

(2001) 10 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 26/2001

Abid Ali

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 305 : (2002) 3 SCT 839

Hon'ble Judges : S.K.Gupta, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : J.S.Kotwal, Ashok Parihar, Advocates appearing for the Parties

Judgement

1. This is an appeal directed against the order/judgement dated 08122000 propounded by learned single judge, whereby writ petition, SWP No.

1358/2000, filed by the appellantwrit petitioner has been dismissed.

2. We have heard Mr J.S. Kotwal, learned senior counsel appearing for the appellant and Mr H. Rehman, Govt Advocate, representing the state,

in extense.

3. The case of the petitioner, Abid Ali, is that he came to be selected in IRPIV Battalion vide order No. DIP/J819/97, subject to the fulfillment of

requisite formalities under rules, which include medical examination, character verification etc. The petitioner was got medically examined. He was,

however, reported adversely by the concerned agency, as he had been detained under J&K Public Safety Act in case FIR No. 4/90 under

sections 3/4 TADA, 2/3 C&MICO, 3 EAO, 302/307/365/120B RPC and 3/25 Arms Act. The recommendations and certificates obtained by the

petitioner in this regard from SDM, Bhadarwah, Lumberdar and Chowkidar of

village Katha and O.K. Kotwal, Member, Legislative Council, however, could not dispel the effect of the adverse reports of the CID agency. A writ petition, SWP No. 1854/97, came to be commenced by the petitioner on 1512 1997, which came to be decided on 12 11 1998 with a direction to the respondents to consider the petitioner's case for appointment. The case of the petitioner was reopened and reexamined by the respondents. A fresh report obtained from the CID agency revealed that the petitioner was arrested in case of general nature registered by police station CIK under FIR No. 4/90 and the petitioner also came to be apprehended while attempting to exfiltrate to POK.

4. The respondents, however, passed an order in the light of the judgement of the High Court in the aforesaid writ petition that the petitioner can be appointed subject to the acquittal of the charge levelled against him in FIR No. 4/90.

5. In order to give vent to his grievances against the aforesaid order, the petitioner claims relief of seeking appointment order in his favour for the post of a constable in view of the selection by the Board explicitly delineated in the writ petition. The stand of the respondents is that recruitment to the police force makes it imperative to have a character verification and medical examination, as is contemplated by Rule 185 of the police manual.

Adverse character reports against the appellantwrit petitioner regarding his detention under J&K Public Safety Act and a case FIR No. 4/90 registered against him in police station CIK in serious offences came in the way of the appellant to be considered for appointment as constable in the police force by the respondents.

6. According to Mr J. S. Kotwal, learned senior counsel for the appellant, there has been a delay of about a decade in concluding the investigation in FIR No. 4/90 without assigning any reason. That the allegations against the appellantwrit petitioner in the said FIR are false and frivolous and, therefore, cannot come in his way to be appointed to the post of a constable. It is pertinent to point out that order No. 1625 of 1999 dated 01051999 indicating the petitioner to be appointed in case of the acquittal of the charges levelled against him in FIR No. 4/90 has not been challenged in the writ petition. For an appointment to the post of constable, it is imperative to have his character verified besides the medical

examination envisaged by Rule 185 of the J&K Police Manual. It is further contemplated by Rule 145 of the J&K Police Manual that the

employerState is further required to assess, estimate and evaluate the suitability of a recruit for enrolment in police force. It is squarely and in its

discretion to judge and consider the suitability of a recruit for his appointment as constable in police force.

A person having adverse report from the agency of the police with regard to this nexus with the antinationals and those who are engaged in

subversive and militant activities, against whom an FIR for offences under sections 3/4 TADA, 2/3 C&MICO, 3 EAO, 302/307/365/120B RPC

and 3/25 of Arms Act has been registered pending investigation, besides his detention under Public Safety Act, cannot claim to have suitability for

his appointment as constable in the police force. Allegations of his involvement in the aforesaid case cannot be held to be false or frivolous merely

on the plea that the detention of the petitioner under J&K Public Safety Act has been quashed. Even delay in investigation cannot be carved out, a

ground to raise a plea that the adverse report against the appellantwrit petitioner is vague and inconclusive in nature and urge to hold the petitioner

a suitable candidate to be appointed to the post of a constable in police force whose prime function is to maintain law and order and curb the

militants activities extending threats to the security of the country and besides endangering the life and property of the innocent people. The

judgements cited and relied upon by the learned senior counsel appearing for the appellant, Mr J.S. Kotwal, are applicable to the facts of those

cases, having no relevance with the facts of the present case being markedly distinguishable. It is a settled proposition of law that a selected and

empanelled candidate cannot claim to be appointed against vacancies available on the date of publication of his results. Empanelment is only

condition of eligibility. It does not create a vested right of an appointment.

7. Taking an over all global view of the aforesaid discussion, we are of the opinion that the order propounded by the learned single judge does not

suffer from any legal or factual infirmity and is, thus, confirmed and upheld. The appeal possessing no merit is hereby dismissed. No orderas to

costs.