

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 19195 of 2019****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021  
In R/SPECIAL CIVIL APPLICATION NO. 19195 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE MAUNA M. BHATT****sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

**PRAGNESHKUMAR SOMCHANDBHAI DUTT**  
Versus  
**STATE OF GUJARAT**

**Appearance:**

**DEEPAK N KHANCHANDANI(7781)** for the Petitioner(s) No. 1  
for the Respondent(s) No. 1

**MS NIRALI SARDA, LD.ASSTT. GOVERNMENT PLEADER** for the  
Respondent(s) No. 1

**NOTICE SERVED BY DS** for the Respondent(s) No. 2

**CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT****Date : 31/07/2023****ORAL JUDGMENT**

1. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Nirali Sarda waives service of Rule on behalf of respondent No.1.

2. Considering the issue involved and with the consent of learned advocates appearing for the respective parties, the present petition is taken up for final hearing today.

3. Learned advocate for the petitioner seeks permission to join “The Director, Prohibition & Excise Department” as party respondent No.3 in the cause title. Draft Amendment is allowed. To be carried out forthwith.

4. This petition is filed challenging action of respondent No.2 in not considering the case of the petitioner for appointment to the post of Jamadar (Class-III), published pursuant to the advertisement dated 17.10.2017. It is also prayed that directions may be issued to respondent No.2 to appoint the petitioner on the said post.

5. Brief facts, referred in the petition, are as under:

The advertisement dated 17.10.2017, was published by respondent No.2, pursuant to which the petitioner applied for the post of Jamadar (Class-III). For the post in question, the candidate is to be appointed on fixed salary for a period of 5

years and upon completion of 5 years, if service is found satisfactory, he is to be appointed on regular basis. The petitioner belongs to SC/ ST candidate and applied accordingly. The petitioner cleared Preliminary Examination, Physical Test and Main Competitive Examination, which are to be cleared mandatorily. Thereafter, the petitioner was called for documents verification. After documents verification, the candidate is to go for medical examination. Since, the petitioner was not called for medical examination, upon inquiry, he came to know that on account of pending criminal case, he was not considered. Against the petitioner, the case was registered before Shahpur Police Station, Ahmedabad being C.R.No.I-77 of 2015, for the offences punishable under sections 143, 147, 332 and 337 of the Indian Penal Code and Sections 3 and 7 of Damage to Public Property Act. Since the candidature of the petitioner was not considered for appointment for the post in question, he preferred this petition.

6. Heard learned advocate Mr.Deepak Khanchandani for the petitioner and learned Assistant Government Pleader Ms.Nirali Sarda for the respondent No.1.

7. Learned advocate Mr.Deepak Khanchandani for the petitioner submitted that rejection of candidature of the

petitioner on the ground of having suppressed the fact of pending criminal prosecution against him, is erroneous because in the application Form, such column for giving such details is not available. He submitted that Online Application Form as referred at Annexure “R-1”, is to be filled, where no details of pending criminal proceedings if any is to be referred. Hence, there is no suppression by the petitioner and therefore, action of the respondent in not considering the application of the petitioner, is erroneous.

Further, for the charges levelled against the petitioner, he has been acquitted by the competent Court of law. Referring to the order dated 03.06.2023, he submitted that Court in Criminal Revision Application No.169 of 2023 has acquitted the petitioner and therefore, as on date, criminal proceeding is not pending against the petitioner. Moreover, as per knowledge of the petitioner, there are vacancies yet to be filled and therefore, if the candidature of the petitioner is considered, it would meet the ends of justice. The petitioner is already in the select list and therefore, directions may be issued to consider the case of the petitioner for appointment.

8. On the other hand, learned Assistant Government Pleader Ms.Nirali Sarda for respondent No.1 submitted that the petitioner is seeking the government employment and the candidate, who is applying for the government employment,

must come with the clean hands. Admittedly, on the date of application, criminal prosecution was pending against the petitioner and therefore, his candidature was rightly not considered at the stage of documents verification. She submitted that in absence of any irregularity, no interference is called for.

9. Considered the submissions. Undisputedly, the petitioner applied for the post in question online. Online Application at Annexure- R-1 refers to the details to be filled by the candidate. It doesn't refer to any information to be given by the candidate in relation to pending criminal proceedings, if any. The petitioner filled all the details sought in the application Form and therefore, in the opinion of this Court, action of respondent No.2 in rejecting application on the ground of suppression of material fact, is erroneous. Moreover, criminal complaint, which was subjected to criminal prosecution has attained finality. The competent Court of law by order dated 03.06.2023 has acquitted the petitioner from the charges levelled against him and therefore, no criminal proceeding is pending against the petitioner as on date, which will make him ineligible to be considered for the post in question.

10. Since there is no suppression of the fact by the petitioner

in his application, respondents are directed to consider the case of the petitioner for appointment, subject to availability of vacancy, if he is otherwise found eligible for the post in question. The aforesaid exercise shall be completed by the respondents within a period of two months from the date of receipt of this order. Upon verification if the petitioner is found eligible for appointment and if the same is made, the petitioner shall not be entitled for any benefits prior to the appointment by claiming any equity.

11. With the above observations and directions, the present petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

12. In view of aforesaid order passed in the main petition, Civil Application (for Direction) No.1 of 2021 does not survive and accordingly disposed of.

sd/-

**(MAUNA M. BHATT,J)**

DIPTI PATEL.