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**(1997) 12 RAJ CK 0037**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 883 of 1997**

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| Brijendra Singh Meena         | Vs | APPELLANT  |
| State of Rajasthan and Others |    | RESPONDENT |

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**Date of Decision :** 18-12-1997

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15, 16, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 344  
Penal Code, 1860 (IPC) — Section 392, 394

**Citation :** (1998) 2 RLW 1107 : (1998) 2 WLC 456 : (1998) 1 WLN 487

**Hon'ble Judges :** N.L. Tibrewal, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

N.L. Tibrewal, J.—This petition involves a short but important question of law. The question is: whether denial of appointment to the petitioner on the post of Junior Marketing Officer merely on the ground of pendency of two criminal cases is legally sound? In other words whether action of the respondents denying appointment to the petitioner is arbitrary and violative of Articles 14, 15 and 16 of the Constitution? By this petition under Article 226 of the Constitution, the petitioner is seeking a writ of mandamus to give him appointment, with all consequential benefits, on the post of Junior Marketing Officer with effect from 7.11.1996 when persons junior to him were given appointment.

2. Factual position is not much in dispute. Pursuant to an advertisement No. F. 7(26)/RE/94-95 issued by the Rajasthan Public Service Commission (for short "RPSC") inviting applications from eligible candidates to fill up five vacancies of Junior Marketing Officer by direct recruitment, petitioner applied for the same. He appeared in screening examination and after found successful he was called for interview. Therefore, on the basis of merit he was selected for appointment and his name was included in select list prepared by the RPSC. One Pooran Chand, who was lower in merit to the petitioner was included in the reserve list.

Then, the petitioner received a letter, dated 23.9.1996, from Additional Director, Agriculture Marketing requiring him to fill up attestation form for verification of his antecedents/character, which was duly filled up and sent by him. Thereafter, the Director, Agriculture Marketing issued office order on 7.11.1996 appointing five persons as Junior Marketing Officer ignoring petitioner's name but including the name of Shri Pooran Chand from reserve list who was lower to the petitioner in merit. The petitioner, then, submitted a representation on 10.12.1996 to the Director, Agriculture Marketing drawing his attention to the fact that person lower in merit to him was given appointment. He also asked to intimate him the reason for denying him appointment. When there was no response as per the petitioner, he met personally with the Director and Deputy Director, but without any positive result.

3. The respondents, in their return, have taken the plea that due to pendency of two criminal cases under Sections 394 and 392 IPC he was denied appointment as the offences related to moral turpitude. It is not in dispute that petitioner was acquitted in criminal case u/s 394 IPC. vide judgment and order dated June 7, 1997, passed by the Court of Additional Civil Judge (Junior Division) Cum Judicial Magistrate No. 2, Hindaun City. A certified copy of the order of acquittal has been produced by the learned Counsel for the petitioner during the course of argument. A perusal of the said order goes to show that while acquitting the petitioner of the charge the Court directed to issue a show cause notice u/s 344 Cr. P.C. to the complainant Jai Ram for filing a false report. About second criminal case it is informed that the same is still pending with no progress in trial as prosecution witnesses are not turning up in the court to give evidence.

4. In light of above factual position the question that requires consideration is whether denial of appointment to the petitioner is just and legally sound?

5. At the out-set it may be stated that the petitioner has not been denied appointment on the ground of concealment of particulars which ought to have disclosed either in the application form or the attestation form. It is also not the case of the respondents that on verification of antecedents the petitioner was found unsuitable for appointment to the post. He has been denied appointment merely on the ground of pendency of two criminal cases as reported by the Collector & District Magistrate. Sawaimadhopur vide his communication dated October 28, 1996, a copy of which has been placed on record by the learned Counsel for the respondents during arguments.

6. There is no dispute that recruitment of Junior Marketing Officer is governed by the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 (for short "the Rules") after Notification No. F. 10 (15) Agrl./Gr. 2/81. S.O. 163 dated January 9, 1986 issued by the State Government. 50% posts of Junior Marketing Officer are filled up by Direct Recruitment and rest 50% by promotion. Rule 13 of the Rules, which relates to the character of a candidate for direct recruitment reads as under and this rule has a direct bearing for resolving the controversy in hand:

13. Character: The character of a candidate for direct recruitment must be such as to fit him for Public Service. He must produce two certificates of good character written not more than six months prior to the date of his application from two responsible persons not related to him.

Note: (1) A conviction by a court of law need not of itself involve refusal of a certificate of good character. The circumstance of the conviction should be taken into account and if they involve no moral turpitude of association with crime or violence or with a movement which has as its object the overthrow by violent means of Government as by law established, the mere conviction need not be regarded as a disqualification.

(2) Ex-prisoners who by their disciplined life while in prison and by their subsequent good conduct have proved to be completely reformed should not be discriminated against on grounds of the previous conviction for purposes of employment in the Service. Those who are convicted of offences not involving moral turpitude shall be deemed to have been completely reformed on the production of a report to that effect from the Superintendent After Care Home or if there are not such Homes in a particular district, from the Superintendent of Police of that district. Those convicted of offences involving moral turpitude shall be required to produce a certificate from the Superintendent, After Care Home endorsed by the Inspector General of Prisons to the effect that they are suitable for employment as they have proved to be completely reformed by their disciplined life while in Prisons and by their subsequent good conduct in an After Care Home.

7. A bare perusal of the above rule makes the position amply clear that even conviction of the candidate by a court of law may not be regarded as a disqualification for his appointment. Note 2 goes even further providing that persons convicted of offence after sometime of their conviction can also be considered for recruitment. The Rules nowhere provided pendency of a criminal case against a candidate to disqualify him for his entry into the service. The reason for this is obvious. Pendency of a criminal case cannot lead to the conclusion of committing the offence by the accused. Presumption is otherwise. No person is presumed to be guilty of an offence unless convicted by a competent court after trial. It is also our common experience that trial of a criminal case consumes much time and ultimately the accused may be acquitted therein. Refusal of appointment on the ground of pendency of a criminal case would, therefore, result in miscarriage of justice to the candidate because even on his ultimate acquittal he cannot enter into service. The Legislature, in its wisdom, has rightly thought it proper by omitting to include a provision in the Rules providing pendency of a criminal case to be taken as a disqualification for entering into the service. The language deployed in Rule 13 only requires that a character of a candidate for direct recruitment must be such as to fit him for public service. It also makes clear that conviction by a court of law need not by itself be regarded sufficient for refusal of the certificate of good conduct. By saying

so it should not be misunderstood that conviction for an offence involving moral turpitude cannot be regarded as a disqualification.

8. As stated earlier, the petitioner has not been denied appointment on the ground that his character is such which makes him unsuitable for the service. Neither it is the case of the respondents nor there is any adverse report against the petitioner of this nature after verification of his antecedents. Hence, I am of definite view that the petitioner has been wrongly denied appointment merely on the ground of pendency of two criminal cases, out of which in one he has been acquitted. This action violates Articles 14, 15 and 16 of the Constitution. The petitioner has been wrongly discriminated on this ground as person lower in merit has been given appointment in his place. No doubt verification of the character and antecedents is one of the important criteria to test whether selected candidate is suitable to a post under the State. However, in the instant case no such opinion was formed against the petitioner on the basis of his character and antecedents. This view taken by me is inconsonance with the letter and spirit of Rule 13 quoted above. Similar view has been taken by me in the case of Sheesh Ram v. State of Rajasthan and Ors. (S.B. Civil Writ Petition No. 1467/96) decided on April 1, 1997 wherein denial of appointment on the post of a constable merely on the ground of pendency of a criminal case involving moral turpitude was held to be unjustified on consideration of Rule 13 of the Rajasthan Police Subordinate Service Rules, 1989, which is para materia to Rule 13 herein. A similar view has been taken by a Division Bench of this Court in the case of Gopi Lal v. State of Rajasthan and Anr. 1989 (2) RLR 748.

9. In Matadin Garg v. State of Rajasthan (Civil Appeal No. 2719/91) the Supreme Court had an occasion to consider this aspect. In that case the appellant Matadin Garg was denied appointment on the ground that he was an accused in a case under the Essential Commodities Act in which he was ultimately acquitted. But this fact was concealed by him in the application form. The Supreme Court allowed the appeal, set aside the order denying appointment to him observing that it was not an intentional suppression of the information.

10. The result of the above discussion is that this writ petition deserves to be allowed. Consequently I allow the writ petition and set aside the order dated 7.11.1996 passed by the Director, Agriculture Marketing, Jaipur denying appointment to the petitioner. He is directed to issue appointment/posting order to the petitioner within four weeks from today. In the appointment letter it shall be mentioned that petitioners service shall be liable to be dispensed with in case of his conviction in the pending criminal case against him. As to the seniority of the petitioner vis-a-vis those who were selected alongwith him, it is made clear that he will take his seniority in accordance with the ranking in the original merit list. But, he shall not be entitled to any salary before he joins the service. In the facts and circumstances of the case there shall be no order as to costs.