forgoing discussions, it is abundantly clear that against the petitioner an offence was registered in Sadar Police Case No. 24/2012 dated 28.02.2012 for an offence under Sections 420/468/471/34 of the IPC and the Challan was filed. He was tried for the charge under Section 468 of the IPC by the Court of Judicial Magistrate, East Sikkim, Gangtok and vide judgment dated 30.04.2016 acquitted giving him benefit of doubt. His acquittal was not honorable but other than honourable. It cannot be doubted that the charged offence involve moral turpitude. The Full Court while recommending to withdraw the appointment of the petitioner has considered the conduct which is not free from an element of doubt, however, decided that he may not be given the assignment of administration of justice and accordingly, passed the resolution. The said resolution has not been challenged either on the basis of mala fide or on extraneous considerations or irrationality of the findings. In absence thereto, in the opinion of this court, interference to the resolution of the Full Court dated 11.08.2017 is not warranted. It is to be noted that upon receiving the representation of the petitioner dated 29.12.2017, it was considered by the Full Court again on 20.02.2018 and rejected the same. Thus, resolution passed by the Full Court is on consideration of the character of the petitioner which was not found impeccable and suited to the post of Civil Judge-cum-Judicial Magistrate. In such a case, High Court cannot be compelled to issue the writ in the nature of mandamus and to grant the relief as prayed by petitioner. The Question no. (ii) is answered, accordingly.

28. It is to observe that this petition is bereft of any merit, therefore, alternative argument advanced by the respondent no.4 is not required to



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be dealt with in detail. Similarly, the judgments, cited by learned counsel for the parties dealing the issue of compulsory retirement is also not being referred to burden the judgment as not having much relevance to the issue discussed hereinabove. Therefore, other judgments cited by the respondents have not been discussed in detail.

29. In view of the discussions made hereinabove, the inescapable conclusion is that the petition filed by the petitioner is meritless and not entitled to the relief as prayed. Accordingly, the Writ Petition is dismissed. In the facts of the case, parties to bear their own costs.

(J.K. MAHESHWARI)
Chief Justice

Approved for Reporting : Yes

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