

(2019) 04 DEL CK 0149

In the Delhi High Court

Case No : Civil Writ Petition No. 860 Of 2017

Shaitan Singh Meena

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 24-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 308, 323, 324, 341, 447

Probation of Offenders Act, 1958 — Section 3, 4, 12

Central Reserve Police Force Act, 1949 — Section 10(n)

Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 — Section 3, 6

Citation : (2019) 260 DLT 294

Hon'ble Judges : Dr. S. Muralidhar, J; I.S. Mehta, J

Bench : Division Bench

Advocate : Naushad Alam, Jitendra Bharti, Arti Bansal, Ajay Diggpaul

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. The Petitioner has approached this Court seeking the quashing of an order dated 18th January 2017 issued by the Presiding Officer, Kritrim Ang Kendra (Artificial Limb Centre - 'ALC') informing the Petitioner that his candidature for the post of Limb Maker Carpenter (ST) at ALC, Pune [functioning under the Armed Forces Medical Services ('AFMS')] has been cancelled in view of the verification report received from the police regarding the conviction of the Petitioner for the offences under Sections 323, 341, 447 and 324/34 IPC. The Petitioner also seeks a direction to the Director General of the AFMS to issue him an appointment letter for the aforementioned post.

2. The background facts are that the Petitioner applied under ST category for the above post pursuant to an advertisement issued in the Employment News 28th May 2016 to 3rd June 2016. On 4th September 2016, he cleared the written exam. He later cleared the trade test. He was also found fit in the medical examination held on 18th November 2016.

3. When the Petitioner did not receive an appointment letter, he filed an application under the Right to Information Act, 2005. In response thereto, a letter dated 18th January 2017 was sent to him by Respondent No.2 informing him that during police verification he was found to have been convicted for the aforementioned offences and, therefore, his candidature stood cancelled. Aggrieved by the said letter, the present petition was filed.

4. The Petitioner has averred in the petition that FIR No.21 of 2013 had been registered at Police Station Sadar Hindon on 1st December 2016 against the Petitioner and his brother Kaptan Singh arising out from a land dispute between the family members of the Petitioner and one Tej Singh. In fact, there were cross-cases filed by one party against the other. During the course of the trial, the matters were referred to the Lok Adalat and both parties accepted their respective guilt before the Trial Court.

5. By a judgment dated 1st December 2016 in Criminal Case No.129 of 2013 arising out of the aforementioned FIR 21 of 2013, the Trial Court while convicting the Petitioner and his brother for the aforementioned offences gave them the benefit of probation by applying Section 4 of the Probation of Offenders Act, 1958 ('POA') and directing them to furnish a personal bond of Rs.10,000/- each apart from paying costs of Rs.2,200/-. The trial Court imposed a condition that neither accused would commit any offence for a period of two years thereafter and subject thereto shall get the benefit of Section 12 of the POA. The two-year period has since elapsed and in the interregnum there has been no criminal case involving the Petitioner.

6. In response to the notice issued in the present petition, the Respondents have filed a counter affidavit inter alia taking the plea that release of the Petitioner under Section 4 of the POA 'would not obliterate the conduct/act which constituted the offence, for which he has already been convicted.' The stand is that Section 12 POA 'would not take away the effect of conviction for the purposes of employment in Government service.'

7. The above stand of the Respondents is based on the judgment of the Supreme Court of India in Union of India v. Bakshi Ram (1990) 2 SCC 426. That was a decision in an appeal from the decision of the Rajasthan High Court which had held that the release on probation had the effect of removal of disqualification attaching to the employee's conviction under Section 10 (n) of the CRPF Act. The Supreme Court reversed the High Court and observed that Section 12 POA did not take away the effect of the conviction. Clearly the context of that case was the removal of a person who had already been employed under CRPF Act.

8. The said ruling was referred to and relied upon by this Court in Satraj Singh v. Union of India 2007 (IX) AD (Del) 241 holding that the conviction of an accused cannot be 'washed out at all because that is the sine qua non for the order of release on probation of the offender.' This was consistent with the earlier rulings in Divisional Personnel Officer, Southern Railway v. T.R. Chellappan AIR 1975 SC

2216 and Shankar Dass v. Union of India AIR 1985 SC 772. Again, in Harichand v. Director of School Education 1998 SC 788 it was held that:

"Where the law that provides for an offence and offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service."

9. It is, therefore, seen that in all of the above decisions the context was the dismissal or removal of a person from Government service once he is convicted by a criminal court. The decision in Harichand draws a distinction between being disqualified to be appointed to a post, which Section 12 POA seeks to overcome, and avoiding dismissal from a post, which it does not prevent.

10. In the instant case, the context is the former scenario. The question here is whether the grant of the benefit of probation to a person in a criminal case will act as a disqualification for such person being appointed to a post?

11. Clearly, Section 12 POA was intended to provide an answer. It reads as under:

"12. Removal of disqualification attaching to conviction.-

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

12. The title of the Section itself is 'removal of disqualification attaching to conviction.' There are decisions which explain that the grant of the benefit of probation in a criminal case would not attract disqualification for appointment to a post in government service on account of Section 12 of the POA. Mr. Naushad Alam, learned counsel for the Petitioner, has placed before the Court a compilation of the relevant decisions in support of his case.

13.1 Specific to the facts in hand a reference may be made to a decision of the Division Bench (DB) of this Court dated 13th February 2013 for WP (C) 5140 of 2012 (Commissioner of Police v. Jagjeevan Ram). The said judgment was common to the aforementioned writ petition and four other writ petitions the lead matter of which was WP (C) 8499 of 2011 (Commissioner of Police. v. Narender Kumar Singh). The facts relevant to the case involving Jagjeevan Ram were that he had been caught cheating in an examination conducted by the Rajasthan University and FIR No.59 of 1995 for the offence of cheating under Sections 3 and 6 of the Rajasthan Examination Act was registered against him at Police Station Tijara. He was convicted but let off on probation by the Trial Court

on 29th April 1995. After Jagjeevan Ram was held disqualified for appointment as Constable in the Delhi Police he approached this Central Administrative Tribunal ('Tribunal') which held in his favour. The Commissioner of Police, Delhi then filed a writ petition in this Court challenging the Tribunal's order.

13.2 Dismissing the petition and upholding the Tribunal's order as far as Jagjeevan Ram's case was concerned, this Court observed that:

"we cannot overlook the fact that he was let off on probation and the mandate of Section 12 of the Probation of Offenders Act is that the person should not suffer the disability of the conviction. As regards him, the only direction issued by the Tribunal is that the Competent Authority should reconsider the matter keeping in view the mandate of Section 12 of the Probation of Offenders Act."

13.3 Therefore, in Jagjeevan Ram's case a direction was issued by this Court that the competent authority would take a fresh decision in terms of the decision of the Tribunal which was under challenge before this Court.

14.1 The second decision, by a DB of this Court, involving the grant of probation to a person applying for a post in government service is Vakil Kumar Meena v. Director, Export Inspection Council of India 2015 LawSuit (Del) 2563. There the Appellant who applied for the post of Technical Officer with the Respondent organisation, failed to disclose in the attestation form his involvement in a criminal case for the offences under Sections 147 and 323 IPC. Later he voluntarily disclosed this fact by separate letters addressed to the Respondent. He explained that the case involved a minor scuffle between two groups of students during his stay at D.T. Boys Hostel in March, 2001 while studying at Udaipur, Rajasthan in respect of which the above FIR was registered against 14 students including the Appellant. By a judgment dated 12th December, 2005, all the students were acquitted under Section 323 IPC. The students were convicted under Section 147 IPC and fine of Rs.100/- was imposed on each student. However, benefit of Section 12 POA was given and it was clarified that the conviction was not to adversely affect their future studies and government service.

14.2 This Court referred to the decisions of the Supreme Court in Commissioner of Police v. Dhaval Singh (1999) 1 SCC 246 and Commissioner of Police v. Sandeep Kumar (2011) 4 SCC 644 and held that the offences in question did not involve moral turpitude and were of trivial nature. Conviction for such offences would not be viewed as disqualifying the Appellant for government service. It was held:

"Every brush with criminal law is not a disqualification in appointment. It is only when a person stands convicted for a very serious act which shocks the moral conscience of the society and evidences that a person is of depraved character and suffers from the tag of moral turpitude, the conviction results in denial of public employment."

14.3 After noting that the Appellant had been given the benefit of the POA, this Court held:

"Since the respondent has not applied their mind as to whether the appellant was fit for appointment considering the trivial offence which had already come to an end and the appellant had been given benefit of Section 12 of the Probation of Offenders Act which would not disqualify him to seek government service, the impugned cancellation of his appointment cannot be said to be justified."

15.1 A third decision, again by a DB of this Court, is dated 29th August 2016 in W.P. (C) 7623 of 2016 (Anju Devi Jatav v. Addl. Deputy Commissioner of Police). The facts there were that the candidature of the Petitioner for the post of Constable (Executive) Female in the Delhi Police was cancelled on account of her failure to disclose in the attestation form the fact of registration of an FIR against her for the offences punishable under Sections 147, 323 and 341 IPC.

15.2 After the Tribunal dismissed her petition, she filed a writ petition in this Court. It was noticed that after the filling up of her application form and prior to the filling up of the attestation form, the above FIR was registered and by an order dated 19th November 2013 the trial Court convicted the Petitioner for the above offences. However, she was extended the benefit of Section 3 POA and was released on probation. It was directed that she would be entitled to the benefit of Section 12 POA.

15.3. This Court in Anju Devi Jatav (supra) reversed the Tribunal's order after noticing the decision of the Supreme Court in Avtar Singh v. Union of India (2016) 8 SCC 471 as well as the Standing Order No. 398 of 2010 issued by the Delhi Police which set out the 'Policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted)'. This Court took note inter alia of clause (9) of the rules laid down in the said Standing Order which stated: "If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service."

15.4 This Court held:

"Having regard to the facts involved of the present case and also taking into consideration that the matter was settled before the Lok Adalat and also that the Sections invoked in the FIR do not fall within the purview of 'moral turpitude', prima facie, it is clear that the dispute was trivial in nature between the neighbours and family members of the petitioner."

15.5 A direction was issued that the Petitioner would make a fresh representation which would then be considered by the Respondents in light of the legal position explained in the decisions discussed in the judgment.

16. The above three decisions of the DB explain the legal position as regards grant of the benefit of probation and consequently Section 12 POA even while

convicting a person. The object of Section 12 POA is to remove the disqualification attaching to the conviction. Another factor to be noted is that in each of the above three decisions, there was an additional issue regarding non-disclosure by the Petitioners of their involvement in the criminal case. Yet, that did not come in the way of their being held not disqualified for appointment to the respective posts in government service.

17. The present case stands on an even better footing since it is not the case of the Respondents that there is any suppression of facts by the Petitioner while applying for the post. It so happened that the conviction for the aforementioned offences came about on 1st December 2016, after the Petitioner had already successfully cleared the requisite tests in November 2016. The fact of his conviction emerged during the police verification that took place in January 2017. Further, the conviction was not for offences involving moral turpitude. It was for relatively minor offences arising out of a dispute over land between families.^{18.1} Ms. Arti Bansal, learned counsel for the Respondents, on the other hand has placed reliance on the decision dated 18th April 2013 of the DB of this Court in WP (C) 3372 of 2010 (Ajit Kumar v. Commissioner of Police). The said decision is therefore examined at some length hereafter.

18.2 The Petitioner Ajit Kumar had been convicted for the offence under Section 308 IPC but was released on probation. The Commissioner of Police cancelled his candidature for the post of Constable in the Delhi Police in view of the above conviction notwithstanding that he had been released on probation.

18.3 The Petitioner approached the Central Administrative Tribunal which dismissed his application holding that Section 12 of the POA would not wipe away his conviction. While dismissing the petition of the Petitioner challenging the Tribunal's order, this Court referred to the decisions in Harichand v. Director of School Education (supra) and of this Court in Satraj Singh v. Union of India (supra) and Sushil Kumar Singhal v. The Regional Manager, Punjab National Bank 2007 IX AD (Delhi) 241 and concluded that Section 12 POA would not come to the rescue of the Petitioner. The Court noted that the Petitioner was seeking appointment as Constable which post required 'utmost integrity, propriety and character.'

18.4 The aforementioned decision is distinguishable not only on account of the post for which the Petitioner was seeking appointment viz., Constable (Executive) in the Delhi Police but also on account of the offence for which he was convicted i.e. under Section 308 IPC. As far as the present case is concerned, the conviction resulted from a dispute relating to land between two families who had filed cross cases against each other. The offences involved could not be termed serious which is why it was possible for them to settle the disputes and go before the Trial Court which recorded that fact and gave the benefit of probation to the Petitioner and his brother. Secondly, the post for which the Petitioner is seeking appointment is that of a Limb Maker Carpenter at the ALC. This is nowhere comparable to the post of Constable in the Delhi Police. Thirdly, the DB which

decided Ajit Kumar did not take note of the decision of the co-ordinate Bench in Commissioner of Police v. Jagjeevan Ram (supra) where even for a post of Constable this Court was prepared to extend the benefit of the POA.

18.4 Consequently, the Court is unable to be persuaded that the decision of this Court in Ajit Kumar v. Commissioner of Police (supra) would apply to the facts of the present case. On the other hand, the Court finds that the present case is more or less on similar lines as Vakil Kumar Meena (supra) and on an even better footing since in the present case there is no failure by the Petitioner to disclose the fact of pendency of the criminal case.

19. As already noticed hereinbefore the Respondent is seeking to use the conviction of the Petitioner for evidently non-serious offences to disqualify him for appointment in government service by ignoring the fact that he has been released on probation thereby defeating the very object of the Section 12 POA. The Court is, therefore, not able to accept the submission of the Respondents that the conviction of the Petitioner in the aforementioned case would come in the way of his being appointed to the post of Limb Maker Carpenter in the ALC notwithstanding Section 12 POA.

20. For the aforementioned reasons, this Court sets aside the decision of the Respondents to cancel the candidature of the Petitioner, as communicated to him by the impugned communication dated 18th January 2017. A direction is issued to the Respondent No.1 to pass an appropriate order appointing the Petitioner to the post of Limb Maker Carpenter in the ALC within a period of 12 weeks from today. The petition is allowed in the above terms but in the circumstances with no order as to costs.

21. Order 'dasti.'