

(2019) 08 RAJ CK 0307
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4488 Of 2019

Pawan Kumar

APPELLANT

Vs

State Of Rajasthan And Ors Vs

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 419, 420
Code Of Criminal Procedure, 1973 — Section 320(8)
Rajasthan Police Subordinate Service Rules, 1989 — Rule 13

Citation : (2019) 08 RAJ CK 0307

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Moti Singh

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 5.3.2019 (Annex.5), whereby, the petitioner has been held ineligible for appointment on the post of Police Constable.

It is inter alia indicated in the writ petition that pursuant to the advertisement for the post of Police Constable recruitment, 2018, the petitioner applied for the post of Constable, appeared in the written test and was called for PST/PET, stood in merit and was called for document verification. In the police verification, it was reported that the petitioner was convicted in the year 2015 for the offences under Section 419 and 420 IPC by the Court of Chief Judicial Magistrate, Kaithal (Haryana) and consequently, his candidature was rejected by order dated 5.3.2019.

Learned counsel for the petitioner with reference to judgment of the criminal court (Annex.6) made submissions that though the petitioner was convicted of the offences under Section 419 and 420 IPC, the petitioner was given benefit of probation and it was also indicated that conviction shall not effect the career of the convict and, therefore, the respondents were not justified in holding the

petitioner as ineligible.

Reliance was placed on judgment in Avtar Singh v. Union of India & Ors. (2016) 8 SCC 471.

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

The respondents by their order dated 5.3.2019 (Annex.5) while applying the principles laid down in the case of Avtar Singh (supra) inter alia came to the following conclusion:-

"1. ???????? ???????? ?? ?????? ?????? 21.07.2016 ?? ?????? ?? -30(3) ??? ?????? ???????? ?????? ??? ?? ???-

The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

2. ?????? ???????? ???????? ?????? ?????? ??? ?????? ?? ?????? ??? ?????????????? ?
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142/18.03.2012 ??? 419, 420 ??..???. ??? ?????? ?????????? ??????
24.03.2015 ?????? ?? ??? ???? ???? ? 20000 ?????? ?? ?????? ??? ???? ??????????
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1989 ?? ???? 13 ?? ?????? ??? ???? ???? ???? ??, ???? ?????? ??????? 782/2004 ???
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3. ?????????? ?????????? ?? ?????? ??????? 21.07.2016 ?? ?????? ??.30(4)
(??) ??? ?????? ?????????? ??????? ???? ?? -

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.

4. ???? ?????? ??? ?????? ?? ?? ?????? ?????????? ?? ?????????? ?????? ??? ?????????? ?? ?? ?
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? ?????????? ?????????? ?????? ??.. 142/18.03.2012 ??? 419,
420 ??..???. ??? ?????? ?????????? ??????? 24.03.2015 ?????? ?? ???? ???? ???? ?
20000 ?????? ?? ?????? ???? ???? ??

5. ???????? ?? ???????? ????? ?????? ?????? ???????? ?? ?????? ?? ???????? ?? ?????? ??
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?? ?????? ?????? ?????????? ?????????? ?????????? ?????????? ?????????? ??????????
21.07.2016 ?? ???????? ?????????????? ?????????? ?? ?????? ?????? ???"

(emphasis supplied)

A perusal of the above finding would reveal that the petitioner herein was caught red-handed by the flying squad while giving examination for some other candidate and he was found guilty by the criminal court after trial and thereafter he has been left on probation.

The respondents came to the conclusion that the petitioner has not been acquitted and he cannot be held eligible for police service as he is guilty of offence involving moral turpitude in view of Rule 13 of Rajasthan Police Subordinate Service Rules and the memorandums issued by the State.

The said determination made by the respondents cannot be said to be incorrect, inasmuch as, admittedly, the petitioner was convicted for offence of impersonating some other candidate at public examination, which offence falls within the category of moral turpitude.

Hon'ble Supreme Court in the case of Avtar Singh (supra) while laying down the various guidelines, even in case of acquittal in a case involving moral turpitude observed as under:-

"38.4.3. 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."

The present case is not a case of acquittal but that of conviction, however, the petitioner has been granted benefit of probation, which situation cannot be better than an acquittal and, therefore, in a disciplinary force like police despite conviction for offences under Section 419 and 420 IPC, the petitioner cannot claim appointment.

Recently, Hon'ble Supreme Court in State of Madhya Pradesh & Ors. v. Abhijit Singh Pawar: 2018 (15) SCALE 154, after noticing the judgment in the case of Avtar Singh (supra), relying on judgment in Commissioner of Police, New Delhi & Anr. v. Mehar Singh : (2013) 7 SCC 685 inter alia came to the following conclusion:-

"15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Singh (supra), specially in paragraphs 34 and 35

completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition."

Similarly, in Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr.: (2018) 1 SCC 797, the Hon'ble Supreme Court upheld the denial of appointment to candidates despite acquittal.

As already observed, the case of grant of probation cannot be better than a case of acquittal and, therefore, the action of the respondents in coming to the conclusion that on account of the offences, for which, the petitioner has been convicted, the petitioner was ineligible for appointment, cannot be faulted.

Consequently, there is no substance in the writ petition. The same is, therefore, dismissed.