

(2023) 05 DEL CK 0238

In the Delhi High Court

Case No : Civil Writ Petition No. 5718 Of 2023

Vikram Ruhai

APPELLANT

Vs

Delhi Police & Ors

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 319

Indian Penal Code, 1860 — Section 34, 313, 323, 406, 498A, 506

Citation : (2023) 05 DEL CK 0238

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Aadil Singh Boparai, Srishti Khanna, Sidhant Saraswat, Sachin Kumar, Avnish Ahlawat, Tania Ahlawat, Nitesh Kumar Singh, Palak Rohmetra, Laavanya Kaushik, Aliza Alam

Final Decision : Allowed

Judgement

Anoop Kumar Mendiratta, J

1. The challenge in this Writ Petition is to an order dated February 20, 2023 passed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal") whereby the Tribunal declined to set aside order dated December 02, 2020 issued by the Deputy Commissioner of Police, Recruitment NPL, Delhi thereby keeping the recruitment of the petitioner to the post of Sub Inspector (Exe) in Delhi Police pending, till final outcome of the proceedings arising out of FIR No. 234/2018, under Sections 313/323/406/498A/506/34 I.P.C., P.S.: Women Police Station, Jind.

2. In brief, the petitioner applied for the post of Sub Inspector in Delhi Police in response to the recruitment notice dated April 22, 2017 issued by the Staff Selection Commission and successfully cleared all the examinations including Tier-1 exam, Physical Endurance Test (PET), Tier-2 exam and detailed medical examination which were held between May, 2017 and September, 2018. In the interregnum, before the announcement of final result, on October 11, 2018, an

FIR No.234/2018 under Sections 313/323/406/498A/506/34 IPC was registered at PS: Women Police Station, Jind by sister-in-law (Bhabhi) of the petitioner, implicating all the family members including the petitioner.

Thereafter, on October 31, 2018 on announcement of final result by SSC, petitioner was recommended for appointment as Sub Inspector in Delhi Police, subject to verification. During verification carried out by Delhi Police, petitioner disclosed about the pendency of aforesaid FIR.

3. Thereupon a show-cause notice No.6352 was issued to the petitioner by the office of Deputy Commissioner of Police on May 31, 2019 as to why the candidature of the petitioner for the post of SI (EXE) Male in Delhi Police-2017 should not be cancelled due to alleged involvement in FIR No.234/2018 under Sections 498A/406/506/313/323/34 IPC registered at PS: Women Police Station, Jind, as disclosed by him at the time of verification. In response, a detailed reply dated June 18, 2019 was submitted by the petitioner in the office of Deputy Commissioner of Police, Recruitment, Delhi Police.

4. In the meantime, on November 01, 2019 charge-sheet in the aforesaid FIR was filed by the police, wherein the name of the petitioner was reflected in "Column 12". The cognizance was taken by the Court of JMIC, but the petitioner was not summoned since he was placed in Column 12 on investigation by the police.

5. Vide letter dated September 11, 2020 issued by the office of Deputy Commissioner of Police, Recruitment, petitioner was informed that his reply dated June 18, 2019 to the show-cause notice was examined by the Screening Committee as per S.O. No.398/2018 and decided to keep his case pending till final decision of the criminal case and, thereafter, appeal, if any preferred.

6. Petitioner preferred two separate representations dated September 22, 2020 and September 26, 2020 before the Commissioner of Police, Delhi thereby requesting to consider his candidature to the post of Sub Inspector, reiterating that no criminal case is pending against him as his name was reflected in Column 12 of the charge-sheet.

Since no response was received from respondents, petitioner left with no other option preferred O.A. No. 1605/2020 before the Tribunal, challenging the Order No. 3042/Rectt. Cell/SI (DA-I)/NPL dated September 11, 2020 issued by the respondent No.1.

7. The aforesaid O.A. was disposed of by the Tribunal vide order dated October 22, 2020 directing the respondents to consider the representation of the petitioner dated September 26, 2020 by passing a reasoned and speaking order expeditiously and in any case within eight weeks of receipt of a copy of the order.

8. In compliance of the order passed by the Tribunal in O.A. No.1605/2020, petitioner was informed vide Order No. 4706/Rectt. Cell/SI (DA-I)/NPL dated December 02, 2020 that on examination of the case of the petitioner, the

Screening Committee recommended to keep the case pending till final outcome of the criminal case, considering the gravity of offences as well as case being under trial before the Court of JMIC, Jind.

9. Aggrieved against the same, in the second limb of litigation, petitioner preferred O.A. No.45/2021 before the Tribunal for setting aside the order dated December 02, 2020 passed by respondent No.1, which was disposed of by the Tribunal vide impugned order dated February 20, 2023 in following terms:-

"7. CONCLUSION:

The OA is disposed off with following directions:-

i. The Impugned Order dated 02.12.2020 (Annexure A-1) does not call for interference at this stage.

ii. The candidature of the applicant shall not be cancelled till the disposal of the case in FIR No.234/2018 and/or FIR is quashed/settlement is arrived at in said case (whichever is earlier).

iii. The applicant shall be at liberty to approach the Competent Authority and/or Screening Committee undoubtedly on disposal of the case in FIR No. 234/2018 by the Trial Court or settlement is arrived at in said FIR and/or said FIR is quashed qua the applicant (whichever is earlier), who shall re-examine his case in terms of Standing Order and issue appropriate appointment/joining letter subject to fulfillment of other terms and conditions within two months of the receipt of such information/representation. The Applicant shall be entitled to all consequential relief(s) i.e. seniority on notional basis. The applicant shall be entitled to salary from date of his joining."

10. The aforesaid order dated February 20, 2023 has been challenged by the petitioner vide present writ petition claiming the following reliefs:

"a. Issue a writ of certiorari or any other appropriate writ, direction or order; setting aside the Order dated 20.02.2023 passed by the Hon'ble Central Administrative Tribunal in O.A.no. 45/2021 titled Vikram Ruhel Vs Delhi Police & Ors., whereby the appointment of the Petitioner has been kept in abeyance till the disposal of FIR no. 234/2018; and

b. Issue a writ of certiorari or any other appropriate writ, direction or order; setting aside the Orders dated 11.09.2020 and 02.12.2020 passed by the Respondents, whereby the appointment of the Petitioner has been kept in abeyance citing pendency of a criminal case against the Petitioner arising out of FIR no. 234/2018; and

c. Issue a writ of mandamus or any other appropriate writ, direction or order, directing the Respondents to issue Joining Letter to the Petitioner and appoint him into service as a Sub-Inspector (Executive) with the Respondent no.1 with all benefits and gratuity accruing therefrom."

11. Learned counsel for the petitioner assails the impugned order on the ground that the petitioner was merely named as a collateral accused in the aforesaid FIR arising from matrimonial disputes, wherein bald allegations had been made implicating all the family members. Further after a detailed investigation, petitioner was placed by the police in column no. 12 of the chargesheet, since the allegations were not established against him. As such it is contended that practically proceedings were not pending against the petitioner, but the learned Tribunal declined the relief only on the presumption that the petitioner may be summoned at a later stage, in exercise of powers under Section 319 Cr.P.C. and since he had been placed in Column 12 of charge-sheet. It is urged that the petitioner cannot be made to suffer in perpetuity till disposal of aforesaid case or appellate proceedings if undertaken despite the fact that the allegations against him were not established during investigation. Reliance is further placed upon judgment passed by this Court in Mahesh Kumar vs. Union of India & Ors., W.P. (C) No.860/2023, dated April 11, 2023.

12. On the other hand, the order passed by the Tribunal is supported by the learned counsel for the respondents and the contentions raised before the Tribunal have been reiterated. The matter is stated to have been considered in accordance with standing orders issued by the Commissioner of Police. Petitioner is claimed to have been only provisionally selected for the post of Sub Inspector (Exe) in Delhi Police subject to satisfactory verification. It is urged that case was duly examined by the Screening Committee, but considering the allegations in the FIR, it was observed that the case being under trial before the Court of JMFC, Jind, Haryana, the matter would be examined after decision of the Court and as such the case for appointment be kept pending till final decision of the case. The petitioner is further stated to have been involved in a serious offence as evident from the allegations in FIR and the action taken by the respondents, is stated to be justified, considering that appointment is in a disciplined force.

13. We have given considered thought to the contentions raised. In Avtar Singh vs. Union of India, (2016) 8 SCC 471, the issue had been referred for resolving the conflict of opinion in the various decisions of Division Benches of the Hon'ble Supreme Court of India as noticed in Jainendra Singh v. State of U.P. through Principal Secretary, Home & Ors. (2012) 8 SCC 748, on the question of suppression of information or submitting false information in Verification Form or having been criminally prosecuted, arrested or as to the pendency of a criminal case.

It is no longer *res integra* that even if a disclosure has been truthfully made by the applicant, the employer has the right to consider antecedents and fitness and cannot be compelled to appoint a candidate.

The principles as summarized in para 38 in Avtar Singh (*supra*) so far as they are relevant to present proceedings, may be beneficially recapitulated. Hon'ble Apex Court held that information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or

after entering into service, must be true and there should be no suppression or false mention of required information. Even if a disclosure has been truthfully made by the applicant, the employer has the right to consider antecedents and fitness and cannot be compelled to appoint a candidate. While doing so, the fact of conviction and background facts of the case, nature of offence etc. have to be considered. Further, even if the acquittal has been made, the employer may consider the nature of offence, whether acquittal is honourable or if the same is given benefit of doubt on technical reasons, and decline to appoint a person, who is unfit or is of dubious character. In case employer comes to conclusion that conviction or grounds of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service. What yardstick is to be applied has to depend upon the nature of post, higher posts would involve more rigorous criteria for all services, not only to uniformed post. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

14. Keeping in perspective the guidelines laid down in Avtar Singh (supra), the Competent Authority in the present case, was required to consider the suitability of the petitioner having regard to result of investigation and cognizance taken thereupon on the charge-sheet, in FIR No. 234/2018, under Section 313/323/406/498A/506/34 IPC, PS: Women Police Station, Jind. The Competent Authority was accordingly under obligation to examine the nature of offence, the evidence appearing against the petitioner and the attendant circumstances. All matters in this regard cannot be placed in a straitjacket and a degree of flexibility and discretion does vest with the authorities, who are expected to exercise the same with care and caution.

15. In the instant case, admittedly the petitioner had truly disclosed on verification regarding FIR No. 234/2018, under Section 313/323/406/498A/506/34 IPC, PS: Women Police Station, Jind, which was registered before announcement of result. There has been no concealment or suppression in this regard by the petitioner. The aforesaid FIR arises out of a matrimonial dispute between the brother of the petitioner namely Praveen Kumar Ruhel and his wife Anju, wherein the petitioner and all other family members have been named as an accused. Petitioner being the brother-in-law of complainant is only a "collateral accused" and not the main accused. It may also be noticed that the investigating agency had removed Section 313 of the IPC on investigation and the surviving offences relate only to Sections 498-A/406/506/323/34 IPC. The allegations against the petitioner were generic in nature who was just aged about 19/20 years at the time of the alleged incident. As per the charge-sheet, petitioner was placed in column No. 12 and it was categorically observed that from the statement of the witnesses and record, case is only made out against the accused Parveen, Karamveer and Sarla and accordingly the challan is being forwarded to the concerned Court. It was further

concluded that during verification and investigation, the allegations of demand of dowry and harassment from Vikram (petitioner) and Rekha, were found false and both Vikram and Rekha were innocent, whose names are placed in column No. 12.

16. Having said so, it may be observed that the Standing Order No. 398/2018 dated October 18, 2018 of the respondents does provide for a policy for deciding cases of provisionally selected candidates in Delhi Police who have disclosed their involvement in criminal cases/acquittal/discharge etc. However, mere possibility of being summoned after filing of chargesheet, when the petitioner has been placed in Column 12 of charge-sheet, has no legal foundation for withholding the appointment, specially in matrimonial offences under Sections 498-A/406 IPC. The petitioner appears to have already suffered ignominy due to registration of FIR and also the appointment stands deferred despite the investigation pointing to his innocence. Criminal trials are generally long and protracted and appointment in such a case should not have been ordinarily deferred for an indefinite period till the conclusion of trial, despite the findings in the investigation being in favour of the petitioner.

The case of the petitioner is better placed than the cases involving trial as an accused, wherein after summoning, the proceedings need to be evaluated on the yardstick of honourable acquittal, technical acquittal or if the benefit of doubt has been extended to accused. Unfortunately, in the present case, the learned Tribunal misdirected itself by assuming that the petitioner could be summoned having being placed in Column No. 12 of the charge-sheet or may be summoned under Section 319 Cr.PC during the course of trial.

The proposition of law as referred by the learned Tribunal in *SWIL Ltd. vs. State of Delhi & Anr.* (2001) 6 SCC 670, *Bhawna Bai Vs. Ghanshyam* (2020) 2 SCC 217, *Nahar Singh Vs. State of Uttar Pradesh* in C.A. 443/2002 (arising out of petition for Special Leave to Appeal (Crl.) No.8447/2015) decided on March 16, 2022, *Commissioner of Police Vs. Raj Kumar* Civil Appeal No.4960/2021 on decided on August 25, 2021 and *Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.* Crl. Appeal No. 195/2022 (arising out of S.L.P. (Crl.) No.6545/2020), is undisputed and needs no deliberations.

It is pertinent to note that at the time of taking of cognizance on the charge-sheet, the learned Judicial Magistrate having applied its mind to the facts of the case and on the basis of the evidence on record, did not deem it appropriate to summon the petitioner. If the petitioner whose name is placed in Column No. 12 had not been summoned after taking of cognizance by the learned JMIC, a presumption could not have been drawn that the petitioner may be summoned at a later stage under Section 319 Cr.PC. It may be clarified that even if a person is neither arrayed as an accused nor placed in Column No. 12 of the charge-sheet, he/she may still be summoned under Section 319 Cr.PC, where in the course of any trial into an offence, it appears from the evidence that the said person has committed any offence for which he could be tried together with other accused.

17. Considering that the petitioner had been placed in Column No. 12 of charge-sheet and the fact that evidence did not establish his involvement in aforesaid offences after investigation, he should have been logically considered suitable for appointment. Merely being named in the FIR cannot be treated as an impediment for public appointment, unless the involvement is substantiated on investigation, specially in relation to matrimonial offences.

The Competent Authority as well as the learned Tribunal appear to have ignored the fact that there is a growing tendency amongst the women to rope in all the relatives including minors in case an FIR is lodged with reference to matrimonial disputes. Many of such complaints are eventually either settled between the families/spouses and are later on stated to have been filed in the heat of the moment over trivial issues. The abuse of the aforesaid provision has been substantially noticed though the salutary purpose of the enactment cannot be ignored in any manner. Merely naming in the FIR does not lead to an inference that the employer can keep in abeyance the employment of an applicant for an indefinite period, even if the applicant has been placed in column No. 12 of the charge-sheet and has not been summoned.

18. In the facts and circumstances, the Competent Authority as well as the learned Tribunal, failed to consider the facts and circumstances in a correct perspective and were merely swept by the factum of the petitioner being named in the FIR. There is nothing else on record to reflect that the antecedents of the petitioner disqualify him in any manner for appointment to the post of Sub-Inspector (Exe) in Delhi Police. It is difficult to presume that the petitioner would be a threat to the discipline of Police Force merely on account of registration of the aforesaid FIR wherein he has even not been summoned.

19. For the foregoing reasons, we are unable to agree with the reasons accorded by the learned Tribunal declining the relief to the petitioner. Accordingly, we set aside the order dated September 11, 2020 and December 02, 2020 passed by the respondents along with the impugned order dated February 20, 2023 passed by the Tribunal in O.A. No. 45/2021 deferring the consideration of appointment of petitioner till disposal of FIR No. 234/2018. Respondents are hereby directed to appoint the petitioner to the concerned post, subject to his satisfying all other conditions within a period of four weeks from the passing of this order. Petitioner shall be further entitled to all consequential benefits including seniority on notional basis, but the payment of salary shall be due from the date of joining.

20. Petition accordingly stands allowed. Considering the facts and circumstances, no order as to costs. Pending applications, if any, also stand disposed of.