
(2010) 08 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3228 of 2008

Arvind Kumar

APPELLANT

Vs

Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. and others

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 406, 498A
Probation of Offenders Act, 1958 — Section 5

Citation : (2010) 127 FLR 690

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : S.S. Hora, for the Appellant; Virendra Lodha, for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant petition has been filed assailing order dated 29.2.2008 (Ann.8) whereby services of petitioner were terminated on the premise that at the time of verification of his character & antecedents, it was informed that he was implicated in criminal case registered for offences under sections 498-A and 406, Indian Penal Code, taking note whereof, it was considered to be a case of his unsatisfactory character and accordingly being probationer trainee, his services were dispensed with.

After participating in process of selection, petitioner was appointed as Junior Engineer-I (PLCC) on the terms & conditions incorporated in the order of appointment dt. 7.4.2007 (Ann.6), itself-pursuant to which, petitioner joined on 18.4.2007 (Ann.7). However, his services were terminated vide order dated 2.2008 (Ann.8) invoking condition No. 17 of his order of appointment.

2. To utter dismay of petitioner, criminal case was registered against him at the instance of his wife for offences under sections 498-A and 406, Indian Penal Code but it being a matrimonial dispute, the parties arrived at a compromise;

however, since offence u/s 498-A Indian Penal Code was not compoundable u/s 320 CrPC, he was advised to admit his guilt and after recording his statement u/s 313 CrPC, in view of compromise between the spouse, vide judgment dt.19.7.2003 though he was convicted u/s 498-A, Indian Penal Code but instead of sentence being passed, was released giving benefit of section 5 of Probation of Offenders Act while imposing a fine of Rs. 1000/- for prosecution expenses.

3. However, since criminal case being disposed of on 19.7.2003, at the same time, application was jointly filed by spouse u/s 13-B of Hindu Marriage Act seeking divorce on their mutual consent, which was decreed vide judgment dt.23.7.2003 (Ann.11) in view whereof, matrimonial dispute was finally settled between the spouse. Thereafter, petitioner applied for appointment to the post of Jr. Engineer and was appointed vide order dated 7.4.2007 (Ann.6) as junior Engineer on probation trainee.

4. Counsel for petitioner submits that Cl. 17 (supra) could be invoked by respondents only upon having verified from the police about character being doubtful or of unsatisfactory; while in case of petitioner, there is no material placed on record by which it could be inferred or verified in regard to his antecedents being either doubtful or of unsatisfactory character; and merely because matrimonial dispute having arisen between petitioner and his wife, and criminal case being registered u/s 498-A Indian Penal Code, which was finally settled between the parties, such an untoward circumstance in no manner can be considered to be a case of doubtful or unsatisfactory character so as to invoke Condition No. 17 of order of appointment for dispensing with services of petitioner; in such circumstances, very action of the respondents in terminating his services vide order impugned is wholly arbitrary and without application of mind; and deserves to be set aside.

5. Counsel further submits that verification of character at the instance of police was only to the effect that at one point of time, because of matrimonial dispute, criminal case under sections 498-A and 406, Indian Penal Code came to be registered against him but if such matrimonial dispute having been finally settled as is evident from documents on record (Ann.10 & 11), Clause 17 (supra) of appointment order in the facts and circumstances of the case has no application.

6. In the reply, Respondents have inter alia averred that criminal case was registered under sections 498-A and 406, Indian Penal Code against petitioner wherein on having admitted guilt, he was convicted but released on probation vide judgment dated 19.7.2003, about which the police has sent verification report, it was considered to be a case of doubtful or unsatisfactory character of petitioner taking note whereof, Clause 17 of order of appointment was invoked and it was considered appropriate to dispense with his services vide order impugned. In support, Counsel placed reliance upon decisions of Apex Court in *Hari Chandra v. Director of School Education* 1999 (82) FLR 593 (SC).

7. This Court has considered contentions advanced on behalf of both the parties

and with their assistance, examined material on record. Condition-17 of order of appointment being relevant reads ad infra:

"17. The antecedents of the candidates will also be got verified from the Police. In case of doubtful or unsatisfactory character, his/her services will be terminated without giving notice and he/she will not be entitled to any compensation."

8. Indisputably, criminal case was registered against petitioner for offence under sections 498-A and 406, Indian Penal Code because of matrimonial dispute between the spouse and since section 498-A, Indian Penal Code, it was not compoundable u/s 320, CrPC; and the parties having entered into compromise, which being special features in matrimonial matters, it becomes the duty of the Court, as well to encourage genuine settlements of matrimonial disputes - in the light whereof, it was considered appropriate at relevant point of time that after statement being recorded u/s 313, CrPC, while convicting him u/s 498-A, Indian Penal Code, he was released on probation. Simultaneously the spouse submitted joint application u/s 13-B of Hindu Marriage Act seeking divorce on mutual consent, which was granted by competent Court of jurisdiction vide order dt. 23.7.2003 (Ann.11) based on their compromise arrived at; their matrimonial disputes being settled finally came to an end. As a consequence whereof, in the facts & circumstances of the case, criminal complaint u/s 498-A IPC cannot in any manner be considered to be a case of doubtful or unsatisfactory character of petitioner.

9. That apart, petitioner much thereafter was appointed after regular selection process as Junior Engineer-I (PLCC) vide order dated 7.4.2007 on certain terms and conditions. Cl. 17 appears to be incorporated with an object that candidate whose antecedents on being verified from the police, if found to be a doubtful or unsatisfactory character, does not deserve to be continued in service his service could be terminated. But, in instant case, antecedents of petitioner were of matrimonial dispute having arisen between the spouse where it always becomes duty of the Court to see that such matrimonial disputes be settled for one or the other reason and that was the only object to be fulfilled while passing the order by the Trial Judge in settling such family disputes, as has been noticed by Apex Court in *B.S. Joshi v. State of Haryana* 2003 (46) ACC 779 (SC) : 2003 (5) AIC 42 (SC), wherein it has been observed that it is the duty of Courts to encourage genuine settlements of matrimonial disputes and there are reasons while such matrimonial dispute may be amicably settled by mutual consent instead of fighting out in a Court of law where it takes years and years to conclude and in such process, both the spouses lose their youth. With this object, parties when arrived at a compromise to settle their matrimonial dispute; taking note whereof the order was passed by learned Trial Judge granting him benefit of probation while convicting u/s 498-A, Indian Penal Code. In the opinion of this Court, conviction u/s 498-A, Indian Penal Code in special features of the case keeping in view matrimonial dispute being finally & mutually settled, would not construe the

antecedents of petitioner of being doubtful or Unsatisfactory character. In considered opinion of this Court, termination of Services of petitioner vide order impugned while Clause 17 being invoked, is whole sic wholly) arbitrary and without application of mind and deserves to be set aside.

10. The judgment in Hari Chand v. Director of Education (supra) relied upon by Counsel for Respondents wherein the Apex Court has examined the scope of probation of offenders Act, has no application in the facts of the instant case.

11. Consequently, writ petition succeeds and is hereby allowed. Order dated 29.2.2008 (Ann.8) terminating services of Petitioner is hereby quashed & set aside. Respondents are directed to reinstate the petitioner in service with consequential Benefits including seniority etc., however, he will be entitled for notional benefits and would not be paid arrears of salary for intervening period. All exercise to comply with directions (supra) be completed within one month. No costs.