

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 10571 OF 2018
(arising out of SLP(C) No.6599 of 2018)

MOHAMMED IMRAN

....APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA AND OTHERSRESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The appellant, a successful aspirant for judicial service, is aggrieved by the order dated 04.06.2010 cancelling his selection for appointment due to the character verification report of the police, and the refusal of the High Court to interfere with the same.

3. Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant, submits that the denial of appointment on grounds of moral turpitude is wrong and unsustainable. The appellant has been

acquitted of the charge under Sections 363, 366, 34, I.P.C. on 28.10.2004 much before he cleared the examination for appointment in the year 2009. He had truthfully and honestly disclosed his prosecution and acquittal by the Sessions Court, Sangli. According to the allegations, the appellant was in an auto-rickshaw along with another, following the auto-rickshaw in which the main accused was travelling with the girl. The main accused has also been acquitted of the charge under Section 376. In similar circumstances, another aspirant Sudhir Gulabrao Barde, who was prosecuted in Case No.3022 of 2007 under Sections 294, 504, 34, I.P.C. but acquitted on 24.11.2009, has been appointed. The appellant has therefore been subjected to arbitrary and hostile discrimination. Reliance in support of the submissions was placed on ***Joginder Singh vs. Union Territory of Chandigarh and others***, 2015 (2) SCC 377.

4. Learned counsel for the respondents submitted that the appellant being an aspirant for judicial service, the standards of behaviour and conduct, to consider suitability for appointment will have to be different from any other service. He was involved in an act of moral turpitude in kidnapping of the girl in question. The acquittal, because the

prosecutrix turned hostile, cannot come to the aid of the appellant. The candidate referred to, for contending hostile discrimination, was not involved in an act of moral turpitude. Mere empanelment for appointment creates no rights to seek mandamus for appointment. The fact that he may have disclosed the alleged involvement in the attestation form, cannot be considered sufficient to ignore his conduct involving moral turpitude.

5. We have considered the submissions on behalf of the parties. The only allegation against the appellant in Sessions Case No.173 of 2000 is that he along with another was travelling in an auto-rickshaw that was following the auto-rickshaw in which the prime accused Bilal, who was charged under Section 376, IPC, was travelling with the girl in question. All the accused were acquitted because the prosecutrix did not support the allegations. The appellant was 21 years of age on the date of occurrence i.e. 25.05.2000.

6. Employment opportunities is a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious

questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.

7. That the expression “moral turpitude” is not capable of precise definition was considered in ***Pawan Kumar vs. State of Haryana and another***, (1996) 4 SCC 17, opining:

“12. “Moral turpitude” is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity....”

8. The appellant by dint of hard academic labour was successful at the competitive examination held on 16.08.2009 and after viva voce was

selected and recommended for appointment by the Maharashtra Public Service Commission on 14.10.2009. In his attestation form, he had duly disclosed his prosecution and acquittal. Mere disclosure in an appropriate case may not be sufficient to hold for suitability in employment. Nonetheless the nature of allegations and the conduct in the facts of a case would certainly be a relevant factor. While others so recommended came to be appointed, the selection of the appellant was annulled on 04.06.2010 in view of the character verification report of the police.

9. It is an undisputed fact that one Shri Sudhir Gulabrao Barde, who had been acquitted on 24.11.2009 in Case No.3022 of 2007 under Sections 294, 504, 34, IPC, has been appointed. We are not convinced, that in the facts and circumstances of the present case, the appellant could be discriminated and denied appointment arbitrarily when both the appointments were in judicial service, by the same selection procedure, of persons who faced criminal prosecutions and were acquitted. The distinction sought to be drawn by the respondents, that the former was not involved in a case of moral turpitude does not leave us convinced. In **Joginder Singh** (supra), it was observed as follows:

“25. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the Appellant was not up to the mark to appoint him to the post....”

10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well settled in this regard in ***Avtar Singh vs. Union of India and others***, (2016) 8

SCC 471. If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.

11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand.

12. We, therefore, consider the present a fit case to set aside the order dated 04.06.2010 and the impugned order dismissing the writ petition, and direct the respondents to reconsider the candidature of the appellant. Let such fresh consideration be done and an appropriate decision be taken in light of the present discussion, preferably within a maximum period of eight weeks from the date of receipt and production of the copy of the present order. In order to avoid any future litigation on seniority or otherwise, we make it clear that in the event of appointment, the appellant shall not be entitled to any other reliefs.

13. The appeal is allowed as above.

.....**J.**
(Kurian Joseph)

.....**J.**
(Sanjay Kishan Kaul)

.....**J.**
(Navin Sinha)

New Delhi,
October 12, 2018.