

**HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No.965 OF 2021

Between:

Dodle Vinod Kumar

.. Petitioner

v.

The State of Telangana,
Rep. by its Principal Secretary
Home Department
Secretariat, Hyderabad & 2 others

.. Respondents

DATE OF ORDER PRONOUNCED: 27-04-2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? : Yes

B. VIJAYSEN REDDY, J

*** HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**

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Dodle Vinod Kumar .. Petitioner

v.

\$ The State of Telangana,
Rep. by its Principal Secretary
Home Department, Secretariat,
Hyderabad & 2 others .. Respondents

! Counsel for the Petitioner : Mr. Palle Sriharinath

^ Counsel for Respondent Nos.1 to 3 : Mr. M.V. Rama Rao,
Special Government Pleader

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. (2016) 8 SCC 471
2. (1996) 4 SCC 17
3. (2019) 18 SCC 135
4. CWP No.2209 of 2016 dated 01-08-2017

C/15

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**WRIT PETITION No.965 OF 2021****ORDER:**

This writ petition has been filed by the petitioner aggrieved by the action of respondent No.2 - the Chairman, State Level Police Recruitment Board, Telangana office of the Director General and Inspector General of Police Complex, Saifabad, Hyderabad in not considering his representation dated 29.10.2020 for the post of Stipendiary Cadet Trainees (SCT) Police Constable (TSSP) (Men) vide Registration No.1161680 in Recruitment - 2018 on the sole ground that he has settled the criminal case to grab the employment as Police Constable and there are no merits to consider him to appoint as Police Constable (TSSP) (Men); and issuing impugned Memorandum vide Rc.No.116/Rect/Admn/4/2020 dated 16.11.2020 cancelling his appointment of Police Constable (TSSP) (Men) mechanically without application of mind and without examining judgment of the Hon'ble Supreme Court in proper perspective though he is not involved in any case of moral turpitude or heinous or serious nature of offence.

2. The case of the petitioner is that he was provisionally selected to the post of Stipendiary Cadet Trainees (SCT) Police Constable (TSSP)(Men) pursuant to recruitment Notification in Rc.No.88/Rect.Admn-1/2018 dated 31.05.2018 issued by respondent No.2. Attestation Forms were submitted by the petitioner on 09.10.2020. Show cause notice vide Rc.No.216/Rectt./Genl.2/2019 dated 18.02.2020 was issued to the petitioner by respondent No.2 calling explanation as to why his provisional selection should not be cancelled alleging that he was involved in Crime No.98 of 2017 for the offence punishable under Section 304-A of the Indian Penal Code 1860 (IPC) on the file of the Station House Officer, Chetyala Police Station. After conducting investigation in the crime, charge sheet was filed and the same was taken on file as C.C. No.282 of 2017 by the learned Judicial Magistrate of First Class, Ramannapet.

(i) In the attestation form dated 09.10.2019, the petitioner has furnished all his details including criminal case pending against him and he has not suppressed any material facts. Explanation dated 24.03.2020 was submitted by the petitioner to the impugned

show case notice dated 18.02.2020 stating that he has not suppressed any material facts. However, without considering his explanation in proper perspective, provisional selection of the petitioner was cancelled. Hence, this writ petition.

3. Heard Mr. Palle Sriharinath, learned counsel for the petitioner, and Mr. M.V. Rama Rao, learned Special Government Pleader for the respondents, and perused the material on record.

4. The learned counsel for the petitioner has submitted that the petitioner has settled the criminal case amicably with the family members of the deceased in the accident by filing a compromise petition under Section 320 of the Code of Criminal Procedure 1973 vide I.A. No.2 of 2020 and I.A. No.3 of 2020 in the quash petition i.e., Criminal Petition No.4143 of 2020 before this Court and the same were allowed by the order dated 12.10.2020 quashing the criminal case registered against the petitioner in C.C. No.282 of 2017 for the offence punishable under Section 304-A of IPC.

5. Per contra, the learned Special Government Pleader has submitted that the offence committed by the petitioner is a serious

one, as such, there is nothing wrong in cancelling the petitioner's provisional appointment as police constable. The learned Special Government Pleader submits that a police constable should always be diligent while discharging his duties and responsibilities but not rash and negligent, as such, the petitioner, whose negligent act led to accident resulting in death of the victim, is not fit for appointment as police constable.

6. Aggrieved by the order dated 07.08.2020, whereby provisional selection of the petitioner has been cancelled, he filed W.P. No.16512 of 2020 before this Court and the same was allowed by the order dated 20.10.2020 directing the respondents to examine the petitioner's case in terms of the law laid down by the Hon'ble Supreme Court in **Avtar Singh v. Union of India**¹.

7. As per the directions of this Court in W.P. No.16512 of 2020 dated 20.10.2020, the petitioner has submitted a representation dated 29.10.2020 to respondent No.2, however, by the impugned memo, respondent No.2 has cancelled appointment of the petitioner observing as under:

¹ (2016) 8 SCC 471

“7. The Criminal Case wherein the Petitioner was involved is a serious offence and not a case of trivial in nature. The Petitioner who was the sole accused in the Criminal Case drove the vehicle in a rash and negligent manner resulting death of the deceased on the spot. During investigation it was established that accident occurred was not due to any mechanical defect of the vehicle. The incident occurred on 15-4-2017 and the accused visited the PS on 19-4-2017. After investigation Police filed charge sheet dated 29-4-2017. After more than 3 years the accused compromised the case with the deceased’s family and filed Criminal MP in the High Court for quashing the proceedings in CC.No.282 of 2017. This he has done only to grab the job of Police Constable. The victim may be prepared to settle the matter for any consideration other than innocence of the accused, but it did not wash off the criminal antecedents of the accused.”

8. The learned counsel for the petitioner has further submitted that the order impugned is contrary to the judgment of the Hon’ble Supreme Court in **Avtar Singh’s case** (Supra 2). The petitioner was not involved in an offence of moral turpitude.

There was no suppression of pendency of criminal case and in any event, the criminal proceedings have been quashed.

9. The offence under Section 304-A IPC is a bailable offence and punishable with a maximum imprisonment up to two years or with fine or with both and triable by a Court of Magistrate. In criminal law jurisprudence, the offences, which are punishable with less than three years imprisonment and triable by Magistrate Court, are treated as less serious offences. However, even the offences punishable with less than three years imprisonment may involve moral turpitude. What constitutes moral turpitude was considered by the Supreme Court in **Pawan Kumar v. State of Haryana**² and held in paragraph No.12 as under:

"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. The government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 (Annexure E in the Paper Book), accepting the recommendations of the Government of India, that ex-convicts who

² (1996) 4 SCC 17

were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

".. ... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:

- (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.
- (2) whether the motive which led to the act was a base one.
- (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offence which are not included in it but which in certain situations and circumstances may involve moral turpitude."

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted."

10. In **State Bank of India v. P. Soupramaniane**³, the Hon'ble Supreme Court while deciding a case relating to an employee working as Messenger in State Bank of India at Puducherry who was discharged from service for his conviction for commission of the offence under Section 324 IPC and sentence of

³ (2019) 18 SCC 135

imprisonment for three months, took note of the circumstances under which the incident in the crime was committed and made the following observations:

9. “Moral Turpitude” as defined in *Black's Law Dictionary* (6th Edn.) is as follows:

“*Moral Turpitude*.—The act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man.” [*Black's Law Dictionary* (6th Edn.) p. 1008.]

“implies something immoral in itself regardless of it being punishable by law”; “restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind.” [Id, p. 1517.]

10. According to *Bouvier's Law Dictionary*, “Moral Turpitude” is:

“An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”

11. *Burton Legal Thesaurus* defines “Moral Turpitude” as:

“Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonour, shame, guilt, knavery, misdoing, perversion, shame, vice, wrong.”

In the above decision, the Supreme Court went on to hold that the crime committed by the employee therein does not involve moral turpitude.

11. In **Om Prakash v. State of Haryana** (CWP.No.2209 of 2016 dated August 01, 2017), it was held that the offence under Section 304-A IPC does not involve moral turpitude. However, the said judgment was rendered taking into consideration the policy decision of the State of Haryana on 02.02.1973, wherein Section 304-A IPC was not included in the list of offences which constitute moral turpitude.

12. In **Avtar Singh’s case** (Supra 2), the Supreme Court dealt with several situations relating to suppression/involvement of employee in serious offence, acquittal of employee on technical grounds, offences involving moral turpitude etc. and laid down

guidelines to be taken into consideration for terminating services of an employee who is involved in a criminal case and observed 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 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.”

13. Offence under Section 304-A IPC will be registered, when death occurs by an act of negligence since no *mens rea* is involved. It is not a serious offence like murder, attempt to murder, cheating, forgery etc., which involve *mens rea*. So also in the light of the judicial pronouncements and definition of the expression ‘Moral Turpitude’ discussed above, this Court holds that offence under Section 304-A IPC does not involve moral turpitude.

14. In the instant case also, the petitioner was involved in the offence under Section 304-A IPC. However, he has entered

into compromise and the proceedings in C.C. No.282 of 2017 were quashed by this Court in Criminal Petition No.4143 of 2020 vide order dated 12.10.2020. Thus, action of respondent No.2 in cancelling provisional selection of the petitioner under the impugned proceedings dated 16.11.2020 is arbitrary, unjust and without application of mind. Hence, contention of the learned Special Government Pleader that the petitioner is not diligent, and therefore, he is not fit for recruitment as police constable does not merit consideration.

15. Therefore, the writ petition is allowed. The impugned Memorandum in Rc.No.116/Rect/Admn/4/2020 dated 16.11.2020 issued by respondent No.2 is set aside. The respondents are directed to appoint the petitioner on regular basis pursuant to his provisional selection vide Register No.116168, at Serial No.2190 in the selection list to the post of Stipendiary Cadet Trainee Police Constable (TSSP) (Men) pursuant to the Notification in Rc.No.88/Rect./Admn-1/2018 dated 31.05.2018 issued by respondent No.2 within a period of four (4) weeks from the date of receipt of a copy of this order. No order as to costs.

As a sequel thereto, miscellaneous applications, if any,
pending in the writ petition stand closed.

April 27, 2022.
PV

B. VIJAYSEN REDDY, J