
(2012) 04 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6630 of 2012

Shweta Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 325, 34

Citation : (2012) 5 ADJ 599 : (2012) 4 AWC 4076 : (2012) 135 FLR 177

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Siddharth Khare, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Manoj Misra, J.—I have heard learned counsel for the petitioner and the learned Standing Counsel for the respondents and have perused the record. By this petition, the petitioner has sought for quashing the order/letter dated 9.11.2011 (Annexure 6 to the writ petition) of the respondent No. 5 thereby reporting/ finding that the petitioner was unfit for appointment on the post of Constable in the U.P. Police Force.

2. The facts, in brief, are that the petitioner, pursuant to an advertisement, applied under general/female category for the post of Constable in U.P. Police Force. After receiving a call-letter, she underwent physical and medical check-up and having cleared medical examination, was called for written examination. On 28.3.2010, she appeared in the written examination and was declared successful, but no steps were taken by the respondent-authorities to send her for training. Later, she received a communication letter dated 26.4.2011 from the office of the District Magistrate, Fatehpur wherein it was stated that upon character verification of the petitioner, it was found that she had a criminal history inasmuch as case No. 67 of 2007, u/s 3/9of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998, was registered against her. By the said letter, she was required to submit an explanation by 5.5.2011. In

response to the letter dated 26.4.2011, the petitioner submitted her explanation stating therein that she had admitted guilt u/s 3/9 of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 so as to avoid litigation and to finish off the matter with a fine of Rs. 100/- only. The District Magistrate, Fatehpur on finding that the petitioner was inflicted with a fine of Rs. 100/- in reference to an offence u/s 3/9 of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 held/reported that the petitioner was unfit for appointment on the post of Constable in U.P. Police Force. It is this order, which has been challenged in the present petition.

3. The counsel for the petitioner has submitted that the order of the District Magistrate, Fatehpur to the extent it held that the petitioner was unfit for appointment, is arbitrary and is also against the Government Order dated 28.4.1958. It has been submitted that as per the Government Order dated 28.4.1958, guidelines have been issued to the appointment department relating to the manner in which verification of the character, and antecedents of Government servants, before their first appointment, is to be carried out. The counsel for the petitioner has drawn the attention of the Court to the Note (a) of the Government Order dated 28.4.1958, which reads as follows :

"(a) A conviction need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object to overthrow by violent means of Government as by law now established in free India the mere conviction need not be regarded as disqualification. (Conviction of a person during his childhood should not necessarily operate as a bar to his entering Government service. The entire circumstances in which his conviction was recorded as well as the circumstances in which he is now placed should be taken into consideration. If he has completely reformed himself on attaining the age of understanding and discretion, mere conviction in childhood should not operate, as a bar to his entering Government service.)"

4. The counsel for the petitioner, relying on uncontroverted statement made in paragraph 25 of the writ petition, submitted that when the petitioner was penalised u/s 3/9 of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998, she was a minor, therefore, the benefit of Note (a) to the Govt. Order dated 28.5.1959 (supra) was available to her, which was not considered by the District Magistrate. The petitioner has also placed reliance on Apex Court's decision in the case of Commr. of Police and Others Vs. Sandeep Kumar, . In the said case, the candidate who had sought for appointment to the post of U.P. Constable (Ministerial), in response to a query contained in the application form, as to whether he had been earlier arrested, prosecuted, kept under detention or bound down/fine, convicted by a Court of law for any offence, debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any examination, rusticated by any

University or any other Educational Authority/Institution, had responded with "NO". This statement of the candidate was found to be false as the candidate alongwith his family members were found to have been involved in a criminal case u/s 325/34I.P.C. On the basis of the aforesaid false statement, a show-cause notice was issued to the candidate asking him as to why his candidature be not cancelled for concealment of fact of his involvement in a criminal case. Thereafter, on submission of reply by the candidate, the authorities cancelled his candidature, which was challenged before the Central Administrative Tribunal. The Central Administrative Tribunal dismissed the petition of the candidate against which, the candidate approached the High Court. The High Court allowed the petition of the candidate and the Apex Court affirming the judgment of the High Court observed as under :

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. 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 :3: 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 v. Crown Official, Q.B. At p. 125C-H]

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 u/s 325/34IPC. 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 a more lenient view should be taken in the matter."

5. In the instant case, I find that the District Magistrate, Fatehpur from a solitary instance of conviction in a case u/s 3/9of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998 has come to the conclusion that the petitioner was unfit for appointment in the U.P. Police Force. While doing so, the District Magistrate, Fatehpur did not apply his mind to the fact that the petitioner was a minor or had not attained the age of discretion when she was fined u/s 3/9of the Uttar Pradesh Public Examinations (Prevention of Unfair Means) Act, 1998. Although, at first glance, an offence of using unfair means in a public examination may appear to be an offence involving moral turpitude. But considering the fact that the petitioner on the date of commission of that offence was a minor and that such conviction was made on confession to avoid the travails of a trial, I am of the view that there was no material for the District Magistrate, Fatehpur to conclude, on the basis of this solitary conviction, that the petitioner was unfit for appointment on the post of Constable. Following the observations of the Apex Court in the case of Commissioner of Police and others v. Sandeep Kumar (supra), I am of the view that a solitary act of use of unfair

means in an examination, before attaining the age of discretion, cannot be used as a yard-stick to determine the suitability of a candidate for the purpose of serving the "State" in future.

6. For the reasons aforesaid, I am of the view that the order dated 9.11.2011 (Annexure 6 to the writ petition) suffers from vice of arbitrariness and as such is liable to be quashed. In the result, the writ petition succeeds and is allowed. The order dated 9.11.2011 (Annexure 6 to the writ petition) passed by the respondent No. 5 is hereby quashed. The respondent-authorities shall proceed to complete the formalities relating to the appointment of the petitioner in pursuance to her result, unless there is any other legal impediment. The aforesaid exercise shall be completed within a period of one month from the date of production of a certified copy of this order. No order as to costs.