
(2003) 09 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5000 of 2002

Sanjeev Kumar Charan

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 379
Rajasthan Judicial Service Rules, 1955 — Rule 13, 19, 21

Citation : (2004) 3 RLW 1486 : (2004) 1 WLC 357

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : M.S. Singhvi, for the Appellant; Sangeet Lodha and Suman Porwal, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—The petitioner Sanjeev Kumar Charan was selected for appointment on the post of Munsif and Judicial Magistrate. However, he was not given appointment in view of the adverse police report. According to police record petitioner has been involved in theft cases. His photograph appears in the album of persons of criminal antecedents, kept at Police Station GRP, Jodhpur. In two cases, wherein petitioner alleged to have committed theft of the articles of foreigners in Train, challan for offence u/s 379 I.P.C. was filed in Court against him.

2. It is contended by the learned counsel that the petitioner has been acquitted in both the cases, as such the adverse police report could not be a ground for refusing the appointment. It is also submitted that two other candidates namely Miss Rekha Choudhary and Sunil Yadav who were also tried for criminal cases have been given appointment. Thus, according to the petitioner it is the case of hostile discrimination.

3. In reply to the show cause notice filed by the High Court, a preliminary objection has been raised to the effect that writ petition is not supported by the

affidavit of petitioner, as such there is no denial of his conduct of criminality. Petition is supported by the affidavit of petitioner's father namely Avardan Charan. On the merit of the case, it is submitted that the cases of the petitioners Sanjeev Kumar, Smt. Rekha Choudhary and Sunil Yadav were placed before the Full Court. The material against the petitioner, Smt. Rekha Choudhary and Sunil Yadav was as under:-

"SMT. REKHA CHOUDHARY

(1) Crime No. 85/2001 u/s 147, 451 and 323 was registered in Police Station Bidhyadhar Nagar. The matter was investigated by CID (CB). F.R. No. 18 dated 08.04.2002 was given. Complainant filed protest petition against F.R. On protest petition F.R. was quashed and set aside but no cognizance was taken against Smt. Rekha Choudhary. Therefore, her case was not even tried by Court.

SUNIL YADAV

(i) F.R. No. 6/92, Under Sections 147, 341 and 323, IPC was registered against Sunil Yadav in Police Station Khetri. After investigation challan was filed. He was acquitted u/s 323 and 341 on the basis of compromise and acquitted u/s 147 after trial."

4. The Full Bench having considered the entire material resolved as follows:-

"Having considered the matter, it is RESOLVED that the names of Ms. Rekha Choudhary (41) and Shri Sunil Kumar Yadav (45) be recommended to the Government for their appointment. As regards, Shri Sanjeev Kumar Charan (55) and Shri Dalip Kumar (97) are concerned, recommendation for their appointment need not be sent. The Government may take suitable legal action against them at their level."

5. We have perused the relevant record pertaining to the petitioner Sanjeev Kumar, Smt. Rekha Choudhary and Sunil Yadav. As far as the case of Mrs. Rekha Choudhary is concerned, a case against her was registered along with other members of the family for offence u/s 147, 451 and 323 I.P.C., at the instance of one Colonel Satyabhan Singh. The record shows that one Smt. Rakhi the sister of Smt. Rekha had married with one Sunil son of Colonel Satyabhan Singh on 26.04.1999. She got a FIR registered on 15.04.2001 against Colonel Satyabhan his wife Smt. Janki Devi and Sunil alleging therein that she was being cheated in as much as the fact that Sunil had already married with one Shefali was not disclosed to her. It was further alleged that she was being tortured by her husband and inlaws. A complaint was also filed by said Smt. Shefali against Sunil and Colonel Satyabhan Singh for offence u/s 498A, 406 I.P.C. The Additional Chief Judicial Magistrate, No. 1, Ajmer had taken cognizance against Sunil and his parents by order dated 29.08.2001. Thus, a false and fabricated case appears to have been filed against the members of the family of Smt. Rakhi including Smt. Rekha as a counter blast. The case was investigated by CID/CB. The Police gave negative report in the case. The complainant filed protest petition which has

been rejected by the order of the Additional Chief Judicial Magistrate, Jaipur dated 30th May, 2002. On these facts it cannot be said that Smt. Rekha has a criminal bent of mind.

6. As regard Sunil Kumar Yadav, a case was registered against him in the year 1992 for offence u/s 147, 323 and 341 I.P.C. The said incident pertains to a trivial quarrel in the locality which was later on compromised. Thus, by order dated 21.11.1996 Judicial Magistrate (Fast Track), Khetri, acquitted Sunil Kumar and others. This case also does not show a criminal bent of mind of Sunil Yadav. In contrast, in the case of the applicant Sanjeev Kumar there are serious allegations about his involvement in the case of committing theft of the articles of foreigners in a train. The album containing the photographs in the criminals, maintained by the GRP, Police is also available on record. This album includes the photograph of the applicant Sanjeev Kumar. Such a person cannot be said to be a person fit to be a member of Judicial Service.

7. Rule 13 of the Rajasthan Judicial Services provides that the character of a candidate for direct recruitment on the service must be such as will qualify him for employment in the service. Further Rule 21 provides that on receipt of the list prepared by the Commission under Rule 19, the Governor shall consult the Court and shall after, taking into consideration the views of the Court and subject to the other provisions of these rules, select candidates for appointment in substantive, temporary and officiating vacancies from among those who stand highest in order of merit in the said list provided, he is satisfied that such candidates are duly qualified in other respects. Thus, the appointment in the cadre of RJS is made by His Excellency the Governor in consultation with the Board that is the High Court. Before an appointment is made the Appointing Authority is to be satisfied that such a candidate is duly qualified in other respects.

8. The Supreme Court in High Court of Judicature at Bombay v. Shashikant S. Patil and Anr. (1), reminded that the judiciary floats only over the confidence of the people in its probity, such confidence is the foundation on which pillars of judiciary are built. The Court observed in para 23 as follows:-

"23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron."

9. The Full Court has found the conduct of the petitioner unbecoming of member of Judicial Service, simply because he has been acquitted of the case registered against him will not take away the jurisdiction of the Appointing Authority and the High Court to satisfy that he is a person of repute and fit to be a member of

Judicial Service. The entry of a person of doubtful conduct is likely to effect the integrity and efficiency of the Judicial Service. The object and purpose of a criminal trial is distinct from the object for scanning the material to satisfy as to whether a person is unbecoming a member of Judicial Service. All the Hon"ble Judges of the Court in Full Court meeting on careful consideration of the material concerning all the three, found Mrs. Rekha and Sunil Yadav to be fit for entry in judicial service but not the petitioner. Such a decision on judicial review can not be lightly disturbed. In this context, it would be advisable to refer the following observation of the Apex Court in the case of High Court of Judicature of Bombay (supra), as follows:-

"When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court."

10. In the said case a five Judges Committee of the High Court considered the conduct of the respondent judicial officer unbecoming the member of the service and as such recommended for removal. The said decision was upset by the Division Bench on judicial side. The Apex Court observed as follows:-

"The Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of the five judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side."

11. The Full Court of this court has found the antecedents of the petitioner to disentitle him to be a member of the judicial service. In view of this recommendation the State Government has not given appointment to the petitioner. In our view, the petitioner has been rightly denied appointment in the cadre of Rajasthan Judicial Services. No interference is called for by this Court in exercise of powers under Article 226 of the Constitution of India.

12. Consequently, there is no merit in this writ petition and the same is rejected.