
(2009) 07 AHC CK 0320

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8993 of 1999

Rajendra Yadav

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 452

Citation : (2009) 122 FLR 869

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.N.S. Yadav, S.S. Yadav and Mrs. Kamla Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

The petitioner was selected for the post of Police Constable in U.P. Police on 5.6.1982. According to the averments made in paragraph 2 of the writ petition, he was not allowed to join the services on the ground of report of his antecedents issued by the Police Station Garwar through Superintendent of Police, Ballia inter alia a criminal case was pending against the petitioner under sections 452 and 323 IPC.

2. The contention of learned Counsel for the petitioner is that the petitioner was selected for the post of Police Constable in U.P. Police on 5th June, 1982 and had been acquitted from the aforesaid criminal case by the Sessions Judge, Ballia on 18.3.1982 prior to the date of selection, hence he is entitled to the reliefs claimed for by him.

3. The reliefs sought by the petitioner in writ petition are thus:--

(I) Issue a writ order or direction in the nature of mandamus directing respondent No. 2 to decide the representation of the petitioner dated 3.3.1998 within 2 months.

(II) Issue any order writ order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(III) Award the cost of this writ petition to the petitioner.

4. Learned Counsel for the petitioner has placed reliance upon the judgment rendered in Qamrul Hoda v. The Chief Security Commissioner. N.E. Railway, Gorakhpur 1997 (3) E.S.E. 2009 (All.).

5. The learned Standing Counsel on the other hand, submits that in his application form the petitioner does not appear to have disclosed the factum of his involvement in criminal case under sections 452 and 323 IPC and it was only when his antecedents were being enquired into this fact was disclosed by the Superintendent of Police, Ballia. The Standing Counsel has informed the Court that the representation of the petitioner has already been decided on 9th December, 1999.

6. I have perused the judgment in the case of Qamrul Hoda (supra) and considered the arguments of the Counsel for the parties.

7. The petitioner in Qamrul Hoda (supra) case was selected as Constable in R.P.F. but was not called for training because he was involved in criminal case which was committed at the age of 15 years. He had somehow became a part of crowd of students protesting against the rising of fees by the college. After considering the facts and circumstances of that case, the Court came to the conclusion that the same could not be a ground for debarring the petitioner from appointment. Action of the respondent in cancelling the selection was arbitrary and illegal as a remedial measure was required rather than taking a strict view in the facts and circumstances of that case. It appears that the view of the Court in that case was based on the fact that the petitioner was 23 years of age when he had filed the writ petition against order of cancellation of his selection and at the time of decision of the writ petition he had not attained even the age of 25 years. However, in the instant case, the petitioner has filed the writ petition in the year 1999 i.e. after about 17 years of his order of cancellation of selection and the writ petition has now come up before the Court after about 10 years thereafter. The petitioner according to affidavit sworn by him would now be about 45 years of age. Therefore, the case cited by the learned Counsel for the petitioner is not applicable to the facts of the present case as latches in filing the representation and subsequently the writ petition disentitle him from the reliefs sought by him within a reasonable period of time.

8. Further since the date of his selection i.e. 5th June, 1982 no action was taken by the petitioner against the order of not allowing him to join the services and he had filed the representation dated 3.3.1998 only to overcome the difficulty of latches in filing of the writ petition. This is what has also been noticed in the impugned order deciding the representation of the petitioner.

9. For all the reasons stated above, I am not inclined to pass any order for

deciding the representation of the petitioner which from the record appears to have already been decided when the petitioner is about 45 years of age. The prayer has become infructuous.

The writ petition is accordingly, dismissed. No order as to costs.