
(2011) 10 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9304 of 2008

Suryabhan Singh Solanki

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 325, 34
Probation of Offenders Act, 1958 — Section 4

Citation : (2012) 3 RLW 2320

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : J.S. Choudhary, for the Appellant; I.S. Pareek, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for direction to the respondents to consider the petitioner's name for appointment in pursuance of the advertisement dated 7.4.2008 with all consequential benefits. As per facts of the case, in pursuance of the advertisement for filling up posts of Constable (General Duty) the petitioner being eligible applied for recruitment. The petitioner was allowed to appear in the written examination, in which, he was declared successful. Thereafter, he was called for physical test/interview. After appearing in the interview, the petitioner was not provided appointment because upon verification roll sent to the concerned Police Station Shambhupura (District Chittorgarh) although the S.H.O. of the police station Shambhupura certified that the petitioner is having good reputation and he is not addict of any drug, so also, his conduct is also found to be good, but the S.H.O., Police Station Shambhupura also sent the HM criminal report, in which, it was mentioned that an FIR was registered against the petitioner bearing No. 659/2004; in the said case, the petitioner was acquitted for offence u/s 323, however, for offence u/s 147, I.P.C., the petitioner was released on probation.

2. After completion of the selection process, the petitioner was not provided appointment by the respondents and, upon inquiry, no information was given to the petitioner. Upon the petitioners representation to enquire the correct facts, it is verbally informed to the petitioner that due to aforesaid criminal case, for which, no information was given by the petitioner the respondents denied appointment to the petitioner.

3. Learned counsel for the petitioner while inviting my attention towards recent judgment of the Supreme Court rendered in Civil Appeal No. (s) 1430/2007, Commissioner of Police & Others vs. Sandeep Kumar, decided on 17.3.2011, submits that in identical situation, the Hon''ble apex Court held that for such type of reasons the appointment should not be denied, therefore, it is prayed that as per the recent verdict of the Hon''ble Supreme Court, denial of appointment to the petitioner for the reason that a criminal case was registered against the petitioner for offences under Sections 341 and 323/34, I.P.C., in which, the petitioner was released on probation, did not come in way of the petitioner to get employment under the State.

4. Per contra, learned counsel appearing on behalf of the respondents, submits that the petitioner was required to give information with regard to registration of the criminal case against him for offences under Sections 323 and 147, IPC but he did not disclose the said fact with regard to his conviction, for offence u/s 147, IPC, in which, the petitioner was released by giving him benefit of Section 4 of the Probation of Offenders Act.

5. It is also submitted by learned counsel for the respondents that in the application form the petitioner did not disclose the fact in column No. 15 that aforesaid case was registered against him, therefore, the petitioner has rightly been denied appointment for the reason that he has not disclosed the fact of registration of the criminal case, in which, he was released on probation. Learned counsel for the respondents invited my attention towards judgment of the Supreme Court passed in Civil Appeal No. 8638/2011, State of Bengal vs. S.K. Nazrul Islam, in which, the Hon''ble Supreme Court set aside the judgment of the Division Bench of the Calcutta High Court dated 14.9.2010, in which, the petitioner of that case did not disclose the factum of pendency of criminal case against him under Sections 148, 323, 380, 427 and 596, IPC in which he was facing trial during the process of selection, therefore, this writ petition may be dismissed.

6. I have considered the rival submissions made by both the parties.

7. Admittedly, in this case, prior to filing application for appointment, criminal case was registered against the petitioner for offences under Sections 323 and 147, IPC which was finally decided vide judgment dated 24.8.2006 whereby the petitioner was acquitted from the charge u/s 323, IPC but held guilty for committing offence u/s 147, IPC and petitioner was released while giving him benefit u/s 4 of the Probation of Offenders Act; meaning thereby, the day on

which, the application was filed no case was pending against the petitioner.

8. In the judgment cited by learned counsel for the respondents, admittedly the criminal case registered under Sections 148, 323, 380, 427 and 596, IPC was pending and respondent (in that case) was facing trial whereas, in this case, the petitioner was released on probation for commission of offence u/s 323/34, IPC much prior to the date when the vacancies were advertised. Therefore, the facts of the present case are different than the fact of afore-cited case of S.K. Nazarul Islam.

9. In the judgment relied upon by learned counsel for the petitioner in the case of Commissioner of Police & Others vs. Sandeep Kumar (supra), the Hon'ble Apex Court held as follows:

The respondent filed a petition before the Central Administrative Tribunal which was dismissed on 13.2.2004. Against that order the respondent filed a writ petition which has been allowed by the Delhi High Court and hence this appeal.

The learned counsel for the appellants has submitted that the respondent should have disclosed the fact of his involvement in the criminal case even if he had later been acquitted. Hence, it was submitted that his candidature was rightly cancelled.

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 be 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.

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.

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 came 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. 114]

In our opinion, we should display the same wisdom as displayed by Lord Denning. As already observed above, youth often commit indiscretions, which are often condoned.

It is true that in the application form the respondent did not mention that he was involved in a criminal case u/s 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 a more lenient view should be taken in the matter.

10. Upon perusal of the aforesaid judgment, it is abundantly clear that Hon'ble Supreme Court held that youth often commit indiscretions which are often condoned. It is also observed that probably the applicant did not mention the fact out of fear that if he did so he would automatically be disqualified, therefore, at any event, it was not such serious offence as murder, rape or dacoity calling for a serious view, therefore, more lenient view should be taken in such matters.

11. After taking into consideration the facts of the present case, it appears that the case u/s 323 and 147, IPC was registered against the petitioner, in which, he was acquitted for offence u/s 323, IPC but held guilty for offence u/s 147, IPC and the criminal Court released the petitioner vide judgment dated 24.8.2006 while giving him benefit u/s 4 of the Probation of Offenders Act much prior to the advertisement for appointment was issued; meaning thereby, the facts of the case cited by the petitioner render strength to the case of the petitioner herein.

12. In view of the above discussion, this writ petition is allowed. The respondents are directed to consider the name of the petitioner within one month for appointment in pursuance of advertisement dated 7.4.2008 ignoring the fact of registration of the criminal case against the petitioner which was already decided much prior to commencement of the selection process and after consideration if the petitioner is found in merit, then, the petitioner may be provided appointment forthwith. No order as to costs.