

(2018) 10 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 756 Of 2016, IA No. 01 Of 2016

Sapna Sharma @APPELLANT@Hash State of Jammu & Kashmir and others

Date of Decision : 01-10-2018

Acts Referred:

Constitution of India, 1950 — Article 16
J&K Civil Service (Classification, Control and Appeal) Rules, 1956 — Rule 17(d)
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 498A
Indian Penal Code, 1860 — Section 32, 325

Citation : (2018) 10 J&K CK 0004

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Abhinav Sharma, Ravinder Gupta

Final Decision : Disposed Off

Judgement

1. The petitioner in this writ petition inter alia seeks the following relief:-

"Issuance of an appropriate writ, direction or order of the nature of mandamus commanding the respondents to consider issuance of appointment order to the petitioner who has been selected for the post of Teacher district cadre Udhampur by J&K Service Selection Board, Jammu vide select list published on 31.10.2015."

2. Briefly stated the facts leading to the filing of the instant writ petition are that the petitioner was selected by the J&K Service Selection Board (hereinafter referred to as the Board) for the post of Teacher for district cadre Udhampur. The name of the petitioner figures at S.No.126 of the select list issued by the Board in reference to item 620 of the Notification No.06 of 2013 dated 10.05.2013. Before the petitioner could be issued the order of appointment, the respondent No.3 received a complaint from one Dharam Chand Sharma that the petitioner was involved in a criminal case and the matter was pending in the Court of law. Accordingly, the petitioner was asked by the respondent No.3 vide his letter No.E-2/75503 dated 08.03.2016 to get the character certificate issued in her favour by the Executive Magistrate Ist Class, Udhampur re-verified from the

competent authority and submit it to his office within a period of one week positively. It was also intimated to the petitioner that in case of failure, her appointment order shall be kept withheld. The respondent No.3 verified the information from the SHO Udhampur who vide his letter No.PSU/2016/725/5-1 dated 26.02.2016 intimated the respondent No.3 that one case FIR No.17 of 2014 under Section 498-A RPC of Police Station Women Cell, Udhampur was registered against the petitioner and the challan was pending in the competent Court of law. Acting on the aforesaid information, the respondent No.3 did not issue the formal order of appointment in favour of petitioner. This is how the petitioner feeling aggrieved has approached this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner vehemently contends that a pendency of criminal case involving the commission of an offence which does not constitute moral turpitude is no ground to deny appointment. It is stated that the petitioner has been unnecessarily made victim by the estranged wife of her brother and her parents who are hell bent to wreck vengeance against the petitioner who have not only involved the petitioner in the FIR but have also lodged a complaint with the respondent No.2 so that the petitioner is denied the appointment of Teacher for which she has been selected by the Board on the basis of her merit and qualification. It is, thus, submitted that the pendency of a challan in the case of the nature of 498-A RPC, which is otherwise based on the false and frivolous allegations, cannot be used as a weapon to deprive the petitioner of her hard earned appointment.

4. The respondents have filed their objections and in the objections the only stand taken is that the petitioner is not entitled to the letter of appointment for the reasons that she is involved in case FIR No.17 of 2014 registered under Section 498-A RPC in the Police Station, Women Cell, Udhampur and that the FIR has been investigated and the challan is presented to the competent Court of law. It is stated by the respondents that the character certificate submitted by the petitioner which is issued under the seal and signature of the Executive Magistrate Ist Class, Udhampur cannot be accepted in the face of the information intimated by the SHO Police Station, Women Cell, Udhampur with regard to the registration of a case and pendency of challan against the petitioner. Both the parties have relied upon Rule 17 (d) of the J&K Civil Service (Classification, Control and Appeal) Rules, 1956 to substantiate their contentions.

5. Having heard learned counsel for the parties and perused the record, it would be appropriate to first reproduce Rule

17 (d) of Rules of 1956 hereunder :-

"17. Qualifications:- No person shall be eligible for appointment to any service by direct recruitment, unless-

(a).....

(b)

(c)

(d) he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service."

6. From a bare reading of the aforesaid Rule, it is clear that no person is eligible for appointment to any service by direct recruitment unless he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service. The sine-qua-non offering appointment to the eligible selected candidates by way of direct recruitment, inter alia, is the satisfaction of the appointing authority that the character and antecedents of the employee are such as would qualify him for such service.

7. It is clear that it is subjective satisfaction of the authority to be arrived at on objective assessment of the material that would determine as to whether the character and antecedents of the employees proposed to be appointed are such as would qualify him for the service. Simply because there is some criminal case registered or pending trial in the Court of law would not be sufficient to deny appointment to a person who is duly selected in a process of selection conducted by the competent authority and it all depends on the facts and circumstances of each case. The appointing authority is under an obligation to independently evaluate the material brought to its notice with regard to the character and antecedents of the candidate proposed to be appointed and arrive at a satisfaction as to whether the character and antecedents of such candidate disqualify him for the service or not. In the instant case, undoubtedly appointing authority has not applied its mind. It decided to withhold the appointment of the petitioner on the ground that there was a criminal charge pending against her without looking further into the matter as to the nature of charge and its effect upon the employment proposed to be offered to the petitioner. The petitioner has been duly selected as Teacher on the basis of merit and qualification and is ordinarily entitled to the letter of appointment. The allegations against the petitioner as are contained in the FIR are levelled by the wife of her brother. It is not in dispute that there is a matrimonial dispute going on between the brother of the petitioner and his wife and with a view to settle the personal score, the wife of brother of the petitioner has not only lodged FIR against her husband but has also roped other members of the family of her husband including the petitioner herein. Such being the nature of allegations, it is hard to conclude that the registration of the FIR and filing of challan in the Court of law against the petitioner for the allegations of cruelty as envisaged under Section 498-A RPC of the Act could be taken as such character and antecedents of the petitioner as would disqualify him to serve as a Teacher. The allegations levelled in the FIR which are now pending trial in the competent Court of law, in any case, do not constitute any moral turpitude.

8. While it is not denied that appointing authority has discretion to refuse

appointment to the selected candidates in case it shown that his/her character and antecedents are of such nature as would render him unfit for the appointment, yet the employer does not have unfettered discretion in the matter to refuse the appointment without even applying his mind to the material against such candidate. The right of the selected candidate to appointment if he/she otherwise fulfils all requisite conditions is a fundamental right guaranteed under Article 16 of the Constitution of India. A selected candidate cannot be denied the appointment arbitrarily. The Hon'ble Supreme Court in the case of Commissioner of Police and others v. Sandeep Kumar 2011(4) SCC 644 in paragraphs 8 to 12 observed as under :-

"8."When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which

the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B.

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence more lenient view should be taken in the matter."

9. To the similar effect is the judgment of this Court rendered in the case of Narinder Kumar Sharma v. State and others reported in 2012(II)SLJ HC 547. This Court relying upon the judgment of Sandeep Kumar (supra) allowed the writ petition and directed the respondents to reconsider the claim of the petitioner for being appointed to the post of Follower (Cook) for which he was already selected.

10. In view of the aforesaid legal position and also keeping in view the nature of allegations contained in the FIR against the petitioner, it cannot be said that the petitioner is involved in a criminal charge which involves moral turpitude and is such as would disqualify her from serving as a Teacher.

11. I have carefully gone through the FIR and find that except for the general allegations involving the petitioner also, there are no specific allegations made against the petitioner. She appears to have been arrayed as an accused only for the reason that she is sister of the estranged husband of the complainant. Such being the nature of allegations, the FIR and the challan presented, per-se, should not have been taken as a bar for appointment by the respondent No.3. Thus, respondent no.3 was under an obligation to look into the nature of allegation and arrive at the satisfaction that in view of the allegations levelled, the character and antecedents of the petitioner were such as would disqualify her to serve as a Teacher.

12. In view of the foregoing reasons, I allow this writ petition and direct the respondent No.3 to reconsider the claim of the petitioner for being appointed as Teacher for which she has been duly selected by the J&K Service Selection Board and take a decision in the light of the observations made hereinabove within a period of one month from the date copy of this order is served upon him.

13. Disposed of as above along with connected MP(s).