
(2009) 06 RAJ CK 0001
In the Rajasthan High Court

Kunj Behari Meena

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Penal Code, 1860 (IPC) — Section 323, 324, 325, 34, 341

Citation : (2010) 2 RLW 1802 : (2009) 3 WLN 408

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prem Shanker Asopa, J.—By this writ petition, the petitioner is seeking an appropriate writ, order or direction to the respondents to allow him to join duties in pursuance to the appointment order dt. 12.09.2008 (Anx.8) on the post of General Nurse Midwife (for short "GNM") inter alia on the ground that the denial of joining on the said post on account of pendency of criminal case is contrary to the rules.

2. Briefly stated the facts of the case are that the petitioner was called for counselling with reference to his application for appointment on the post of GNM on 11.08.2008 before the Chief Medical and Health Officer, Baran along with all original documents. After the counselling, the petitioner was selected on the post of GNM in National Rural Health Mission (NRHM) and offer of appointment was given on 12.09.2008 to join duties up to 29.09.2008 after completion of the formalities as mentioned in the order. At the time of joining, the petitioner was required to submit the police verification/character verification and the medical certificate. In the police verification, it has been reported by the Supdt. of Police, Kota Rural that FIR No. 475/2000 was registered against the petitioner for the offences under Sections 452 and 323 IPC at Police Station Mahaveer Nagar, Kota and the charge sheet No. 478 has also been filed on 30.12.2000.

3. The State has filed reply and submitted that the respondents are within their

right to deny appointment to the petitioner on account of the pendency of criminal case and has filed letter dt. 25.09.2008 for denying appointment to the petitioner.

4. Neither the advertisement is on record nor the respondents referred the Rules concerned. Although the petitioner has quoted Rule 13 of the Rajasthan Subordinate Services (Recruitment and Other Service Conditions) Rules, 1960 in the writ petition but during the course of arguments, considering the fact that in offer of appointment dt. 12.09.2008 the National Rural Health Mission Scheme is mentioned, he placed reliance on Rule 16 of the Rajasthan Rural Medical and Health Subordinate Service Rules, 2008 (in short "the Rules of 2008") and submits that as per Rule 16, except for offences relating to moral turpitude or violence, a convict is also entitled for issuance of a character certificate which makes him entitled for appointment after selection. Since the petitioner has not been convicted so far and the offences involved are relating to Section 452/323 IPC wherein the allegation of entering in the shop of the complainant and giving beating to his servant Mukesh and further pelting stone in the shop have been made which does not involve moral turpitude and violence therefore, the same will not disentitle the petitioner for appointment. Further, the said offences are of minor nature, which are yet to be established in the trial. The trial is pending since 2000. In support of the aforesaid contention, counsel for the petitioner has placed reliance on the judgment of co-ordinate Bench of this Court in Mukesh Kr. Arvind v. State and Anr., CWP No. 11643/2008 decided on 17.12.2008 wherein this Court after consideration of Rule 16 of the Rules of 2008 has held that the pendency of criminal case, except of moral turpitude or violence, will not come in the way of issuance of character certificate.

5. Counsel for the respondents has submitted that the petitioner is not entitled to get appointment in view of the pendency of aforesaid criminal case and the order dt. 25.09.2008 (Anx.R-1) of denial of appointment has been rightly passed.

6. I have gone through record of the writ petition and further considered rival submission of counsel for the parties.

7. Before proceeding further, it is relevant to quote Rule 16 of the Rules of 2008 and the relevant portion of the aforesaid judgment dt. 17.12.2008 in Mukesh Kr. Arvind. The same are as under:

Rule 16 of the Rules of 2008

16.Character.-The character of a candidate for direct recruitment to the service must be such as to qualify him for employment in the service. He must produce a certificate of good character from the Principal/Academic Officer of the University or College in which he was last educated and two such certificate written not more than six months prior to the date of application from two responsible persons not connected with the College or University and not related to him.

Note: (1) A conviction by a Court of law need not of itself involve the refusal of a certificate of good character.-The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object the overthrow by violent means of the 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 the grounds of their previous conviction for purposes of employment in service. Those who are convicted of offences not involving moral turpitude or violence, 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 no such Homes in a particular district, from the Superintendent of Police of that district.

(3) Those convicted of offences involving moral turpitude or violence 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 prison and by their subsequent good conduct in an After Care Home.

Relevant portion of judgment in *Mukesh Kr. Arvind v. State and Anr.*

I have considered contentions of Counsel for both the parties and with their assistance, pondered over material on record. Petitioner on being finally selected for the post of G.N.M. pursuant to advertisement dt. 21.04.2008 (Ann. 1) in ordinary course was entitled for appointment after being placed in order of merit but he was denied of appointment only because of criminal case registered and pending against him. A bare perusal of Rule 16 of Rules, 2008 makes it clear that a convict by competent Court and even a ex prisoner who by their disciplined life are proved to be reformed by subsequent good conduct are also considered to be qualified for appointment in Government service provided conviction may not involve moral turpitude or violence. In instant case, only challan has been filed against petitioner for minor offences under Sections 341, 323, 324, 325/34, IPC. No adverse inference can be drawn at this stage about criminal case pending against petitioner. Petitioner must have submitted a certificate of good character as required under Rule 16 of Rules, 2008. It is not the case of respondents that there was requirement for applicant to disclose about criminal case being registered or challan being filed; as such it could not be considered to be a case of wilful suppression of material facts while submitting application form pursuant to advertisement (Ann.1). Hence in the opinion of this Court, denial of appointment by respondents in no manner can be held to be justified and their action is certainly in violation of Article 14 of the Constitution.

Consequently, writ petition succeeds and is hereby allowed. Respondents are

directed to consider candidature of the petitioner for appointment to the post of GNM pursuant to advertisement dt. 21.04.2008 (Ann.1) as per his order of merit assessed in course of his final selection, along with consequential benefits. Appropriate orders be passed within one month. No order as to costs.

8. I am in respectful agreement with the aforesaid judgment of this Court in Mukesh Kr. Arvind v. State and Another and am of the view that the denial of appointment to the petitioner on the ground of pendency of the criminal case for offences u/s 452/323 IPC, which does not involve moral turpitude or violence, therefore, the same is not only contrary to Rule 16 of the Rules of 2008 but arbitrary also.

9. A careful reading of Rules 16(3) and 16(4) of the Rules of 2008 would reveal that even ex-prisoner or convict of moral turpitude or violence is also entitled for employment subject to production of suitability/reformation certificate of the Prescribed Authority. Thus, the conviction even of offences of moral turpitude or violence is not totally prohibited.

10. Accordingly, the writ petition is allowed and the respondents are directed to allow the petitioner to join on the post of GNM within a period of fifteen days, after completion of other formalities, from the date of receipt of copy of this order.