
(2012) 01 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2896 of 2011

Surendra Pal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 407, 420

Citation : (2012) 3 WLN 110

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Sunit Awasthi, for the Appellant; Vibhuti Bhushan Sharma, Additional Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.—The matter has come up on application for modification and vacation of stay order, however, with the consent of learned counsel for both the parties, the matter is heard finally. It is a case where petitioner was selected for the post of Lab Technician. Vide Annex.2, i.e., the order dt. 15th February, 2011. The petitioner was asked to submit certain documents as well as character certificate issued by the Superintendent of Police showing that he has not been convicted in any of the case. Vide Annexure-3, petitioner produced certificate giving out that one case bearing No.69/2006 is pending against him. On getting aforesaid information, the respondents has referred the matter to the Additional Director (Administration) for necessary instructions regarding joining of petitioner.

2. It is stated that petitioner cannot be denied benefit of appointment merely on account of pendency of criminal case. For the aforesaid, a reference of Rule 12 of Rajasthan Medical & Health Subordinate Rules, 1965 (for short "the Rules of 1965") has been given to show that even pendency of criminal case cannot be taken as a bar for appointment.

3. Learned counsel for respondents, on the other hand submits that keeping in

mind pendency of criminal case against the petitioner for an offence under Secs. 407, 420 and 120-B of Indian Penal Code (for short "the IPC"), he was not given appointment.

4. I have considered the submissions made by learned counsel for both the parties and perused the documents enclosed along with the writ petition.

5. It is not in dispute that petitioner was selected for the post of Lab Technician and thereupon he was asked to submit certain documents, which includes character certificate issued by the Superintendent of Police. The petitioner accordingly produced the aforesaid certificate wherein details of pending criminal case has been given and on the aforesaid ground alone, he has been denied benefit of appointment. For the aforesaid, a reference of Rule 12 of the Rules of 1965 has been given, which is quoted hereunder for ready reference:

12. Character-The character of a candidate for direct recruitment to the service must be such as to qualify him for employment in the service. He must produce a certificate of good character from the Principal/Academic Officer of the University or College in which he was last educated and two such certificates written not more than six months prior to the date of application from two responsible persons not connected with the college or University and not related to him.

Note :-(1) A conviction by a Court of Law 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 the overthrow by violent means of the government as by law established, the mere conviction need not be regarded as a dis-qualification.

(2)Ex-Prisoners, who by their disciplined life while in prison and by their subsequent good conduct have proved to be completely reformed, should not be discriminated against on grounds of their previous conviction for the purpose of employment in service. Those, who are convicted of offence not involving moral turpitude or violence, shall be deemed to have been completely reformed on the production of a report to that effect from the Superintendent, After Care Home or if there are no such Homes in a particular district, from the Superintendent of Police of that district.

Those convicted of offences involving moral turpitude or violence shall be required to produce a certificate from the Superintendent, After Care Home, endorsed by the Inspector General of Prisons, to the effect that they are suitable for employment as they have proved to be completely reformed by their disciplined life while in prison and by their subsequent good conduct in an After Care Home.

6. Perusal of note appended shows that conviction of person by a Court of Law need not be ground to refuse the certificate of good character, rather

circumstances of conviction should be taken into account if they are not involved for the offences moral turpitude or association with crimes for violence etc. Sub-rule (2) of Rule 12 of the Rules of 1965 further provides that even ex-prisons would not be disqualified to get character certificate. Perusal of the aforesaid Rule shows that even conviction cannot be taken as ground to refuse character certificate. Other than pendency of one criminal case against the petitioner, nothing is adverse against him. In fact, character certificate cannot be denied to him on that ground, so as the appointment. This is moreso when as per rules even a prisoner is brought in main stream if his conduct is good after conviction and after serving the punishment.

7. There are catena of judgments of this Court holding that even conviction by itself cannot be a ground to deny the benefit of appointment. In the present matter, the petitioner has not even been convicted, rather only one case for an offence under Sec. 407, 420 & 120B of IPC is pending for trial. Thus, denial of appointment cannot be said to be legal moreso when alleged offences are not involving moral turpitude or involving petitioner for violence etc.

8. In view of the discussion made above, the writ petition is allowed.

9. The respondents are directed to consider the case of petitioner for appointment for the post of Lab Technician within a period of one month from the date of receipt of certified copy of this order and if petitioner is otherwise found eligible for appointment, necessary order in that regard may be passed within the period aforesaid. It may, however, be subject to final outcome of criminal case if petitioner is convicted therein, the respondents would be at liberty to take proper action in the matter as per Rules. This disposes of the stay application also.