
(2014) 08 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Writ Petition No. 21687/2013

Chandra Prakash Meena

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 320, 482
Penal Code, 1860 (IPC) — Section 323, 406, 498A

Citation : (2014) 08 RAJ CK 0070

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—The question for our consideration is as to whether initiation/pendency of criminal proceedings before a competent court of law would be sufficient to deny entry into government service, which we need to dwell in the instant proceeding.

2. Petitioner present in person and none present for the respondents despite notices of the present petition being served and Mr. S.S. Raghav, Senior Standing Counsel for Union of India put in appearance on behalf of the respondents when the matter came up before the court on 10.02.2014 and after it was heard for quite some time, interim protection was granted to the petitioner-restraining respondents from taking any adverse action in regard to final selection of the petitioner, pending proceedings before this court and continuously for the last four hearings, the respondents abstained their appearance without any cause and no request was made but the petitioner, in person appeared continuously in the last four hearings which took place on 16.07.2014 followed with 23.07.2014, 11.08.2014 & finally on the day when it was concluded on 13.08.2014 and since counsel for parties abstained from putting their appearance, the petitioner was heard in person and the material on record was taken into consideration by this court. Finally the arguments were concluded and order was reserved on

13.08.2014.

3. The brief facts, culled out from the record are that the petitioner is a member of Scheduled Tribe and appeared in the Civil Services Examination, 2009 conducted by Union Public Service Commission for appointment in All India Services, Central Services Group-A & Group-B and other allied services. After qualifying the preliminary and main examinations, he was called for interview and personality test vide communication dt. 22.03.2010 and after qualifying the interview and personality test, he was allotted Delhi, Andaman and Nicobar Island, Lakshya Deep, Daman & Diu and Dadra & Nagar Haveli Public Service (Group-B) (DANIPS). The aforesaid allocation was made in the year 2010, which is evident from communication dt. 25.01.2011, issued by the Government of India, Ministry of Home Affairs to the Home Secretary, Government of Rajasthan and so also to District Collector, Hanumangarh. The petitioner was very hopeful and full of joy that he has been selected for Class-I Services which is always an ambition and dream of the participant/applicant in getting public employment.

4. After qualifying the main examination and prior to his appearing in the interview-cum-personality test, the petitioner got married with Suman @ Purnima Meena but to his dismay, their matrimonial relations could not continue and immediately after marriage and as alleged by him, she was not at all interested from Day-1 in residing with him and just within three months, there was a matrimonial discord and she lodged FIR No. 93 against him at Mahila Thana, District Hanumangarh on 28.05.2010 for offence u/S. 498A, 406 & 323 IPC but since the marriage took place at Jaipur and cause of alleged incident, if any, had taken place at Jaipur, the FIR No. 93/2010 of Mahila Thana, Hanumangarh was transferred to Mahila Thana, Jaipur City (East) and registered as FIR No. 75 dt. 30.06.2010.

5. After the investigation, the Investigating Officer proposed Final Report No. 49 dt. 18.10.2010 and recorded in the Final Report that the complainant happens to be estranged wife and despite ample opportunities being given, she did not turn up to get her statement recorded and finally she refused to record any statement to the Investigating Officer and the Final Report, proposed by the Investigating Officer, was supported by the complainant and she did not raise any objection and on her consent, the Final Report was accepted by the competent court of law at Jaipur on 01.11.2010. It will be appropriate to quote the order dt. 01.11.2010 which reads ad infra:-

6. For the self-same allegation, the disgruntled wife filed a private complaint No. 44/2010 before the Id. Judicial Magistrate, First Class, Hanumangarh impleading the petitioner and all his family members including father, mother, brother and sisters for taking cognizance against all of them for offence u/S. 498A, 406 & 323 IPC. At that point of time, the Id. Magistrate did not consider it appropriate to send the complaint for investigation u/S. 156(3) of the Code and proceeded to get the statements recorded of the complainant and her witnesses u/S. 200 and 202 Cr.P.C. and took cognizance against the petitioner for offence u/S. 498A, 406

& 323 IPC and summons were issued to ensure his presence vide order dt. 13.07.2010. It may be noticed that in the FIR No. 75/2010 which was registered initially at Mahila Thana, Hanumangarh and later on transferred to Mahila Thana, Jaipur City (East), the disgruntled wife gave her consent for acceptance of Final Report and that came to be accepted by the competent court of law on 01.11.2010 and this fact was in her complete notice that cognizance has been taken against the petitioner on her private complaint by the Id. Magistrate at Hanumangarh vide order dt. 13.07.2010. Aggrieved by the order taking cognizance against petitioner, a criminal revision petition was filed by him and that came to be dismissed by the Id. District Judge, Hanumangarh on 08.12.2010 and order of the revisional court came to be challenged by filing S.B. Criminal Misc. Petition No. 1765/2010 u/S. 482 Cr.P.C. before the Main Seat at Jodhpur and during the course of proceedings it appears that record was summoned and parties were also called to explore for settlement of their matrimonial dispute but it can be noticed by this court that the Id. Single Judge of this court in order dt. 12.12.2012 observed that the parties were open to settle their matrimonial dispute and the petitioner offered a sum of Rs. 15 Lakhs towards full and final settlement but the wife intended to settle the dispute provided Rs. 2 Crores is paid to her. It will be appropriate to quote the order dt. 12.12.2012 which reads as follows:-

"In pursuance to the order dated 4.12.2012, the parties are present in Court. Learned counsel for the petitioner has offered after seeking instruction from the petitioner, who is present in Court, Rs. 15 lacs towards full and final settlement. The respondent too, is present in Court. She was asked by the Court and it was stated by her that Rs. 60 lacs were spent on marriage and that she will settle the dispute in case Rs. 2 crores paid to her. However, the gap between the two amounts is too huge.

However, the Court feels that there is possibility for exploring the amicable settlement. Let, the parties to appear before the Mediation Centre on 23.1.2013."

7. The above proceedings u/S. 482 of the Code are still pending before the Main Seat at Jodhpur for quashing of the proceedings initiated taking cognizance against petitioner by the Id. Magistrate vide order dt. 13.07.2010.

8. The petitioner separately filed a petition before the Id. Family Court seeking divorce based on their local customs which is acceptable by law and the Id. Family Court after taking into consideration the material which came on record finally granted him decree of divorce and confirmed the decision of their Panchayat dt. 07.08.2010 vide judgment & decree dt. 02.07.2012 and, as informed to this court, the decree of divorce granted to the petitioner dt. 02.07.2012 is not the subject matter of challenge in any of the proceedings and at the same time it is also relevant to note that the estranged wife of petitioner Suman Meena who is a resident of Hanumangarh is presently serving as Teacher in Government Upper Primary School, Ward No. 06, 1 HMH Shereka and the petitioner was able to get this information under Right to Information Act from

the office of Senior Deputy District Education Officer, Panchayat Samiti Tibbi, Hanumangarh on 25.03.2014.

9. When the matter was sent for Police verification, the police record of petitioner is found clean except that his wife made several complaints to Government of India about their matrimonial discord and pendency of criminal proceedings, the respondents withheld the offer of appointment to the petitioner and that compelled him to file Original Application No. 171/2011 before the Id. Central Administrative Tribunal and that came to be disposed of with the direction to make representation to the Ministry of Home Affairs, New Delhi and the Id. Tribunal thought it appropriate to direct for disposal of his representation within one month vide order dt. 04.05.2011 but when no action was taken by the respondents and the representation remained unattended, the petitioner was advised to file a fresh Original Application before the Id. Tribunal which came to be registered as Original Application No. 286/2012.

10. After the notices of second Original Application came to be served, the respondents filed their response and it was averred that his wife Smt. Suman Meena filed a complaint against him of dowry harassment and referred to certain FIRs and arrest warrants issued by the competent court of law and on that basis the decision has been taken by the respondents not to issue offer of appointment to the petitioner till he is acquitted/exonerated of the charges. However, the fact is that no charge so far has been framed against him. It will be relevant to note that the respondents in their reply, which is also noticed by the Id. Tribunal in its order, have referred to certain complaints/cases registered against the petitioner and it was clarified by the petitioner in respect of cases, as referred to by the respondents in their reply and made basis to hold that it may not be possible to extend him offer of appointment. It will be appropriate for this court to quote the cases & clarification of petitioner in seriatim which is ad infra:-

11. Thus, from the narration of record, referred to by the respondents in reply and noticed by the Id. Tribunal in order impugned, which was made a basis to uphold the action in withholding offer of appointment of the petitioner, it reveals that no case is so far pending against the petitioner, other than one which was originated from private complaint filed by the disgruntled wife of petitioner being case No. 44/2010 and which is now pending consideration before the Id. Single Judge at Main Seat, Jodhpur in S.B. Criminal Misc. Petition No. 1765/2010, preferred by the petitioner.

12. It can be taken note of from the material which is available on record that other than the matrimonial dispute which unfortunately arose between the parties, the track record of petitioner is clean and unblemished and if this matrimonial dispute is kept aside, there is nothing on record which can at all abstrain the respondents from passing the order of appointment.

13. The Id. Tribunal after hearing the parties disposed of his Original Application vide order dt. 01.04.2013 holding that looking to the pendency of criminal cases

against the petitioner, it will not be appropriate to direct the respondents to give him offer of appointment and that can only be issued in his favour if he is fully exonerated/acquitted of the criminal charges levelled against him, however, liberty was granted to represent before the respondents and it was expected from the respondents to consider his case with regard to issuance of offer of appointment and that is the subject matter for consideration in the instant proceedings.

14. The plain and unequivocal submission of the petitioner is that when he has not committed any offence and decree of divorce has been granted to him by the competent court of law and only on the basis of cognizance being taken against him in a matrimonial case where charges are yet to be framed and this fact cannot be ignored that earlier for the self same incident, FIR was registered at the instance of disgruntled wife at Hanumangarh which came to be transferred to Jaipur and Final Report was proposed by the Investigating Officer and she has given her consent for acceptance of Final Report and that came to be accepted by the competent court of law, how far and how long taking cognizance against him u/S. 498A, 406 & 323 IPC would come in his way as an impediment which could deny him offer of appointment more so, at this stage in legal parlance nothing can be construed that any criminal proceeding is pending against him.

15. The respondents have not put in appearance and there is no reply filed by them but we have gone through the reply on record, filed by the respondents, before Id. Tribunal and in their counter affidavit, it is averred that because of the complaint filed by his wife alleging dowry harassment and issuance of certain arrest warrants and judicial orders in connection with the case, reference whereof has been made above, the Ministry has taken a decision not to issue offer of appointment to the petitioner till he is exonerated of these charges. However, as regards his final selection to DANIPS on the basis of Civil Service Examination, 2009, that is not disputed by the respondents.

16. We have heard the petitioner, present in person and also perused the material available on record with his assistance.

17. The Apex Court in a recent judgment delivered on 02.07.2014 in Arnesh Kumar Vs. State of Bihar took judicial notice of the fact regarding phenomenal increase in matrimonial dispute in recent past and also noticed from the National Crime Records Bureau, Ministry of Home Affairs regarding the cases arising from matrimonial disputes which are registered u/S. 498A IPC and it will be appropriate to take notice of Para-6 of the judgment, which reads ad infra:-

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than

shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence u/s 498A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases u/s 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."

18. It is true that S. 498A IPC is a cognizable and non-bailable offence which has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by wives but still the Apex Court in catena of cases considered the issue in relation to the matrimonial disputes that even if the offences u/S. 498A & 406 IPC are not compoundable and the mandatory provisions of S. 320 of the Code cannot be bypassed but still the High Court in exercise of its inherent power can quash criminal proceedings or FIR/complaint and S. 320 of the Code does not limit or affect the powers u/S. 482 of the Code. It is true that such proceedings can be quashed only if the parties are ready to amicably resolve their matrimonial dispute or litigation, as observed by the Apex Court in B.S. Joshi and Others Vs. State of Haryana and Another,

19. In the instant case, from the proceedings pending before the Main Seat at Jodhpur u/S. 482 of the Code, arises from a private complaint on which cognizance has been taken by the Id. Magistrate at Hanumangarh, it appears that parties were open to settle their matrimonial dispute provided adequate & hefty money is paid to her and it has been referred by the Id. Single Judge of this court in its order dt. 12.12.2012 that the disgruntled wife is ready to settle their matrimonial dispute provided she is paid Rs. 2 Crores. It is really a sorry state of affairs that settlement could not be arrived at to settle their matrimonial dispute/litigation based on monetary considerations and the petitioner is helpless to settle the matrimonial dispute and is a height of erosion of human values.

20. Not to induct persons with a criminal background in public service is based on the premise that considerations of public policy, concern for public interest and regard for public good would justify a prohibition but the primary consideration is whether public interest and public good would be jeopardized if a person with criminal background is inducted in public service. As generally understood, offences involving moral turpitude may deprive a person from

seeking public employment but it can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of offender i.e. whether the motive which led to the act was a baseness or alternatively whether on account of the act having been committed the perpetrator could be considered to be a depraved character or a person who was to be looked down upon by the society.

21. In common parlance, "moral turpitude" means baseness of character. Concise Oxford Dictionary defines "moral" as-concerned with goodness or badness of character or disposition or with distinction between right and wrong virtuous in general conduct; and "turpitude" means "baseness" depravity, wickedness". Thus, any act which is contrary to good morals from society's point of view will come within the ambit of "moral turpitude". The term "moral turpitude" is rather vague one and it may have different meaning in different contents. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involved moral turpitude or not.

22. Nothing is brought to the notice of the court which could deny appointment to the petitioner except the cognizance being taken against him by the competent court of law for the offence arises from matrimonial dispute for offence u/S. 498A, 406 & 323 IPC but the track record and criminal antecedents of the persons are looked into before he is offered appointment, it is always expected to examine antecedents and criminal record of the applicant, if there is any, and the Ministry of Home Affairs in its letter dt. 25.01.2011 addressed to the Home Secretary, Government of Rajasthan and so also to District Collector, Hanumangarh asked for verification of character and antecedents of the petitioner and so also for verification of complaints received from his wife and in reference thereof, a letter was sent from the office of Dy. Inspector General of Police, CID (Security), Rajasthan, Jaipur dt. 12.07.2011 giving details of complaints and Final Report being furnished & accepted by the competent court of law but despite that no one paid attention on the representation made by the petitioner and finally when he approached the Id. Tribunal by filing fresh Original Application, the respondents in their counter affidavit taking note of the narration of facts, referred to above, regarding criminal complaints registered at the instance of his wife, arising from matrimonial dispute, took decision that it may not be possible to give offer of appointment to the petitioner until he is exonerated of these charges.

23. In totality, all the cases registered against the petitioner one after the other arises from matrimonial discord between the parties and details of each case has been separately dealt with, referred to supra, except the private complaint No. 44/2010 which is filed by the wife of the petitioner against him and implicating whole of his family members i.e. his parents, brother and sisters and on that

private complaint, the Id. Magistrate took statement of the complainant and his witnesses u/S. 200 & 202 of the Code and took cognizance against the petitioner vide order dt. 13.07.2012 and that is the subject matter of challenge in S.B. Criminal Misc. Petition No. 1765/2010, pending before the Main Seat at Jodhpur and it can be noticed that settlement could be arrived at between the parties provided the demand is satisfied, as recorded by the Id. Single Judge of this court in its order dt. 12.12.2013.

24. In the instant case, no charge so far has been framed against the petitioner and the solitary case against him is of taking cognizance by the Id. Magistrate u/S. 498A, 406 & 323 IPC vide order dt. 13.07.2012 and when the order taking cognizance against him is the subject matter of challenge before the Id. Single Judge of this court, certainly nothing can be attributed that he has committed any offence involving moral turpitude which could deprive him of his fair consideration seeking public employment after being finally selected and qualifying the Civil Services Examination, 2009 and this fact cannot be ignored that on a petition filed by the petitioner seeking divorce on the basis of their local panchayat, the decree of divorce has been granted to him by the Id. Family Court vide order dt. 02.07.2013.

25. The Id. Tribunal has not looked into the material which is available on record and just upon the narration of facts, as referred to by the respondents in their counter affidavit, arrived at the conclusion that petitioner cannot be considered for appointment unless acquitted/exonerated of the criminal charges by the court of law but the Id. Tribunal failed to consider that if the charge is yet to be framed against him, it is not a stage where it can be said that he is facing criminal proceedings and acquittal/exoneration therefrom, in the instant case, may not arise, more so, when the order taking cognizance against him by the Id. Magistrate is pending and subjudice before the Id. Single Judge of this court in S.B. Criminal Misc. Petition No. 1765/2010 and apart from it for the self same allegation, FIR No. 93/2010 dt. 23.05.2010 was lodged by the wife which was registered at Mahila Police Station, Hanumangarh and that came to be transferred to Mahila Police Station, Jaipur City (East) and Final Report was proposed by the Investigating Officer and on the consent by the complainant (wife) the same was accepted by the competent court of law vide order dt. 01.11.2010, the question as to how far such private complaint (44/2010), in these facts & circumstances, could be said to be justified and be made basis to deny public employment to the petitioner.

26. In the considered opinion of this court, taking cognizance against the petitioner in no manner, in the facts of the instant case, would deprive the petitioner from seeking public employment and the order of the Id. Tribunal dt. 01.04.2013, in the facts of the instant case, is not sustainable in law and deserves to be quashed.

27. Consequently, the instant petition is allowed. The order impugned passed by the Id. Tribunal dt. 01.04.2013 is quashed and set aside and the respondents are

directed to process the case of the petitioner for appointment in furtherance of his allocation to Delhi, Andaman and Nicobar Island, Lakshya Deep, Daman & Diu and Dadra & Nagar Haveli Public Service (DANIPS) on qualifying Civil Services Examination, 2009. The respondents are directed to pass appropriate orders, in compliance thereof within a period of thirty days from today.

28. No costs.