

(2019) 02 RAJ CK 0078
In the Rajasthan High Court
Case No : Civil Writ No. 19152 Of 2018

Mahendra Singh Rathore

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 11-02-2019

Acts Referred:

Rajasthan Police Subordinate Service Rules, 1989 — Rule 13, 15

Citation : (2019) 02 RAJ CK 0078

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Nikhil Dungawat, Kailash Choudhary, Manish Vyas

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved against order dated 06.12.2018 (Annexure-6) and seeking a direction to grant appointment on the post of Constable (Outstanding Sportsman 2018) as per final select list (Annexure-4) with all consequential benefits.

It is, inter alia, indicated that pursuant to the advertisement dated 25.05.2018 (Annexure-1) the petitioner participated for recruitment on the post of Constable (General) Non-TSP for Commissionerate, Jodhpur as an outstanding sports person; after undergoing written examination and PST/PET, name of the petitioner stood in the district-wise final selection list (Annexure-4); when appointment order was not issued to the petitioner, the petitioner filed S.B.C.W.P. No. 17640/2018, which writ petition was decided on 28.11.2018, wherein, noticing the facts that the petitioner had not indicated pendency of criminal cases in the application and had submitted the information regarding the criminal cases subsequent thereto and the judgments cited by the petitioner being Commissioner of Police, Delhi & Anr. v. Dhaval Singh : AIR 1999 SC 2326 and Mukesh Kumar v. State of Rajasthan & Ors. : 2016 (3) WLC 345, which judgment was followed in Rakesh Sharma v. The State of Rajasthan & Ors. : S.B.C.W.P. No. 11753/2015, decided on 11.11.2016, it was directed as under:-

"In view of the above fact situation, wherein the petitioner has already represented to the respondents regarding pending criminal cases and law in this regard as laid down by the Hon'ble Supreme Court in the case of Dhaval Singh (supra) and Mukesh Kumar (supra) are clear, the respondents are required to deal with the same appropriately and expeditiously.

Consequently, the writ petition filed by the petitioner is disposed of. The petitioner may file a fresh representation raising all the issues as raised in the present writ petition with the Commissioner of Police, Jodhpur within a period of one week and it would be required of the respondents to decide the said representation made by the petitioner appropriately keeping in view the law laid down by the Hon'ble Supreme Court and this Court within a period of a two weeks thereafter.

In case, the petitioner is found eligible for appointment, he shall be entitled to all the notional benefits as granted to the persons recommended alongwith him."

Pursuant to the order dated 28.11.2018, the respondents passed order dated 06.12.2018 (Annexure-6), wherein, referring to the Circulars dated 14.08.2013 & 15.07.2016 and order dated 19.11.2018 it was held that petitioner was not entitled to grant of appointment on account of pendency of criminal cases.

Feeling aggrieved, the present writ petition was filed by the petitioner, wherein, by order dated 07.01.2019, on a prayer made by counsel for the respondents, after noticing that the directions of this Court, pertaining to the consideration of judgments cited by the petitioner, have not been complied with, time was granted to pass a fresh order strictly in accordance with the directions given by this Court also keeping in view the provisions of Rule 13 of the Rules of 1989.

Pursuant thereto, after seeking time on various occasions, now an order dated 07.02.2019 (Annexure-R/1) has been passed by the respondents again coming to the conclusion that the petitioner, on account of pending criminal cases, was not entitled to grant of appointment pursuant to the recruitment.

Learned counsel for the petitioner submits that the order dated 07.02.2019 (Annexure-R/1), produced by the respondents pursuant to the directions issued by this Court, is ex facie contrary to the settled law, which was cited and the manner in which the said judgments have been distinguished by the respondents are not only factually incorrect but essentially distortion of the law laid down by this Court and, therefore, the orders impugned deserve to be quashed and set aside.

Submissions were made that it has wrongly been indicated in the order that in the case of Mukesh Kumar (supra) the order was passed on account of acquittal of the petitioner therein, which is factually incorrect. Further submissions were made that the interpretation sought to be put and distinguished, pertaining to Rule 13 of the Rules of 1989, is also baseless and cannot be supported and on that count the petitioner is entitled to be accorded appointment.

Submissions were also made that though it is not denied that criminal proceedings are pending against the petitioner, however, the same cannot be a reason enough to deny appointment to the petitioner as laid down in the case of Mukesh Kumar (supra), which judgment has been upheld by the Division Bench in State of Rajasthan & Ors. v. Mukesh Kumar : D.B. Special Appeal (Writ) No. 500/2016, decided on 06.03.2017 and, therefore, the order impugned dated 07.02.2019 (Annexure-R/1) now passed by the respondents alongwith the earlier order dated 06.12.2018 (Annexure-6) deserve to be quashed and set aside.

Learned counsel for the respondent - State made submissions that the order dated 07.02.2019 (Annexure-R/1) passed by the respondents deals with all the issues raised by the petitioner and has rightly rejected candidature of the petitioner. It was submitted that in the case of Mukesh Kumar (supra), relied on by learned counsel for the petitioner, there was only one case pending against him, whereas, in the present case there are two criminal cases pending against the petitioner, which distinguishes the case of the petitioner from that of Mukesh Kumar (supra) and, therefore, even if, the said judgment has not been correctly dealt with by the authority in the order impugned dated 07.02.2019, the petitioner is not entitled for grant of any appointment.

It was further submitted that as the issue raised has already been dealt with in the representation during pendency of the present writ petition, no separate reply is required to be filed in the present writ petition.

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

It is not in dispute that the name of the petitioner appeared in the final list of selected candidates, however, he was not accorded appointment and no order was passed by the respondents in this regard. The petitioner approached this Court by filing S.B.C.W.P. No. 17640/2018, wherein, after hearing learned counsel for the respondents, issues as raised by the petitioner, were noticed and the respondents were directed to deal with the issues raised by the petitioner keeping in view the law laid down by Supreme Court and this Court.

The respondents passed a slipshod order dated 06.12.2018 (Annexure-6), wherein, though the reference was made to the judgments in the case of Dhaval Singh (supra) and Mukesh Kumar (supra) not a word was indicated as to how the petitioner was not entitled to grant of appointment in light of the said judgments.

As noticed, when the order dated 06.12.2018 was challenged in the present writ petition, the counsel appearing on caveat sought liberty to pass a fresh order so as to take care of the laconic order passed, the respondents were granted opportunity to pass a fresh order, which order has been passed on 07.02.2019 and placed as Annexure-R/1.

The fact that petitioner has not indicated pendency of the criminal cases in the application, has not been made a basis by the respondents for rejecting his

candidature as the said aspect has neither been indicated in the order dated 06.12.2018 nor in order dated 07.02.2019, as such the said aspect need not detain the Court. The only issue, which is required to be dealt with, pertains to the fact that admittedly two criminal cases are pending against the petitioner and as to whether the petitioner during pendency of those cases is entitled to be accorded appointment.

This Court in the case of Mukesh Kumar (supra) after referring to the provisions of Rules 13 and 15 of the Rules of 1989 and judgment in the case of Khama Ram Vishnoi v. State of Rajasthan : 2000 (2) WCL (Raj.) 702, laid down that there is no provision in the Rules of 1989, which debars the candidates, who was involved in the criminal case or against whom a criminal case is pending from the employment in police service and directed as under:-

"16. In view of the aforesaid discussion, the writ petition deserves to be and is hereby allowed. The respondents are directed to offer appointment to the petitioner on the post of Sub Inspector of Police in the questioned selection process ignoring the pendency of above criminal case against the petitioner. However, the appointment order shall bear a condition that the petitioner's services may be terminated in the event of his conviction and he shall also submit an undertaking to this effect before joining the post. Since the petitioner was gainfully employed as a Teacher during the intervening period, he is not entitled to any consequential benefits. However, the respondents shall grant him all notional service benefits from the date of the order Annex. 6 dated 22.12.2009."

Against the said judgment, the State filed D.B. Special Appeal (Writ) No. 500/2016, which was decided on 06.03.2017, wherein, the Division Bench after noticing the directions issued by Single Judge, observed as under:-

"The learned Single Judge, while issuing the aforesaid directions, has also imposed the condition that the petitioner (respondent No.1 herein) will file an undertaking to the effect that in the event of his conviction in the above criminal case, he may be liable to be terminated from service without holding an enquiry.

In our considered opinion, the view taken by the learned Single Judge is just and proper and no other view is possible in the instant case.

The appeal deserves to be dismissed and the same is dismissed accordingly."

The respondents while dealing with the said case, in the order dated 07.02.2019 observed as under:-

"2. राजस्थान राज्य बनाम श्री मुकेश कुमार - श्री मुकेश कुमार का चयन उप निरीक्षक के पद पर हुआ था लेकिन श्री मुकेश कुमार के विरुद्ध फौजदारी प्रकरण दर्ज होने व विचाराधीन होने से नियुक्ति का पात्र नहीं माना। इससे व्यथित होकर याचिकाकर्ता द्वारा रिट याचिका संख्या 186/2010 दायर की गई। माननीय एकलपीठ ने रिट को इस आधार पर स्वीकार किया कि समान कार्मिकों को नियुक्ति प्रदान की गई है तथा निर्देश दिये कि नियुक्ति आदेश में यह शर्त अंकित की जा सकती है कि फौजदारी प्रकरण में सजा होने पर इसको हटाया जावेगा तथा याचिकाकर्ता से भी इस आशय की

अण्डर टेकिंग दिये जाने के निर्देश दिये।

माननीय एकलपीठ द्वारा पारित निर्णय के विरुद्ध राज्य सरकार को अपील इस आधार पर प्रस्तावित की गई कि जिन समान अभ्यर्थियों का उल्लेख एकलपीठ ने किया वे फौजदारी प्रकरणों में बरी हो चुके हैं तथा राज्य सरकार के निर्देशानुसार नियुक्ति प्रदान की गई है। गृह विभाग के निर्देशानुसार खण्डपीठ ने राज्य की ओर से दायर इस अपील को खारिज कर दिया। जहां तक मुकेश कुमार को नियुक्ति दिये जाने का प्रश्न है इसे फौजदारी प्रकरण में बरी होने के तथ्य को ध्यान में रखते हुए दी गई थी, इस याचिकाकर्ता महेन्द्रसिंह के विरुद्ध अभी भी माननीय न्यायालय के समक्ष दो फौजदारी प्रकरण विचाराधीन हैं। इसलिए इस प्रकरण के तथ्य भी समान रूप से लागू नहीं हैं। नियम 13 आरपीएसएसआर 1989 व माननीय सर्वोच्च न्यायालय द्वारा श्री अवतारसिंह बनाम भारत संघ में पारित निर्णय के बिन्दु 3 व 6 के क्रम में भी परीक्षण किया गया।"

After making the above observations and dealing with Rule 13 of the Rules of 1989 and by observing that the said Rule deals with the case wherein candidate has been convicted and not in a case where the case is pending against the candidate, came to the following conclusion:-

"अतः याचिकाकर्ता श्री महेन्द्रसिंह राठौड़ पुत्र श्री मोहन सिंह राठौड़ अभ्यर्थी कानि. भर्ती वर्ष 2018 रोल नं. 600301 को माननीय उच्चतम न्यायालय द्वारा पुलिस आयुक्त दिल्ली व अन्य बनाम श्री धवलसिंह ए.आईआर. 1999 एस.सी. 2326 निर्णय के आलोक में परीक्षण में तथ्य समान नहीं होने व मुकेश कुमार को नियुक्ति दिये जाने का प्रश्न है इसे फौजदारी प्रकरण में बरी होने के तथ्य को ध्यान में रखते हुए दी गई थी, इस याचिकाकर्ता महेन्द्रसिंह के विरुद्ध अभी भी माननीय न्यायालय के समक्ष दो फौजदारी प्रकरण विचाराधीन हैं। इसलिए इस प्रकरण के तथ्य भी समान रूप से लागू नहीं होने तथा साथ ही याचिकाकर्ता नैतिक पतन (अन्तर्गत धारा 382 आईपीसी) तथा हिंसा (अन्तर्गत धारा 353, 342 आईपीसी), आपराधिक बल प्रयोग से संगीन अपराध से सम्बन्धित अपराधों में संलिप्त रहा है तथा प्रकरण अभी भी विचाराधीन है जबकि नियम 13 में दोषसिद्धि का उल्लेख है, इसलिए इस नियम के अन्तर्गत भी याचिकाकर्ता नियुक्ति हेतु पात्रता नहीं रखने के कारण याचिकाकर्ता महेन्द्रसिंह राठौड़ रोल नं. 600301 कानि. वर्ष 2018 की उत्कृष्ट खिलाड़ी कानि. के पद पर नियुक्ति की मांग को अस्वीकार किया जाकर माननीय राजस्थान उच्च न्यायालय, जोधपुर में दायर एस.बी. सिविल रिट संख्या 17460/2018 में पारित आदेश दिनांक 28.11.2018 व एस.बी. सिविल रिट संख्या 19152/2018 में पारित आदेश दिनांक 07.01.2019 की पालना में जरिये स्पीकिंग आदेश द्वारा निस्तारण किया जाता है।"

A perusal of the above determination made would reveal that Dy. Commissioner of Police unable to appropriately deal with the said judgment, has observed that as per the directions of the Home Department, the Division Bench rejected the appeal and has further observed that so far as grant of appointment to Mukesh Kumar is concerned, the same was granted on account of the fact of his acquittal, whereas, against the petitioner two cases are pending.

The said observations are apparently factually incorrect as before the Division Bench, no submission regarding acquittal of Mukesh Kumar, as indicated in the order was made. Further even in the operative portion also again it has been repeated that Mukesh Kumar was granted appointment on account of his acquittal in the criminal case, whereas, against the petitioner two cases are pending. However, nothing is forthcoming in the determination made by the respondents vide Annexure-R/1 and/or in submissions as to how the case of the petitioner can be distinguished from that of Khama Ram Vishnoi (supra) and Mukesh Kumar (supra).

The mere fact that in case of Mukesh Kumar (supra) only one case was pending and in the present case two cases are pending is hardly any reason to distinguish the law laid down in the judgments of Khama Ram Vishnoi (supra) and Mukesh Kumar (supra).

The determination made, regarding non-applicability of the provisions of Rule 13 of the Rules of 1989, though in letter may be correct, however, so far as the spirit of the said provisions is concerned, the same has not been taking into consideration, inasmuch as, the provisions of Rule 13 specifically provide that mere fact that a person has been convicted would not be a disqualification and in the present case the matters are pending against the petitioner and, therefore, the principles as laid down in the case of Khama Ram Vishnoi (supra) and Mukesh Kumar (supra) as upheld by the Division Bench, would have application on all force to the facts of the present case and, therefore, the order impugned dated 06.12.2018 (Annexure-6) and 07.12.2019 (Annexure-R/1) passed during pendency of the present writ petition cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed. The orders dated 06.12.2018 (Annexure-6) and 07.02.2019 (Annexure-R/1) are quashed and set aside. The respondents are directed to accord appointment to the petitioner to the post of Constable (General) if he is otherwise eligible in the questioned selection process ignoring pendency of the criminal cases against the petitioner, however, the appointment order shall bear a condition that the petitioner's services may be terminated in the event of conviction and he shall also submit an undertaking to this effect before joining on the post. The petitioner would be entitled to all consequential notional benefits from the date appointment has been accorded to the candidates whose name appeared in the final selection list (Annexure-4), who were lower in merit to the petitioner, however, he will be paid salary from the date of appointment.

Needful may be done by the respondents within a period of three weeks from the date of this order.