

(2019) 03 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Writ No. 19121, 19166 Of 2018, 1180 Of 2019

Kuldeep Bhakar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Citation : (2019) 03 RAJ CK 0144

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.K. Poonia, Ganga Ram, Kailash Choudhary, Manish Vyas

Final Decision : Allowed

Judgement

These writ petitions arise out of the orders dated 27.11.2018, 11.12.2018 and 18.12.2018 passed by the respondents in respective petitions, whereby, on account of acquittal of the petitioners giving them benefit of doubt by the criminal courts in proceedings held against them, their candidature has been rejected by the respondents on the ground that they have not been honourably acquitted.

Learned counsel for the petitioners made submissions that the respondents have themselves issued circular/guidelines dated 28.02.2017, inter alia, indicating the matters, in which benefit of acquittal even based on benefit of doubt/compromise would not be taken as a disqualification, however, the orders impugned have been passed mechanically without dealing with the cases of the petitioners based on the existing Circular.

Further submissions have been made that this Court in Lokesh Meena v. State of Raj. & Ors. : S.B.C.W.P. No. 18212/2018, decided on 20.02.2019, in similar nature matter, came to the conclusion that as the reason indicated was only that the acquittal was not honourable, the same was not sufficient in terms of the guidelines laid down in the case of Avtar Singh v. Union of Nidia & Ors. : (2016) 8 SCC 471 and, as such, the issue stands covered by judgment in the case of

Lokesh Meena (supra).

Learned counsel for the respondents sought to distinguish the judgment in the case of Lokesh Meena (supra) by relying on judgment in the case of Dy. Inspector General of Police & Anr. v. S. Samuthiram : (2013) 1 SCC 598 and Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr. : (2018) 1 SCC 797.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

This Court in the case of Lokesh Meena (supra) after considering the Circular dated 28.02.2017 and judgment in the case of Avtar Singh (supra), inter alia, came to the following conclusion:-

"A perusal of Circular dated 28.02.2017 reveals that the respondents have indicated the categories, in which, the candidates would be eligible for appointment, which includes acquittal by the Court on according benefit of doubt and acquittal based on compromise between the parties.

In view thereof, as in both the cases the petitioner has been given benefit of doubt/acquitted based on compromise, the case of the petitioner would be covered by the said Circular.

So far as the observations made by Hon'ble Supreme Court in the case of Avtar Singh (supra) are concerned, the relevant portion of the directions, read as under:-

"(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee."

(emphasis supplied)

A perusal of the above direction would reveal that Hon'ble Court directed that if acquittal had already been recorded in a case involving mortal turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal or benefit of doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

A perusal of the order impugned i.e. 29.11.2018, whereby, the candidature of the petitioner has been rejected, the respondents have observed as under:-

"2. आपके विरुद्ध चालान संख्या 16/2015 धारा 147,149,341,323,427 भादस में न्यायालय निर्णय दिनांक 02.07.18 द्वारा धारा 147 भादस में संदेह का लाभ देकर दोषमुक्त किया गया एवं 341,323,427,149 भादस में राजीनामा के आधार पर दोषमुक्त किया गया।

3. बिन्दु संख्या 2 में उल्लेखित प्रकरण में आपको न्यायालय निर्णय दिनांक 02.07.2018 द्वारा धारा 147 भादस में संदेह का लाभ देकर दोषमुक्त किया गया एवं 341,323,427,149 भादस में राजीनामा के आधार पर दोषमुक्त किया गया है। जो ससम्मान बरी नहीं है। अतः आप नियमानुसार नियुक्ति के पात्र नहीं है।"

(emphasis supplied)

As noticed hereinbefore, the Hon'ble Supreme Court observed that even in a case where acquittal is not clean or benefit of doubt has been given, the employer is required to consider all relevant facts available as to the antecedents and take an appropriate decision. However, in the order passed by the respondents the same has been passed mechanically by merely indicating that the acquittal is not clean neither the antecedents nor the relevant facts with regard to acquittal of the petitioner have been considered by the respondents and, therefore, the order dated 29.11.2018 (Annexure-10) passed by the respondents cannot be sustained."

In the present case also, the operative portion of orders impugned, reads as under:-

(S.B.C.W.P. No. 19166/2018) dated 27.11.2018 (Annexure-7)

"अतः उपरोक्त बिन्दुओं के आधार पर इस जिले में कानि. भर्ती 2018 में चयनित किन्तु आपराधिक प्रकरण के कारण नियुक्ति से वंचित अभ्यर्थी श्री कुलदीप भाकर पुत्र श्री उम्मेद सिंह रोल नम्बर 3107305 ग्राम भाकरा पोस्ट राघा छोटी तहसील राजगढ़ जिला चुरू को आपराधिक प्रकरण में ससम्मान बरी होने के कारण नियमानुसार नियुक्ति के लिये अपात्र किया जाता है।"

(S.B.C.W.P. No. 19121/2018) dated 11.12.2018 (Annexure-12)

"3. बिन्दु संख्या 2 में उल्लेखित आपराधिक प्रकरण के अनुसार अभ्यर्थी को धारा - 323 325 341 34 आईपीसी में माननीय न्यायालय निर्णय 26.11.2016 द्वारा जरिये राजीनामा दोषमुक्त किया है जो ससम्मान बरी नहीं है। इसलिये अभ्यर्थी नियमानुसार नियुक्ति का पात्र नहीं है।"

(S.B.C.W.P. No. 1180/2018) dated 18.12.2018 (Annexure-10)

"(3) बिन्दु संख्या 2 में उल्लेखित आपराधिक प्रकरण चार्जशीट नंबर 103/16 धारा 452, 323, 34 भा.दं.सं. में माननीय न्यायालय निर्णय दिनांक 24.01.2018 के द्वारा आदेश पारित कर अभियुक्त को धारा 323/34 भा.दं.सं. में जरिये राजीनामा व धारा 452 भा.दं.सं. में साक्ष्य के अभाव में दोषमुक्त किया गया। अभ्यर्थी के विरुद्ध दर्ज धारा 452 आईपीसी तुच्छ प्रकृति (Trivial in Nature) की श्रेणी में नहीं है, अपितु गम्भीर धाराओं में न्यायिक कार्यवाही की गई है। इसलिए अभ्यर्थी नियमानुसार नियुक्ति का पात्र नहीं है।"

A perusal of the above reasons indicated in the orders impugned clearly indicates that the orders have been passed mechanically by merely indicating that the acquittal is not clean. Neither the antecedents nor the relevant facts with regard to acquittal of the petitioners have been considered by the respondents.

So far as the judgment in the case of S. Samuthiram (supra) cited by learned counsel for the respondents is concerned, the said judgment would have no application to the facts of the present case, inasmuch as, by respondent department's own Circular dated 28.02.2017 the parameters have been laid

down wherein candidates acquitted from criminal charges based on compromise or grant of benefit of doubt have been held eligible for grant of appointment.

Similarly, in the case of Pradeep Kumar (supra), a perusal of the judgment would indicate that the respondents therein had indicated the reasons for coming to the conclusion that despite acquittal, the candidates were not entitled for appointment. Further in the said case also there was no circular/guidelines like Circular dated 28.02.2017 issued by the Department therein providing for eligibility in case of acquittals.

In view of the above, the judgments cited and the attempt made by learned counsel for the respondents to distinguish the judgment in the case of Lokesh Meena (supra)/seek reconsideration of judgment in the case of Lokesh Meena (supra) has no substance.

In view of the above discussion, the writ petitions filed by the petitioners are allowed. The impugned orders dated 27.11.2018 (Annexure-7), 11.12.2018 (Annexure-12) and 18.12.2018 (Annexure-10) passed by the respondents in respective petitions are quashed and set aside. The respondents are directed to accord appointment to the petitioners pursuant to their selections, if they are otherwise eligible. The petitioners would be entitled to notional benefits from the date appointment has been accorded to the candidates lower in merit to the petitioners. However, actual monetary benefits would be paid to the petitioners from the date of appointment.

Needful be done within a period of four weeks.