

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 29TH DAY OF SEPTEMBER 2023 / 7TH ASWINA, 1945

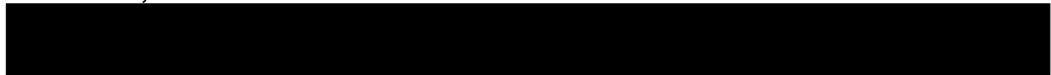
OP(KAT) NO. 267 OF 2021

AGAINST THE ORDER IN OA 2076/2020 DT 19/3/2021 OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

- 1 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, HOME (SSB)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, KERALA-695001.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
INTELLIGENCE, POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA-695014.
- 3 THE COMMANDANT,
INDIA RESERVE BATTALION, RAMAVARMAPURAM, THRISSUR, KERALA-680001.
BY ADVS.
GOVERNMENT PLEADER
SHRI.ASOK M.CHERIAN, ADDL. ADVOCATE GENERAL
PUBLIC PROSECUTOR
T.S.SHYAM PRASANTH, GOVERNMENT PLEADER

RESPONDENT/S:

- 1 DURGADAS,

- 2 THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM, KERALA-695004.
BY ADVS.
KALEESWARAM RAJ
THULASI K. RAJ
VARUN C.VIJAY

THIS OP (KERALA ADMINISTRATIVE TRIBUNAL) HAVING BEEN FINALLY HEARD ON
8.09.2023, THE COURT ON 29/9/2023 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 29th day of September, 2023

A.Muhamed Mustaque, J.

“Man aspires and makes his choice but the choice itself becomes a hurdle in the journey he aspired for”.

Shri Durga Das failed miserably in his life goal to have a partner of his choice. He realised the greatest challenge in life is not falling but rising from the moment when he falls. He fancied a career as a police constable in India Reserve Battalion Commando Wing. He succeeded in all tests that qualifies him to be appointed as a constable except establishing his antecedent character. Unlike in his failed marriage, he has not stopped raising his challenge. He persisted for his glory and succeeded before the Kerala Administrative Tribunal to appoint him as a constable. However, the State wants to stop him and has come up with this original petition challenging the order of the Tribunal.

2. Durga Das was involved in a criminal case based on a complaint lodged by his estranged wife while a matrimonial dispute was pending. The allegation against him was serious and would have persuaded any

prospective employer to doubt his character and integrity. It was alleged that he trespassed into the classroom Peruman Engineering College in uniform of a student and inflicted injuries on the left leg and shoulder of his wife, who was the complainant with a surgical blade. It is further alleged that he also intimidated the classmates of his wife with fear of death. Thus, he was proceeded for the offences punishable under Sections 419, 452, 307 and 506 (ii) of IPC. During the trial, none of the witnesses supported the prosecution case. Accordingly, he was acquitted under Section 235(1) of Cr.PC.

3. The Rules related to appointment mandate that the Government must be satisfied with character and antecedents for qualifying such services (See Rule 10(b)(iii) of the Kerala State & Subordinate Service Rules, 1958 [KS&SSR]).

4. Section 86 of Chapter VII of Kerala Police Act, 2011 deals with the “disqualifications of appointment as a police officer”. It is appropriate to refer Section 86 which reads thus:

86. Disqualifications for appointment as a police officer.- (1) No person shall be eligible for appointment as a Police Officer or shall have the right to continue in employment as a Police Officer if that person, -

(a) is not a citizen of India; or

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(b) has been convicted by a Court of law for an offence involving proclivity for violence or moral turpitude;

(c) is found mentally, physically or behaviourally unfit for carrying out the duties of police; or

(d) is a member of a political party and is not prepared to terminate his membership even after recruitment; or

(e) is an office bearer of any social, religious, cultural or scientific organization and is not prepared to give up or terminate such position even after instructions from Government, State Police Chief or the District Police Chief; or

(f) is or has been, a member of any banned organization.

(2) A person against whom a criminal case for an offence involving proclivity of violence or moral turpitude is pending before a Court of law shall be entitled to appear for recruitment, to get selected and to undergo training, but shall be entitled for permanent appointment only after being acquitted.

(3) A Police Officer, at any time after appointment is found belonging to any of the categories under (a) to (f) of sub-section (1), the appointing authority may immediately place the said officer under suspension and after giving reasonable opportunity to prove otherwise, dismiss, remove or compulsorily retire the officer as the case may be.

5. Before the Tribunal, the State defended its action on the ground that, merely because the witnesses had turned hostile, it was not safe to hold that the character and antecedents would qualify him for such service. However, the Tribunal noted that there was nothing adverse

regarding the character and antecedents of Durga Das except the criminal case and, there was no other independent material to hold that Durga Das was unsuitable for appointment as a Constable. The impugned order was therefore, set aside and, the Tribunal ordered to appoint him as a Police Constable.

6. Before us, the learned Additional Advocate General Shri Asok M.Chcrian argued the matter in extenso and submitted that the scope of judicial review was limited and the subjective element of satisfaction as to the character and integrity cannot be substituted by a different view of the Tribunal. According to him, the Tribunal went beyond its jurisdiction and interfered with the autonomy and choice made by the employer/Government. We shall advert to the judgments relied upon by the learned Additional Advocate General hereafter.

6(i). In **Anil Kumar A. v. State of Kerala and Others** [2012 (2) KHC 257], this Court opined that the question whether one is suitable in the police force will have to be considered by the Department notwithstanding his acquittal and the Department is even free to terminate such person, if his character and antecedents are found to be bad.

6(ii). In **Deputy Inspector General of Police and Another v. S.Samuthiram** [(2013) 7 SCC 685], the Apex Court observed that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent was not honourably acquitted by the criminal court, but only due to the fact that PW1 and PW2 turned hostile and other prosecution witnesses were not examined.

6(iii). In **Commissioner of Police, New Delhi and Another v. Mehar Singh** [(2013) 1 SCC 598] at para.24 it was held as follows:

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of correlation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

6(iv). In **State (UT of Chandigarh) v. Pradeep Kumar** [(2018) 1 SCC 797], the Apex Court held as follows in para.11

11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. In *Commr. of Police v. Mehar Singh* [*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasising upon the importance of character and integrity required for joining police force/discipline force, in *Mehar Singh case* [*Commr. of Police v. Mehar Singh*, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , this Court held as under: (SCC pp. 698-700 & 702-03, paras 23-25, 33 & 35)

“23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the

law and order situation rather than maintaining it. In our opinion, this policy framed by Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [*R.P. Kapur v. Union of India*, AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "*honourable acquittal*" was considered by this Court in *S. Samuthiram* [*Inspector General of Police v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] . In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section

509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal* [*RBI v. Bhopal Singh Panchal*, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] , where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "*honourable acquittal*", "*acquitted of blame*" and "*fully exonerated*" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "*honourably acquitted*". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony

of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand.”

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(emphasis in original)

The same principle was reiterated in *State of M.P. v. Parvez Khan* [*State of M.P. v. Parvez Khan*, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544].

6(v). In **State of Rajasthan and others v. Love Kush Meena** [AIR 2021 SC 1610], the Apex Court opined as follows:

16. In a similar factual scenario to the extent of recruitment to the posts of Subedars, Platoon Commandants and Inspectors of Police in pursuance to an advertisement and disqualification of one of the candidates being assailed resulted in a judgment of this Court in *State of Madhya Pradesh and Ors. v. Abhijit Singh Pawar* [(2018) 18 SCC 733 : (AIR 2018 SC (Supp) 1493)] by a two Judge Bench. Suffice to say, in the factual context, a case registered in the year 2006 was pending on the date when affidavit was tendered and within four days the compromise was entered into between the original complainant and the respondent. An application for compounding was filed. The compounding was found to be permissible as it dealt with offences under Sections 294, 325/34, 323, 506 Part II of the IPC and on discussion of the legal principle enunciated in the earlier judgments, it was opined that the earlier judgment in the case of *Commissioner of Police v. Mehar Singh* [(2013) 7 SCC 685 : (AIR 2013 SC 2861)] it was opined that there is no doubt about the proposition that even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedent and suitability of the candidate. In this context, it was held, the employer is entitled to take into account the job profile for which the selection is undertaken, the severity of the charge levelled against the candidate and whether acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt as a result of composition. We may also add

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that one aspect which was noticed which is common with the present case is the absence of any suggestion that the decision was actuated by mala fide or suffered on other accounts except the issue raised of the subsequent circular applicable.

6(vi). In **State v. Raj Kumar [(2021) 8 SCC 347]** at paras.28, 31 and 32, the Apex Court held as follows:

28. Courts exercising judicial review cannot second guess the suitability of a candidate for any public office or post. Absent evidence of malice or mindlessness (to the materials), or illegality by the public employer, an intense scrutiny on why a candidate is excluded as unsuitable renders the courts' decision suspect to the charge of trespass into executive power of determining suitability of an individual for appointment. This was emphasised by this Court in *M.V. Thimmaiah v. UPSC* [*M.V. Thimmaiah v. UPSC*, (2008) 2 SCC 119 : (2008) 1 SCC (L&S) 409] which held as follows : (SCC pp. 131, 135-36, paras 21 & 30)

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion. ...

30. We fail to understand how the Tribunal can sit as an appellate authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an appellate authority over the selection.”

31. Public service – like any other, presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision-making is neither illegal, unfair, or lacking in bona fides.

32. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should

not be taken seriously, given the age of the youth and the rural setting. This Court is of opinion that such generalisations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinised by the public employer concerned, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security.

6(vii). In **Union of India and Others v. Methu Meda** [(2022) 1 SCC 1], the Apex Court at para.10 held as follows:

10. While addressing the question, as argued the meaning of expression “acquittal” is required to be looked into. The expressions “honourable acquittal”, “acquitted of blame” and “fully acquitted” are unknown to the Code of Criminal Procedure or the Penal Code, 1860. It has been developed by judicial pronouncements. In *State of Assam v. Raghava Rajgopalachari* [*State of Assam v. Raghava Rajgopalachari*, 1967 SCC OnLine SC 1 : (1972) 7 SLR 44] , the effect of the word “honourably acquitted” has been considered in the context of the Assam Fundament Rules (FR) 54(a) for entitlement of full pay and allowance if the employee is not dismissed. The Court has referred to the judgment of *Robert Stuart Wauchope v. Emperor* [*Robert Stuart Wauchope v. Emperor*, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , in the context of expression “honourably acquitted”, Lort-Williams, J. observed as thus : (*Robert Stuart Wauchope case* [*Robert Stuart Wauchope v. Emperor*, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , SCC OnLine Cal)

“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 the government authorities term "honourably acquitted".

7. The learned counsel Shri Kaleeswaram Raj appearing for the respondent Shri Durga Das placed reliance on the following judgments:

7(i). In **Joginder Singh v. UT of Chandigarh, (2015) 2 SCC 377**, the Apex Court at paras.24, 25, 26 and 28 held as follows:

24. However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14-4-1998, after he had applied for the post of Constable. Further, he had been acquitted on 4-10-1999 i.e. much before he was called for the interview/medical examination/written test. Further, as per Rule 12.18, emphasis has been laid on the freedom or otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the trial court that as the prosecution has failed to prove the charges against the appellant by adducing cogent evidence, therefore, the police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the

appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order [*UT, Chandigarh v. Central Administrative Tribunal*, (2008) 2 PLR 565] passed by the High Court is vitiated in law and liable to be set aside.

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. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in *Jagtar Singh v. CBI* [1993 Supp (3) SCC 49 : 1993 SCC (L&S) 922 : (1993) 25 ATC 81] which states as under : (SCC pp. 50-51, para 4)

“4. ... It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on

the part of the respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to government service. We are of the view that the appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission.”

26. Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

28. Since we have upheld the judgment and order of CAT, the respondents are directed to comply with the same by issuing appointment letter to the appellant within four weeks from the date of receipt of the copy of this order. There shall be no order as to costs.

7(ii). In **Pramod Singh Kirar v. State of M.P. [(2023) 1 SCC 423]** the Apex Court held at paras.10 and 11 as follows:

10. From the judgment and order of acquittal passed by the trial court it appears that there was a matrimonial dispute which ended in settlement and the original complainant did not support the case of the prosecution and was declared hostile in view of settlement out of the

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court and the other prosecution witness(s) examined in the case did not corroborate the prosecution story. Thus, it can be seen that the appellant did not face the prosecution for the other offences of IPC.

11. Therefore, for whatever has happened in the year 2001 and the criminal case for the offence under Section 498-A resulted in acquittal in the year 2006, the appellant should not be denied the appointment in the year 2013/2014. The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498-AIPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife).

8. The Kerala Subordinate Service Rules are general provisions governing members of the State Subordinate Services. The Kerala Police Act is a Special Statute related to the Police force in the State. Under Section 86(2) of the Kerala Police Act, there is no bar even for a person against whom criminal cases are pending for an offence involving proclivity of violence or moral turpitude, to get appointment temporarily. The permanent appointment will be only after being acquitted. Thus, the provisions of the Kerala Police Act do not bar Durga Das claiming for selection and permanent appointment in the light of his acquittal. But that does not mean on such acquittal, the candidate will have free walk to the post. The question then falls is whether the

character and antecedent do required to be adverted for appointment in public service, even after the acquittal, we must say yes if law desires so, if such appointment requires character verification. The criminal case or such other proceedings are all relevant factors for objective enquiry not the factor itself. It is to be noted that KS&SSR is a general provision and still would govern the candidates aspiring as a member of the State and subordinate services. The allegations in the criminal case can be considered independently to assess the character and integrity of a person. The acquittal in a criminal case will not automatically entail him for qualifying in public service. This is the perplexed question in this matter which requires clarification on the law. In an enquiry related to character and integrity, what matters for the Government, is the point to be considered by us. The Government, objectively is enquiring character and antecedents to find whether such a person can be appointed in any post in such service. In that process, the criminal case records including civil cases may be relevant, if it reflects the character and antecedents of such a person. The scope of enquiry in such a situation is to find out whether the allegations and materials would qualify him to occupy the office in the service or not. It is not the final outcome of such a case that is decisive but the relevant finding in such cases is material. We have fashioned through judicial language;

the phrase, 'honourable acquittal', to denote that the findings in that are material or relevant in an assessment of the character and antecedents. In a criminal case, there may be findings reflecting character but may be short of a criminal offence for want of elements constituting the offence. Still that may be valid or relevant in assessing the character of a person concerned though the ultimate outcome might have resulted in acquittal. In that process of enquiry, what concerns the Government is whether the findings disclosed in the criminal investigation or any other dispute are having a ramification on the character of the persons concerned. In that process, the Government being an employer, is not looking at the final outcome. No doubt, in the final outcome, process results in conviction, without much labour the character can be assessed. But in a case, where the person concerned is acquitted for want of evidence the Government has to conduct an enquiry as to whether the materials as such (not the allegations alone) reflect upon the character and antecedents of the person. If the materials including allegations as such do not disclose anything tainted as to the character of persons concerned, based on the mere allegations in the prosecution case, the Government cannot hold that the character would disqualify him in the service. In such a situation, the Government will have to conduct an independent enquiry to assess the character and antecedents of the

person concerned with reference to the incident which was the subject matter of the criminal case. The Government cannot merely restate the allegations in the prosecution and hold that the character is bad to make him unsuitable for the post. Thus, we make it clear that in criminal cases where the prosecution cases end up in acquittal if the Government cannot form an opinion based on the prosecution allegations and other materials including the finding entered by the criminal court as to the character of the person, the Government is bound to conduct separate enquiry as to the character antecedents of the person. Thus, mere registration of the criminal case will not enable the Government to disqualify such a person from becoming a member of service.

9. Now, coming back to the findings in the impugned order, the impugned order was based on a report of the Additional Director of Police (Intelligence) dated 10.11.2020. The impugned order was proceeded as though the candidate was convicted. This appears to have been a mistake. However, the impugned order refers to the report of the Additional Director of Police dated 10.11.2020. We had the advantage of looking at the report which was placed before us during the course of argument. That report clearly indicates that the attempt to enquire about the character with reference to the incident which was subject matter of the crime was not fructified as the investigation officer was not alive. It

was also stated that the de facto complainant and all key witnesses turned hostile in the prosecution. Except the allegation of the prosecution, absolutely no materials were available to hold against the candidate Durga Das. It is not safe to assess the character based on the prosecution allegations alone. In such circumstances, the conclusion arrived at by the Government to hold against the candidature of Durga Das is erroneous and unsustainable. The Court in such circumstances actually is not overturning the decision but only interfering with the process leading to the decision. The Government could not have concluded that the character is bad to disqualify him from becoming a member of the service without any materials, merely based on prosecution allegations. Thus, we concur with the findings of the Tribunal and dismiss the original petition.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

APPENDIX OF OP (KAT) 267/2021

PETITIONER EXHIBITS

Exhibit P1	COPY OF THE ORIGINAL APPLICATION ALONG WITH ANNEXURES.
Annexure A1	TRUE COPY OF THE ORDER DATED 07.02.2017 IN O.P. NO. 1332/2014.
Annexure 1:	TRUE COPY OF G.O. (RT) NO.146/2022/HOME DQTED 15.01.2022..
Annexure A2	TRUE COPY OF THE JUDGMENT DATED 16.02.2017 IN S.C. NO. 994/2014 ISSUED BY THE COURT OF THE III ADDITIONAL SESSIONS JUDGE, KOLLAM.
Annexure A3	TRUE COPY OF THE ADVICE MEMO VO. RIC (10 19478/10/G.W DATED 16.8.2017 ISSUED BY THE SECRETARY KERALA PUBLIC SERVICE COMMISSION OF THE APPLICANT.
Annexure A3 (A)	TRUE COPY OF THE COMMUNICATION MEMO NOO. A2-10148/2017/IRB DATED 18.09.2017 ISSUED TO THE APPLICANT BY THE 3RD RESPONDENT.
Annexure A3 (B)	TRUE COPY OF THE CERTIFICATE OF MEDICAL FITNESS ISSUED ON 2.11.2017 TO THE APPLICANT BY THE MEDICAL OFFICER ON 02.11.2017.
Annexure A4	TRUE COPY OF THE SHOW CAUSE NOTICE NO. HOME SSB3/430/2017 DATED 22.12.2017 ISSUED BY THE 1ST RESPONDENT TO THE APPLICANT.
Annexure A5	TRUE COPY OF THE REPLY TO THE SHOW CAUSE NOTICE DATED 12.1.2018 SUBMITTED BY THE APPLICANT BEFORE THE PRINCIPAL SECRETARY TO GOVERNMENT HOME DEPARTMENT.
Annexure A6	TRUE COPY OF THE JUDGMENT DATED 24.01.2018 IN O.A. (EKM) NO. 142/2018.
Annexure A6 (A)	TRUE COPY OF THE LETTER DATED 30.10.2017 ISSUED BY THE SUB INSPECTOR OF POLICE, KOLLAM.
Annexure A7	TRUE COPY OF THE COMMUNICATION B.O. NO. 26/2018/IRB DATED 30.01.2018 ISSUED BY THE 3RD RESPONDENT.

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Annexure A8	TRUE COPY OF THE G.O.(RT) NO. 722/2018 /HOME DATED 13.03.2018.
Annexure A9	TRUE COPY OF THE ORDER DATED 23.03.2018 IN O.A. (EKM) NO. 744/2018.
Annexure A10	TRUE COPY OF THE JUDGMENT DATED 08.06.2018 IN OP KAT NO. 178/2018.
Annexure A11	TRUE COPY OF B.O. NO. 175/2019/IRB DATED 02.07.2018 ISSUED BY THE 3RD RESPONDENT.
Annexure A12	TRUE COPY OF THE COMMUNICATION NO. A2-1607/2018/IRB DATED 03.03.2020 ISSUED BY THE 3RD RESPONDENT TO THE APPLICANT.
Annexure A13	TRUE COPY OF B.O. NO. 270/2020/IRB DATED 23.07.2020 ISSUED BY THE 3RD RESPONDENT.
Annexure A14	TRUE COPY OF G.O.(R.T) NO. 2882/2020/HOME DATED 1`5.12.2020.
Annexure A15	DOWNLOADED COPY FROM THE WEBSITE OF THE KERALA POLICE DEPARTMENT DATED 21.12.2020 SHOWING THE LIST OF PERSONS WHO HAVE RECEIVED REGULARIZATION OF APPOINTMENT.
Exhibit P2	COPY OF THE REPLY STATEMENT FILED BY THE 2ND RESPONDENT.
Exhibit P3	COPY OF THE REPLY STATEMENT FILED BY THE 3RD RESPONDENT.
Annexure R3(A)	TRUE COPY OF THE B.O. NO. 175/2018/IRB DATED 02.07.2018.
Annexure R3(B)	TRUE COPY OF THE B.O. NO. 188/2018/IRB DATED 07.07.2018.
Annexure R3(C)	TRUE COPY OF THE LETTER NO. A2-1607/2018/IRB DATED 03.03.2020.
Annexure R3(D)	TRUE COPY OF THE LETTER NO. L7.35534/2020/DATED 16.06.2020.
Annexure R3(E)	TRUE COPY OF THE B.O. NO. 270/2020/IRB DATED 23.07.2020.
Annexure R3 (F)	TRUE COPY OF THE G.O.(RT) NO. 2882/2020/HOME DATED 15.12.2020.

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Exhibit P4

TRUE COPY OF THE ORDER DATED 19.03.2021 IN
O.A. NO. 2076/2020.

ANNEXURE-1

TRUE COPY OF GO RT NO.146/2022 HOME

DT.15/1/2022 - FILED ALONG WITH STATEMENT IN OP(KAT)267/2021

DT.28/1/2022

RESPONDENTS EXHIBITS:

Exhibit R1(a): True copy of the order dated 09.10.2020 OA(EKM)
No.744/2018.

Exhibit R1(b): True copy of the order dated 18.12.2020 in OA(EKM)
No.744/2018.