
(2012) 03 RAJ CK 0096
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12793 of 2011

Girish Kumar Meena

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 341

Citation : (2013) 1 RLW 339 : (2012) 3 WLN 383

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : P.S. Bhati, for the Appellant; I.S. Pareek, Govt. Counsel, for the Respondent

Judgement

Dinesh Maheshwari, J.

Relevant facts and background aspects:

1. The petitioner belonging to the category of Scheduled Tribe in Dungarpur District, offered his candidature pursuant to the advertisement dt. 14.10.2010 (Annex. 1) for the different posts of Constable. The petitioner qualified in the written examination and was called for physical test and his name appeared in the select-list dt. 27.06.2011 at Serial No. 191 and his name also appeared in Dungarpur GD Merit-List at Serial No. 76. The petitioner having not been issued the appointment order, sought information under the Right to Information Act whereupon he was informed by the communication dt. 25.11.2011 as under:-

The petitioner has filed this writ petition that he is unnecessarily being denied the right of appointment though he has not concealed any fact. It is submitted that his name appeared in one criminal case in FIR No. 59/2011 lodged on 21.03.2011 for offences under Sec. 341, 323/ 34 IPC but therein, the Investigating Officer did not find any kind of crime committed by the petitioner; and challan was filed only against other persons but not the petitioner.

2. The petitioner submits that when he has not been involved in any criminal

case on the date of filing of the application and even in relation to the FIR where his name occurred, he has not been charge-sheeted, there was no reason that he was not being offered the appointment. Several decisions of the Hon''ble Supreme Court and this Court have been referred in the petition to submit that right of appointment cannot be declined for mere suggestion about involvement in criminal case. It is submitted that in this case, the petitioner has not even been involved in any case nor has he concealed any fact.

Preliminary hearing in the first session:

3. This writ petition has been taken up for consideration with the other matters involving somewhat akin issues relating to the recruitment to the post of Constable. Some of these matters on Board were heard yesterday and, in continuity, all the matters have been placed on Board today. Though some common legal issues have been raised by different counsel appearing in the matters but the facts concerning each individual case have also been noticed.

4. During the process of taking note of the factual aspects, when this particular matter came up for consideration and the facts were divulged, this Court, prima facie, found the proposition on the part of the respondents in depriving the present petitioner of his rightful claim for appointment seriously questionable and hence, the learned Government Counsel was called upon to clarify.

5. After having heard the learned Government Counsel preliminarily, and after perusing the documents on record and those shown during the course of submissions, this Court expressed serious concern over the approach of the respondents in keeping the matter of this particular petitioner pending unnecessarily and inexplicably. In response, the learned Government Counsel submitted that in regard to this matter he too had called for clarifications from the department and awaiting such clarifications, the reply could not be filed earlier. The learned Government Counsel further submitted that the reply has now been prepared and sent for vetting and, therefore, some time may be granted for filing the same. Ordinarily, this Court would have considered granting time but then, firstly, the matter has been on Board for quite sometime where notices for final disposal were issued as back as on 17.01.2012; and there appeared no reason as to why department did not take the requisite steps for filing reply within time. Moreover, in view of the undeniable and explicit fact situation, this Court found no reason to adjourn the matter for filing reply and that too, during the course of hearing with other matters. Hence, the prayer for adjournment was declined.

6. After examining the matter further, this Court expressed its opinion that this particular case called for immediate attention of the authorities concerned and there appeared no reason that the petitioner was being denied his legal rights.

7. All the aforesaid proceedings took place during the first session sitting of this Court but in the interest of justice, the learned Government Counsel was extended some time so that he may confer with the authorities concerned during

recess hours for appropriate steps; and the matter was passed over to be taken up in the second session sitting of the Court.

The response from the respondents in second session:

8. Now, when the matter is taken up in the second session sitting of the Court, the learned Government Counsel submits that he has conferred with the concerned Superintendent of Police at Dungarpur and has also communicated with the Headquarter of the Department at Jaipur where he had had the conversation with the concerned DLR, who reverted to him after having discussions with the Inspector General concerned. The learned Government Counsel submits that the stand emerging after such discussions is that according to the authorities, the petitioner had not stated complete and correct facts in his application, particularly, as required in Column No. 21 thereof. The learned Government Counsel has shown before the Court a proforma of the application form [as received by him today by fax at 1:22 p.m. from IGP (HQ), PHQ, Jaipur] and submitted that the petitioner did not divulge the requisite information in Column No. 21 regarding registration of a criminal case. It is submitted that nondisclosure of the facts has been that of material concealment and hence, the petitioner is not entitled to any relief.

9. For completion of record, the learned counsel for the petitioner and so also, the learned Government Counsel were requested to file a copy of the F.I.R. said to have been lodged against the petitioner, which alone is the reason for the respondents taking the stand that the petitioner has concealed material facts. The document as filed by the learned counsel for the petitioner with the application (IA No. 3468/2012) is taken on record. The application (IA No. 3468/2012) stands disposed of.

The impressions: total apathy on the part of authorities:

10. After having examined the matter in its totality, this Court is rather aghast with the absolute unconcerned and perfunctory approach as adopted and the posture of unreasonableness as shown by the authorities concerned in this matter.

11. It has been noticed during the course of submissions that recently, in several of the similar nature cases, this Court has essentially taken note of the dictum of the Hon"ble Supreme Court in the case of Commr. of Police and Others Vs. Sandeep Kumar, and has found mere non-mentioning of the fact about criminal case in the application not decisive of the matter. It is noticed, inter alia, that a writ petition (CWP No. 9304/2008: Suryabhan Singh Solanki vs. State of Rajasthan & Ors.) was allowed by this Court at the Principal Seat at Jodhpur on 19.10.2011 and another writ petition (CWP No. 1666/2011: Mukesh Kumar Meena vs. State of Rajasthan & Ors.) was allowed at the Jaipur Bench on 13.09.2011. The department is, therefore, aware of the propositions adopted, principles laid down, and the orders passed by this Court. Be that as it may, as the legal issues are the subject matter of consideration in the batch of pending

petitions, this Court would not make final comments in that regard herein. These aspects have been noticed only to point out that the department is aware of the dictum of the Courts that mere non-mentioning of fact of the criminal case in the application is not decisive unless it be a case of intentional concealment aimed at taking undue advantage. The department, if at all acting reasonably and fairly, would have considered reviewing all similar cases of its own. However, the department has chosen to drive the persons to the course of litigation and that is leading to multiple writ petitions of the present nature coming to the Courts.

12. Even when all the aforesaid aspects showing wanton unconcern on the part of the authorities are left aside for the moment, what this Court finds in the present case is rather astonishing and surprising that none of the authorities has shown its readiness to look into the matter objectively and dispassionately.

13. It is moreover painful when it is noticed that for this particular case, despite the Court making several of the observations and giving time to the authorities to see reasons, the posture remains the same that is, of sheer apathy and indifference.

14. All the aforesaid comments are, per-force, required to be made in this case for the reason that what the learned Government Counsel has been instructed to argue before the Court is not in conformity with the very basic facts of the case. The petitioner is not guilty of concealment of any fact and the guilt or fault, whatever, lies only and squarely with the authorities concerned, who have chosen to deal with this matter totally away from the very basic facts and realities. A few fundamental facts and related aspects, as dilated hereinafter would clarify whole of the situation.

Factual matrix:

15. The advertisement in question whereunder the petitioner applied was issued on 14.10.2010 (Annex. 1) for recruitment to the different posts of Constable (Constable-General, Constable-Operator and Constable-Driver etc.) and the last date for submission of the application form, as per the said advertisement was 12.11.2010. Obviously, the application by the petitioner must have been filled up on or before 12.11.2010.

16. The fact of the matter, undeniably and indisputably, remains that as on the date of application, there was no criminal case even whispered against the petitioner, what to say of being registered. The referred FIR was itself lodged only on 21.03.2011. The attempt on the part of the respondents to suggest that the petitioner concealed any fact is itself rather preposterous and definitely turns out to be a matter of pretension on the part of the respondents.

17. The matter does not end at what has been noticed above. In fact, the other facts and circumstances are moreover telling and glaring. The said F.I.R. was indeed registered at Police Station, Aspur at the instance of one Takhat Singh S/o Parbat Singh on 21.03.2011. A copy of the F.I.R., as placed before the Court

during the course of submissions, indeed shows that the petitioner Girish Kumar S/o Taju Meena was named therein as one of the persons who assaulted the complainant. The contents of said complaint are reproduced in extenso as under:-

18. The most significant fact of the matter is that on the said F.I.R. bearing No. 59/2011, investigation was carried out and the result of the investigation was submitted to the Court in the form of charge-sheet No. 36 dt. 29.03.2011. A copy of the said charge-sheet has been placed on record and entire of its contents on the result of investigation are also reproduced hereinunder for ready reference:

19. It is at once clear from a look at the said charge-sheet that apart from not mentioning the name of the petitioner Girish Kumar in the opening paragraph, significantly the Station House Officer, Police Station Aspur found, after investigation that a case for offences under Secs. 341, 323/34 IPC was made out only against two persons namely, Harish S/o Roop Ji and Taju S/o Badiya and, significantly, other persons were not found involved in the crime; rather, other persons were found attempting to pacify. It is not left for anybody's doubt at all that even if the petitioner was named cursorily by the complainant alongwith about a dozen other persons, the investigating agency, who, by the way, is none other but the department of the respondents themselves, found very clearly that the offence was made out only against two persons, but not the petitioner. It inheres in the said charge-sheet, rather explicit it is, that the petitioner was not found involved in the alleged crime.

20. Thus, the net position obtainable in this case on the factual aspects is: one, that there was no case registered against the petitioner at the time of his filling in the application form; and secondly, even if he was named in the said F.I.R. No. 59/2011, the investigating agency, after investigation, found no case against him and he was never charge-sheeted.

Obvious unreasonableness of respondents:

21. Had the factual aspects been not so crystal clear as aforesaid, may be, this Court would have considered granting some time to the respondents but as noticed, the factual position remains undeniable that as on the date of filing of the application in or about the month of November 2010, the petitioner did not conceal any fact because there was no criminal case registered against him at that time. Even if, on a hyper-technical suggestion, it be assumed that a case was registered against the petitioner by lodging of the F.I.R. on 21.03.2011 because of his name occurring therein, the investigating agency definitely found the petitioner not at all involved in the offence.

22. In view of the facts aforesaid it would beat anyone's imagination as to what concealment the respondents at all intend to allege against the petitioner? The facts aforesaid are not brought out from any other source or agency but are emerging from the very records maintained by none other but the respondents themselves! When the respondents have yet chosen to ignore the record and the

simple factual aspect, this Court has no option but to conclude that they have done so deliberately; and have kept the matter of the petitioner for appointment on the post of Constable pending for extraneous reasons; and are now looking for some pretext so as to deprive him of his rights.

23. In view of the aforesaid clear cut factual position, when this Court is satisfied that the respondents have intentionally and deliberately avoided to take a fair decision in the case of the petitioner, this writ petition is required to be allowed and for that matter, while imposing heavy costs on the respondents who have not only avoided to see reasons and to stand reasonable but have further avoided to do so despite this Court, before passing the order, having extended them opportunity through the Government Counsel.

24. This Court cannot help further commenting that the petitioner herein belongs to a Scheduled Tribe of Dungarpur District. If at all a relevant question is addressed to, i.e., as to whether the concerned authorities have been sensitive towards such class of society, the answer would only be in the negative. The manner of dealing with the present matter by the respondents, where the authorities having shown total insensitivity towards genuine claim of an unemployed person belonging to a Scheduled Tribe of a Scheduled Area, is agonisingly painful.

Result:

25. In view of what has been discussed above, this writ petition is required to be, and is hereby, allowed with costs quantified at Rs. 50,000/- (rupees fifty thousand). The impugned communication dt. 25.11.2011, in so far relating to the petitioner Girish Kumar S/o Taju Meena, is quashed. The respondents are directed to proceed with the matter of appointment of the petitioner ignoring their baseless suggestions about registration of the criminal case that had never been registered against the petitioner. If the petitioner is found standing in the merit, he shall be offered appointment within fifteen days from today. It shall also be required of the respondents to make payment of the amount of cost to the petitioner within fifteen days from today and to report compliance to this Court.

26. Looking to the subject matter of consideration, though this Court has not affixed any of the adverse comments aforesaid on any particular individual but then, of course, it is left open for the concerned authorities that if so chosen, they would be free to recover the amount of costs from the person/persons responsible for the fault, default and flaws relating to this case; but only after making payment to the petitioner.

Before Parting:

In all fairness to the Government Counsel it is required to be observed before parting that on one hand, he made the concerned authorities aware of the tentative views of the Court and yet on the other hand, in fair discharge of his

duties, in the course of submissions, made all endeavour to put forth the case and stand of the respondents. Obviously, beyond a particular point, the Government Counsel must have felt helpless particularly because of the adamancy of the concerned authorities. This Court puts on record its appreciation on the services of learned Government Counsel, both as the Law Officer of the Government and an Officer of the Court. However, this Court, in the peculiar facts of this case, is compelled to reiterate its total disapproval of the approach of the authorities concerned and to deprecate their approach of taking every matter in a perfunctory manner without looking at the ground realities.