
(2014) 12 AHC CK 0192
In the Allahabad High Court
Case No : Service Single No. 803 of 2011

Swadesh Premi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498-A, 506

Citation : (2015) 2 ADJ 770 : (2015) 2 UPLBEC 908

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : S.N. Bhardwaj, Advocates for the Appellant

Judgement

Devendra Kumar Upadhyaya, J.—Through these proceedings instituted under Article 226 of the Constitution of India, the petitioner has prayed for issuing direction to the respondents to send him for training for appointment for the post of Constable in U.P. Police pursuant to the final select/recruitment list dated 6.1.2011 prepared by the U.P. Police Recruitment and Promotion Board (hereinafter referred to as Board"). Further, a prayer has been made that the respondents be also directed to pay salary and admissible allowances to the petitioner as and when the same accrues to him. Pursuant to an advertisement issued on 25.6.2009 for recruitment of the post of Constable in U.P. Police, the petitioner submitted his application and accordingly, he was subjected to selection process.

2. During the course of selection process, to which the petitioner was subjected to, an FIR was lodged by his elder brother's wife (bhabhi) on 19.2.2010, under Sections 498-A, 323, 506 IPC and Section 3/4 of Dowry Prohibition Act. The said FIR has been registered at Case Crime No. 71 of 2010, Police Station Civil Lines, District Etawah. After investigation, charge-sheet appears to have been filed on 4.7.2010. In the meantime, the petitioner was required to furnish information as

to whether any criminal case is pending against him. In response thereto, he submitted his affidavit on 22.9.2010 stating therein the information relating to lodging of aforesaid FIR and the pendency of criminal case against him.

3. The Board, on the basis of selection held in which the petitioner had also participated, declared the final select/recruitment list wherein the name of the petitioner with roll No. 16011191 appears at serial No. 30481. The petitioner was accordingly allotted district Shravasti to undergo training. Accordingly, the petitioner on 10.1.2011 submitted his joining to the Superintendent of Police, Shravasti stating therein that in the select/recruitment list dated 6.1.2011, the petitioner has been allotted district Shravasti and he has been given instructions at the police lines, Etawah to submit his joining at Shravasti and pursuant to the said instructions he had submitted his joining. The petitioner again made an application on 31.1.2011 stating therein that the other selectees, who were selected along with him, have been allowed to undergo training w.e.f. 10.1.2011. However, the petitioner was not allowed to join the training, as such he may also be permitted to undergo training. However, since the petitioner was not permitted to join the training, he has preferred this petition before this Court with the prayers as aforesaid.

4. Counter-affidavit has been filed by the respondents stating therein inter alia that as per the requirement of Rule 16 of the LLP. Civil Police Constable and Head Constable Service Rules, 2008 (hereinafter referred to as "Service Rules"), it is necessary to get the character verification done before appointment of a recruit and further that in fulfillment of the aforesaid requirement, the district police authorities and the District Magistrate, Etawah were required to verify the character of the petitioner and submit report thereof. It has further been stated in the counter affidavit that the FIR against the petitioner was lodged on 19.2.2010, pursuant thereto, after completion of the investigation, charge-sheet before the competent Court has also been submitted. It has also been stated in the counter-affidavit that in view of the adverse material found against the petitioner in the form of pendency of the criminal case, the Superintendent of Police, Etawah required the District Magistrate, Etawah to give his opinion after following the procedure as prescribed under the Government Order dated 28.4.1958. The District Magistrate, thus, appears to have formed his opinion about the character of the petitioner and has submitted his report clearly indicating therein that the petitioner is not suitable to be appointed on the post of Constable in Civil Police and has, thus, refused to verify the character.

5. Learned Standing Counsel heavily relying on the averments made in the counter-affidavit has, thus, submitted that the character of the petitioner has since not been verified, rather the District Magistrate has expressed his opinion otherwise, the petitioner is not entitled to be given any appointment in view of the non-fulfillment of the requirement of Rule 16 of the Service Rules. He has also stated that mere selection does not confer any right on any candidate and only because the petitioner's name figures in the final select/recruitment list

dated 6.1.2011, the petitioner cannot be held legally entitled to be given appointed.

6. I have heard learned counsel for the petitioner and learned Standing Counsel appearing for the State respondents and have also perused the record of the writ petition.

7. There is no dispute to the legal proposition, as canvassed by the learned Standing Counsel, that mere selection does not confer any right on any person to be appointed. However, it is equally settled that refusal to make appointment after selection has to be based on some reasonable ground and it should have some rational basis. It has rightly been contended by the learned counsel appearing for the State that in terms of the provisions contained in Rule 16 of the Service Rules, unless and until the character of the recruit is verified, he cannot be offered appointment. Thus far the arguments raised by learned Standing Counsel appears to be correct.

8. However, what needs to be considered in this case is as to whether the opinion expressed by the District Magistrate about non-suitability of the petitioner to be appointed as Constable in Civil Police, in the facts and circumstances of the case, is legally sustainable.

9. A detailed procedure has been prescribed in the Government Order dated 28.4.1958 issued for the purposes of regulating the process involved in verification of the character and antecedents of Government servants before their first appointment.

10. As per clause 3(a) of the said Government Order, every direct recruit to any service under the State of U.P. will be required to produce a certificate of conduct and character from the head of the education institution, he shall also be required to submit certificates of character from two persons. The provisions further provides that appointing authority will lay down the requirements as to the kind of persons from whom these certificates are desired to be given.

11. Clause 3(b) of the aforesaid Government Order also prescribes that in case of doubt, the appointing authority may either ask for further references, or may refer the case to the District Magistrate concerned and that the District Magistrate thereafter may make such further inquiries as may be deemed necessary by him.

12. The Notes appended to clause 3 of the aforesaid Government Order assume significances here keeping in view the nature of controversy and issues involved in this case. The said Notes run as under:

"Notes.--(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).

(b) While no person should be considered unfit for appointment solely because of his political opinions, care should be taken not to employ persons who are likely to be disloyal and to abuse the confidence placed in them by virtue of their appointment. Ordinarily, persons who are actively engaged in subversive activities including members of any organization the avowed object of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. Participation in such activities at any time after attaining the age of 21 years and within three years of the date of enquiry should be considered as evidence that the person is still actively engaged in such activities unless in the interval there is positive evidence of a change of attitude.

(c) Persons dismissed by the Central Government or by a State Government will also be deemed to be unfit for appointment to any service under this Government.

In the case of direct recruits to the State Services under the Uttar Pradesh Government besides requiring the candidates to submit the certificates mentioned in paragraph 3(a) above the appointing authority shall refer all cases simultaneously to the Deputy Inspector General of Police, Intelligence and the District Magistrate [of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry] giving full particulars about the candidate. The District Magistrate shall get the reports in respect of the candidates from the Superintendent of Police who will consult District Police Records and records of the Local Intelligence Unit. The District Police or the District Intelligence Unit shall not make any enquiries on the spot, but shall report from their records whether there is anything against the candidate, but if in any specific case the District Magistrate, at the instance of the appointing authority asks for an enquiry on the spot, the Local Police or the Local Intelligence Units will do so and report the result to him. The District Magistrate shall then report his own views to the appointing authority. Where the District Police or the Local Intelligence Units report adversely about a candidate, the District Magistrate may give the candidate a hearing before sending his report.

(d) In the case of direct recruits (who are lower in rank than that of a State Service Officer) of:

(i) the police (including ministerial staff of Police Offices),

(ii) the Secretariat,

(iii) the staff employed in Government factories,

(iv) powerhouses and dams,

besides requiring the candidates to submit the certificates mentioned in paragraph 3(a) above the appointing authorities shall refer all cases simultaneously to the Deputy Inspector General C.I.D. and the District Superintendent of Police, [of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry] giving full particulars about the candidate. The Superintendent of Police will send his report direct to the appointing authority if there is nothing adverse against the candidate. In cases where the report is unfavourable the Superintendent of Police will forward it to the District Magistrate who will send for the candidate concerned give him a hearing and then, form his own opinion. All the necessary papers (the Superintendent of Police's report, the candidate's statement and the District Magistrate's finding) will thereafter be sent to the appointing authority".

13. A perusal of the aforequoted Note (a) embodied in the Government Order dated 28.4.1958 reveals that it is not necessary to refuse the certificate of good character in case of every conviction.

14. What is important is that the authority issuing the certificate of good character has to take into account the circumstances of conviction if it is found that the circumstances did not involve moral turpitude or association of the persons concerned with the crimes of violence or with a movement which has as its object to overthrow the Government by violent means (armed rebellion).

15. The aforequoted Note further provides in an unambiguous term that mere conviction of a person need not be necessarily regarded as a disqualification, thus, conviction of a candidate seeking employment with the State Government or seeking appointment on the basis of some selection, on a criminal charge in every circumstance and in every case may not be a ground for not verifying the good character. For considering the issue as to whether the candidate's character is to be verified for the purpose of appointment, the conviction in itself does not stand alone as a basis. The conviction on a criminal charge has to be taken into account along with the circumstances of the conviction provided the conviction is not based on a charge involving moral turpitude or association of the candidate with the crimes of violence or his/her association with a movement engaged in armed rebellion to overthrow the Government established by law.

16. A case where trial has not concluded, that too, on a criminal charge not involving the moral turpitude or association of the candidate with the crimes of violence or his association with armed rebellion, stands on a much better footing so far as the issue regarding verification of the character is concerned.

17. The Notes appended to Clause 3 of the Government Order dated 28.4.1958 further prescribe that apart from requiring the certificate mentioned in Clause

3(a) of the said Government Order, the appointing authority shall refer all cases simultaneously to the police authorities of the home district where the candidate has resided for more than a year within five years of the date of inquiry. The Superintendent of Police is thereafter required to send his report directly to the appointing authority, if there is nothing adverse against the candidate. However, in case report is not favourable, the Superintendent of Police is to forward the same to the District Magistrate who is further required to send for the candidate and form his own opinion after giving the candidate an opportunity of hearing. After the opinion is formed by the District Magistrate, all the papers including the report of the Superintendent of Police, statement of candidate and the finding of the District Magistrate are to be sent to the appointing authority.

18. In the instant case, it appears that on account of pendency of the criminal case as referred to herein above, the matter was sent to the District Magistrate for inquiry, as envisaged in the Notes to Clause 3 of the Government Order dated 28.4.1958. The District Magistrate thereafter appears to have considered the matter giving an opportunity of hearing to the petitioner. The District Magistrate has, thus, passed an order on 11.7.2011 stating therein that since a criminal case under Sections 498-A, 323, 506 IPC and Section 3/4 of Dowry Prohibition Act is registered with the police station Civil Lines, District Etawah wherein a charge-sheet has also been submitted against all the accused persons, including the petitioner on 4.7.2010 as such in these circumstances, he did not find the petitioner suitable for the post of Constable in Civil Police. The aforesaid order/report dated 11.7.2011 of the District Magistrate, Etawah is on record as annexure CA-8 to the counter-affidavit filed by the respondents.

19. The District Magistrate, though has noted the provisions contained in the Note (a) appended to the Clause 3 of the Government Order dated 28.4.1958, however, he has refused to verify the character of the petitioner to be fit for appointment as Constable in Civil Police solely on the ground of pendency of trial of the criminal case lodged against him.

20. The question, thus, for consideration in this case is as to whether the opinion formed by the District Magistrate, Etawah in his order/report dated 11.7.2011 can be said to be based on some reasonable and germane ground or not.

21. The conviction in a criminal case, as observed above and in view of the detailed provisions contained in the Government Order dated 28.4.1958, in itself is not a ground for refusal of the character certificate. Even in case of conviction, where conviction has resulted on a charge not involving moral turpitude or association with the crimes of violence or association of the candidate with armed rebellion, such conviction necessarily in every case, cannot form the basis of not verifying the character of the candidate concerned.

22. What needs to be seen and considered even in case of conviction are the circumstances leading to conviction and mere conviction need not in itself result in refusal of the certificate of good character.

23. The Government Order dated 28.4.1958 does not envisage a situation, neither does it give any guideline to deal with a case where consideration for verification of character of a candidate is to be done where trial is pending i.e. neither conviction has taken place, nor the trial has resulted in acquittal.

24. However, in my considered opinion, the broad provisions given in the Government Order dated 28.4.1958 can be taken aid of to meet a situation where the candidate, whose character is in the process of being verified, has neither been convicted nor acquitted, that is to say, where criminal trial against such a candidate is pending. Broadly speaking the same principles which have been elaborated in the Government Order dated 28.4.1958 in case of conviction of the candidate will apply in case of pendency of trial against the candidate on a criminal charge as well, with not only the same force but probably with more force and vigour.

25. As far as the facts and circumstances of present case are concerned, the FIR was lodged by the wife of the elder brother of the petitioner under Sections 498-A, 323, 506 IPC and Section 3/4 of Dowry Prohibition Act. The petitioner, who is the younger brother of the husband of the complainant, is not the sole accused. A perusal of the FIR reveals that in the aforesaid case general allegations against the husband, father-in-law, mother-in-law and another younger brother of the petitioner, namely, Desh Premi were made by the complainant, apart from the petitioner. However, the complaint lodged by the complainant which has resulted in filing of the charge-sheet against accused persons is the subject-matter of trial, hence, I do not deem it appropriate to make any comment on the same for the reason that the trial is still pending. Nonetheless, the fact that the case instituted by the same complainant against the petitioner and other family members under the provision of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "Domestic Violence Act, 2005") has resulted in its dismissal vide an order dated 25.10.2011 passed by the Additional Chief Judicial Magistrate, Aligarh. The order dated 25.10.2011 passed by the Additional Chief Judicial Magistrate, Aligarh rejecting the case under the Domestic Violence Act, 2005 is based inter alia upon an affidavit filed by the complainant herself that she is accompanying her husband and hence, does not want to prosecute the same.

26. The order dated 25.10.2011 by Additional Chief Judicial Magistrate, Aligarh was passed after the order/report by the District Magistrate on 11.7.2011 was passed/sent. Thus, at the time of consideration by the District Magistrate, the said fact of dismissal of the case under Domestic Violence Act, 2005 initiated by the same complainant against the petitioner was not available.

27. It is also relevant to mention herein that except for the pendency of criminal case, no other adverse material has been reported against the petitioner by the police authorities or from any other corner. In fact, the initial police report submitted by the concerned police station which has been annexed as annexure CA-4 to the counter-affidavit filed by the respondents clearly indicates that the

petitioner possesses good character and his general reputation is good. The exact phrase occurring in the said report dated 5.9.2010 is .

28. In view of the fact that except for the pendency of criminal case launched by the wife of the elder brother of the petitioner who has herself subsequently withdrew the proceedings lodged against the petitioner and other family members under the Domestic Violence Act, 2005, there is no other material against the petitioner which can be suggestive of the petitioner not possessing good character, I deem it appropriate to remit the matter to the District Magistrate, Etawah who shall consider the matter afresh in the light of the observations made hereinabove in this judgment and also keeping in view the provisions contained in Government Order dated 28.4.1958, specially, the Notes appended to Clause 3 of the said Government Order. The petitioner shall be associated with the inquiry to be held afresh by the District Magistrate, Etawah, who will be at liberty to take all pleas available to him including dismissal of the case initiated by the complainant under the provisions of Domestic Violence Act, 2005 and also the police report submitted earlier by the police station concerned wherein it has clearly been recorded that the character of the petitioner is good and further that he enjoys good reputation. The District Magistrate after conducting the inquiry will submit his report to the Superintendent of Police, Etawah who shall forward the same to the appointing authority of the petitioner, namely, Superintendent of Police, District Shravasti.

29. The aforesaid exercise shall be completed within a period of three months from the date of production of certified copy of this order to the District Magistrate, Etawah.

30. With the aforesaid observations and directions, the writ petition is finally disposed of. However, there will be no order as to costs.