



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 17047/2022

Jubair Bhati S/o Anwar Umar Bhati, aged about 29 Years, R/o Chippa Street, Near Jama Masjid, Kuchaman City, District Nagaur.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur through its Registrar General, Jodhpur.
2. The Registrar (Examination), Rajasthan High Court, Jodhpur.
3. Monika D/o Shri Ramesh Kumar Bishnoi, R/o Gharsana - 335707, District Ganganagar, Rajasthan.

----Respondents

For Petitioner : Mr. Vikas Balia, Sr. Adv. assisted by
Mr. Nishant Bora, Adv. &
Mr. Ashok Choudhary, Adv.

For Respondents : Dr. Sachin Acharya, Sr. Adv. assisted
No.1 & 2 by Mr. Chayan Bothra, Adv. &
Mr. Samyak Dalal, Adv.

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

Reportable

11/07/2024

1) The petitioner has preferred this writ petition claiming the following prayer:

- (i) *issue direction to quash and set aside the impugned result dated 30/08/2022 (Annex.8) qua the petitioner and the note No.6 appended with the result may be declared illegal. Further, issue direction to the respondent to recommend the petitioner's name for appointment to the post of Rajasthan Judicial Services-Civil Judge 2021 along with all consequential benefits;*

- (ii) *in alternative, issue direction to the respondent to decide the representation dated 01/09/2022 (Annex.15) submitted by the petitioner within the stipulated period of two weeks with the liberty to file a fresh writ petition, if the need arise.*
- (iii) *Any other order favourable to the petitioner may also be passed.*

2) Brief factual matrix of the case is that the petitioner completed his B.B.A., LLB. (Hons.) Course in the year 2018 and was a topper of his batch and scored 8.3 Cumulative Grade Point Average (CGPA). The petitioner was awarded gold medal being the first rank-holder in his batch.

2.1 The respondents issued an advertisement for recruitment to Civil Judge Cadre-2021 on 22.07.2021 to be held in accordance with Rajasthan Judicial Service Rules, 2010 (hereinafter referred to as "the Rules of 2010"). The petitioner filled his form under OBC-NCL category. He disclosed in his form about pendency of criminal cases registered against him. The examinations were held by the respondents and the petitioner was declared successful in the main examination for recruitment in the Civil Judge Cadre-2021.

2.2 Thereafter, the petitioner was called for interview on 22.08.2022. Pursuant to the interviews, the result of the recruitment of Civil Judge Cadre was declared on 30.08.2022 wherein the petitioner stood at serial No.152, as he secured 166.5 marks and was qualified for recruitment. The cut-off for OBC-NCL category was 163 and on merit, the petitioner was entitled to be recruited. However, the respondents declared the

petitioner non-suitable for the appointment in view of the criminal antecedents.

2.3 The petitioner was facing an FIR No.5/2021 lodged at Police Station Kuchaman City, Nagaur for offences under Sections 420, 406, 120-B, 341 and 384 of IPC. The allegations in the FIR pertain to family educational institution in the name of Hightech Shikshan Sansthan, Kuchaman City, Distt. Nagaur, in which half of the stakes were sold to one Bhanwar Singh, who became the complainant as the dispute arose between both the parties regarding running of the Educational Institution. The dispute arising out of the same transaction further culminated into another FIR No.249/2021 lodged at Police Station Kuchaman City. The aforesaid offences were not concealed by the petitioner while filling up the form.

3) The learned Senior Counsel Shri Vikas Balia, assisted by Mr. Nishant Bora, Advocate and Mr.Ashok Choudhary, Advocate appearing for the petitioner submits that the petitioner is a highly meritorious student, who was qualified on merit to be appointed in the Civil Judge Cadre, but has not been given appointment on count of the aforesaid FIRs.

3.1 Learned Senior counsel for the petitioner further submits that both the FIRs were because of a dispute between the family of the petitioner and the complainant, who agreed by an Agreement to Sell-cum-Contract to share the property for running the school in question. The said agreement shows that 50% of the school land and assets were to be controlled by the petitioner's family, whereas another 50% was to be controlled by

the complainant-party. The petitioner was not a party to the original agreement, on the basis whereof, the complainant party got 50% of the members in the society for running of the school. The petitioner, who remained away from the aforesaid events, was inducted as the member of society upon demise of his grand-father, who was the Chairman of the Society with the consent of all the existing members of the Society on 21.05.2017. The ensuing property dispute resulted into the aforesaid FIR.

3.2 Learned Senior counsel for the petitioner also submits that a pure civil and contractual dispute was, in a colourable exercise, converted into a criminal case with the purpose of asserting pressure upon the petitioner's family and after thorough investigation, the FIR No.5/2021 was culminated into a negative Final Report qua the petitioner on 27.02.2024. It is further informed by the learned counsel for the petitioner that another FIR No.249/2021 also culminated into a negative Final Report on 26.11.2021.

3.3 Learned Senior counsel for the petitioner also submits that the petitioner has been suffering the misery of being deprived of the appointment despite being highly meritorious and having qualified the examination arising from the advertisement dated 22.07.2021 for the purpose of appointment to Civil Judge Cadre.

3.4 Learned Senior counsel for the petitioner has drawn attention of this Court to the advertisement and particularly Clause 14, which deals with the Disqualifications for

Appointment. Clause 14(ग) of the advertisement is relevant part, which applies in the present case, and reads as follows:-

"14(ग) यदि वह नैतिक अधमता से अन्तर्वलित किसी अपराध के लिए दोषसिद्ध किया गया था या किया गया है (If he was or is convicted for any offence involving moral turpitude) या किसी परीक्षा या साक्षात्कार में सम्मिलित होने से किसी उच्च न्यायालय या संघ लाक सेवा आयोग या किसी राज्य लोक सेवा आयोग द्वारा स्थायी रूप से विवर्जित (Debarred) या निरर्हित (Disqualified) किया गया है।"

4) Learned Senior counsel for the petitioner submits that the disqualifications pertain to conviction for any offence involving moral turpitude or disqualifications issued by any High Court or Union Public Service Commission or any State Public Service Commission, which have debarred or disqualified a person from appearing in the examination. Learned Senior counsel further submits that none of the aforesaid disqualifications or any other disqualifications mentioned in paragraph 14 of the advertisement are applicable in the present case.

4.1 Learned Senior counsel for the petitioner has then drawn the attention of this Court to the Rule 12 of the Rules of 2010 as amended upto 20.08.2020 wherein the disqualifications for appointment is mentioned and particularly, sub-Rule (c) of Rule 12, which reads as follows:-

"(c) if he was or is convicted for any offence involving moral turpitude or has been permanently debarred or disqualified by any High Court or Union Public Service Commission or any State Public Service Commission from appearing in any examination or interview;"

5) Learned Senior counsel for the petitioner also submits that terms of the aforesaid condition in the advertisement is

absolutely identical to the Rule 12(c) of the Rules of 2010. The learned counsel for the petitioner has also drawn attention of this Court to the Circular dated 04.12.2019 (Annex.-R/1/1) issued by the Chief Secretary, Government of Rajasthan, in which the character verification has been dealt with. The relevant part of the said Circular reads as follows:-

"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.

- (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 its object the overthrow by violent means of the government as established by law, 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 the service. Those, who are convicted of offences 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.*
- (3) *Those convicted of offences involving moral turpitude or violence shall be required to produce a certificate from the superintendent, After Care Home, or if there is no such home in particular district, from the superintendent of police of that*

district, 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) Learned Senior counsel for the petitioner submits that the part of the aforesaid Circular dated 04.12.2019 also deals with the proposition that the conviction or acquittal would have limited relevance but the character of the candidate should have optimum relevance. It shall be open for the Appointing Authority to assess the character of the candidate as to whether it would commensurate with the requirement of the post in question. The formulations made in the Circular, which would ordinarily pave way for consideration of the Appointing Authorities are also laid down. The formulations for disqualification and qualification both as laid down in the Circular, are reproduced hereunder:-

"1. ऐसे प्रकरण/स्थितियां जिनमें नियुक्ति हेतु अपात्रता मानी जानी चाहिए:-

यदि किसी भी अभ्यर्थी के विरुद्ध निम्न में से किसी भी प्रकार के अपराध के तहत प्रकरण **अन्वेषणाधीन/न्यायालय में विचाराधीन (under trial)** है अथवा दोषसिद्धि उपरांत सजा हो चुकी है, तो उसे राज्य के अधीन सेवाओं/पदों पर नियुक्ति हेतु पात्र नहीं माना जाना चाहिए:-

- (i) नैतिक अधमता यथा छल, कूटरचना, मत्तता, बलात्संग, किसी महिला की लज्जा भंग करने के अपराध में अन्तर्वलितता (involvement) हो।
- (ii) स्वापक औषधि और मनः प्रभावी पदार्थ अवैध व्यापार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 26) में यथापरिभाषित अवैध व्यापार में अन्तर्वलितता हो।
- (iii) अनैतिक व्यापार (निवारण) अधिनियम, 1956 (1956 का केन्द्रीय अधिनियम सं.104) में यथापरिभाषित अनैतिक दुर्व्यापार में अन्तर्वलितता हो।
- (iv) नियोजित हिंसा या राज्य के विरुद्ध ऐसे किसी अपराध में अन्तर्वलितता हो, जो भारतीय दण्ड संहिता, 1860 (1860 का केन्द्रीय अधिनियम सं. 45) के अध्याय 6 में वर्णित है।
- (v) भारतीय दंड संहिता के अध्याय 16 एवं 17 में यथावर्णित अपराधों में अंतर्वलितता हो।
- (vi) भारतीय दंड संहिता की धारा 147, 148 (बलवा करना) के अपराध में अंतर्वलितता हो।

- (vii) भारतीय दंड संहिता की धारा 498 A (स्त्रियों के प्रति आपराधिक दुर्व्यवहार-दहेज) के अपराध में अंतर्वलितता हो।
- (viii) अजा/अजजा अधिनियम 1989 के तहत अपराध में अंतर्वलितता हो।
- (ix) लैगिंग अपराधों से बालकों का संरक्षण अधिनियम (पोक्सो), 2012 के तहत अपराध में अन्तर्वलितता।

यहां यह भी स्पष्ट किया जाता है कि उक्त प्रकार के अपराधों से संबंधित कोई भी सूचना जानबूझकर छिपाने वाले अभ्यर्थियों को भी नियुक्ति हेतु अपात्र माना जाएगा।

2. ऐसे प्रकरण/स्थितियां जिनमें अभ्यर्थी को नियुक्ति हेतु पात्र माना जाना चाहिए:-

- (i) जिन अभ्यर्थियों को आपराधिक प्रकरण में अन्वेषण में दोषी नहीं पाया गया तथा संबंधित भर्ती में परीक्षा परिणाम जारी होने के एक वर्ष के भीतर अन्वेषणोपरांत एफ.आर न्यायालय में प्रस्तुत की जा चुकी हो।
- (ii) दोषमुक्ति के मामलों में, विभाग में इस संबंध में गठित समिति जिसमें एक पुलिस अधिकारी भी सदस्य होगा, अभ्यर्थी के पूर्ववृत्त (antecedents), आरोपों की गहनता एवं दोषमुक्ति का आधार, अर्थात् क्या दोषमुक्ति सम्मानजनक रूप से प्रदान की गई है अथवा संदेह के लाभ/समझौते के आधार पर प्रदान की गई है, आदि का समुचित परीक्षण कर, अभ्यर्थी को नियुक्ति देने के संबंध में निर्णय लेगी।
- (iii) अभ्यर्थियों के ऐसे प्रकरण जिनमें न्यायालय द्वारा परिवीक्षा अधिनियम की धारा 12 का लाभ दिया जाकर परिवीक्षा पर छोड़ा गया हो। (दोषसिद्धि किसी निरर्हता से ग्रस्त नहीं/राजकीय सेवा/भावी जीवन पर किसी प्रकार का विपरीत प्रभाव नहीं)।
- (iv) अभ्यर्थियों के ऐसे प्रकरण जिनमें दोषी करार दिया जाकर किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2005 की धारा 24(i) का लाभ प्रदान किया गया हो। ”

7) Learned Senior counsel for the petitioner further submits that the petitioner does not fall in the category of disqualified candidates and rather also, cannot be disqualified on account of the disqualifications, which have been laid down in the Circular dated 04.12.2019. Learned Senior counsel for the petitioner also submits that the assessment of the criminal antecedents has to be made on the basis of factual matrix of the particular allegations as well as the trial/chargesheet /final order of the criminal case. Learned Senior counsel for the petitioner further submits that this is a

case where neither the trial began nor there was any conviction order and even there has not been any chargesheet against the petitioner. Learned Senior counsel also submits that there was an allegation, which was followed by a thorough investigation and the result of the investigation was that no offence against the petitioner was made out.

8) Learned Senior counsel for the petitioner has referred to the judgment of Hon'ble Supreme Court rendered in the case of **Mohammed Imran Vs. State of Maharashtra & Ors, reported in (2019) 17 SCC 696**. The relevant part of the judgment is reproduced herewith as follows:

"5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case".

"9. In our opinion, no reasonable person on the basis of the materials placed before us can come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny

appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment.....”

9) Learned Senior counsel for the petitioner has referred to the judgment of Division Bench of this Court passed in **State of Rajasthan & Ors. Vs. Gajendra Narayan Patidar & Ors.**, **reported in 2022 SCC Online Raj 888**. The relevant part of the judgment is reproduced herewith as follows:-

“31. As has been discussed above, the charge-sheet of the criminal case wherein, the respondent writ petitioner has been arraigned as an accused does not prima facie justify his involvement. It appears that he has been charge-sheeted in the case simply because he is brother of Smt. Kailash who had filed the FIR No. 35/2012 against her husband Ratan Lal son of Jagdish Oad (Complainant in FIR No. 387/2012).

32. The learned Single Bench also considered the allegations levelled in the FIR and came to a conclusion that there was nothing in these allegations which could disentitle the writ petitioner for entering into Government Service and rightly so in our opinion.

33. Having discussed in detail the allegations as set out in the FIR and the charge-sheet (supra), we are in conformity with the view taken by the learned Single Bench that the respondent cannot be denied entry into Government Service on the basis of his totally unjustified involvement in the criminal case (supra).”

10) Learned Senior counsel for the petitioner has also referred to the judgment of Hon’ble Supreme Court rendered in the case of **Ravindra Kumar Vs. State of U.P. & Ors.**, **reported in (2024) 5 SCC 264**. The relevant part of the judgment reads as follows:-

“32. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the

application/verification form; the contents of the character verification reports; the socio-economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.”

11) Learned Senior counsel for the petitioner submits that neither the statutory provision nor the advertisement nor the Circular laid any condition whereby the petitioner could be debarred from the recruitment.

12) Learned Senior counsel, Dr. Sachin Acharya, assisted by Mr.Chayan Bothra, Advocate and Mr.Samyak Dalal, Advocate appearing for the respondents No.1 & 2 submits that the post in contention is of constitutional majesty belonging to a Civil Judge Cadre and cannot be taken lightly so as to give appointment to the candidates who may be having criminal antecedents. Learned counsel for the respondents further submits that parameters for judging character of a candidate, who is seeking appointment on the post of Civil Judge Cadre and is supposed to discharge his divine duty as per the societal norms, has to be at a very high pedestal and cannot be lowered down at any instance so as to ensure that the candidate has sterling background and was proved to be an appropriate person to be appointed in the Civil Judge Cadre.

13) Learned Senior counsel for the respondents has also referred to Rule 12 of the Rules of 2010 and submits that the

foundation of the disqualifications is laid down in the advertisement as well in the Rules of 2010. The said Rule has already been reproduced in the above paras.

14) Learned Senior counsel for the respondent has further drawn the attention of this Court to Rule 19 of the Rules of 2010, in which he has emphasized that character has been given high prominence and thus, an independent assessment of character has to be left to the employer so as to co-relate the task to be assigned to the recruitee vis-a-vis antecedents/criminal case/any other allegations. Rule 19 of the Rules of 2010 is reproduced as follows:-

"19. Character.- The character of a candidate for direct recruitment to the service must be such as will 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 or School 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 his University or College or School and not related to him."

15) Learned Senior counsel for the respondents thereafter has referred to the judgment of Hon'ble Supreme Court rendered in the case of **Rajasthan High Court, Jodhpur Vs. Akashdeep Morya & Anr. Reported in (2021) 14 SCC 567**, in which it has clearly been laid down that while making recruitment to the post of Civil Judge Cadre, highest degree of caution has to be maintained. The relevant part of the judgment reads as follows:-

"23. We cannot be oblivious, in a case of this nature, about the nature of the post which is at stake. The post of a judicial officer at any level of the hierarchy involves applying the most exacting standards. This is for reasons which are obvious. The incumbent of a judicial post discharges one of the most important functions of the State, that is, the resolution of disputes involving the people of the country. Judges occupying the highest moral ground go a long way in building public confidence in the justice delivery system. In fact, even in the advertisement, there is a reference to the requirement of the candidate being possessed of character. Character cannot be understood as being limited to a mere certifying of the character by the competent authority. The High Court is involved with the appointment of judicial officers and rightly so, under the scheme of the Constitution. Though the order of appointment is issued by the State, the involvement of the High Court in the appointment of judicial officers essentially flows from its position in the constitutional scheme. The High Court is duty-bound to recommend the most suitable persons to occupy the post.

24. The post of a Civil Judge or a Magistrate is of the highest importance notwithstanding the fact that in the pyramidal structure of the judiciary, the Civil Judge or the Magistrate is at the lowest rung. We say this for the reason that of all the litigation which is instituted in the country, the highest volume of the same takes place at the lowest level. Not many of the cases finally reach the highest Court. It is through the Civil Judge (Junior Division)/Magistrate that the common man has the greatest interface. Most importantly, the perception of the common man about the credentials and background of the judicial officer is vital. We have only highlighted these aspects as a prelude to consider the facts of the case further. In other words, in the absence of a honourable acquittal, the alleged involvement of an

officer in criminal cases may undermine public faith in the system”.

16) Learned Senior counsel for the respondents further submits that an objective consideration has been made by the employer and after such consideration, it has been decided that such appointment cannot be given to the petitioner as the offences involved are under Sections 420, 406, 120-B, 341 and 384 of IPC.

17) Learned Senior counsel for the respondents also submits that the matter does not require any interference by this Court at this belated stage when the appointments have been made and the recruitment has already been completed so much so even the training of one year thereafter has been completed and the posting has been given to all the selected candidates in the various courts, which is meant for Rajasthan Judicial Service. Learned Senior counsel further submits that unless a direct recourse is adopted, it shall be very difficult for the respondents to maintain the high pedestal of individual character required for the pious duties that he shall discharge.

18) Learned Senior counsel for the respondents also submits that there is no available post on which the petitioner can be given appointment because the posts available were 120 and appointment was offered to 119 candidates. As many as 5 candidates did not join, therefore, training was given to these 114 candidates. However, after training, 5 more candidates left. Thus, their posts also became vacant. Out of these 109 candidates, 2 candidates are on maternity leave but their posts

cannot be said to be vacant posts. Learned Senior Counsel also submits that the total number of available posts lying vacant are 11 and out of which, as many as 6 posts are kept reserved subject to the final outcome of the litigation pending before the Hon'ble Supreme Court and 5 posts have been re-determined as fresh vacancies and have been advertised for fresh recruitment.

19) Learned Senior counsel for the respondents has further drawn attention of this Court to a Circular dated 27.12.2021, which pertains to operation of reserve-list and in particular, has highlighted Clause 4, which says that once a selected candidate joins, then the recruitment process for that post are considered to be complete. After joining the duty, any vacancy arising due to resignation or any other reason will be considered a new vacancy and it can only be filled through a new recruitment process. The candidates in the reserve-list have no right on that post. Learned Senior counsel submits that as per the Circular, the reserve list cannot operate on such person. He submits that none of seat is available for any further appointment.

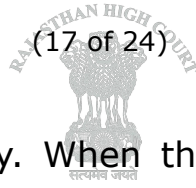
20) Heard learned counsel for the parties as well as perused the record of the case along with judgments cited at the Bar.

21) This Court while considering the aforesaid factual matrix is conscious of the fact that the judicial service is a place where the duties to be discharged are of very pious nature and to maintain the high standards envisaged in the Constitution for the judiciary, the parameters for appointment of the judges have to be strictly construed. The strict construction of the laws have to be made and a deeper assessment has to be followed so as to



ensure that at the threshold the candidate/recruitee, who has passed on merits, shall be able to stand up to the touchstone of the constitutional majesty which has been bestowed upon the selected candidates by virtue of their merit.

21.1 The question of criminal antecedents has been a long drawn cause of concern for the legal fraternity as on one hand it is the requirement of the job where the best and the cleanest people are required to be given opportunity to become public servants and on the other hand, there are many youngsters, who are embroiled in a controversy for no good reasons and despite having high merit are deprived of the chance to serve the nation as a public servant. On perusal of the precedent law cited by counsel for the parties, it is clear that the filter has to be of highest order so as to throw out the person having slightest of the criminal antecedents involving moral turpitude and resultant convictions. Here is a case where a young man, who was a gold medalist in his law course, and has secured the qualifying merit as well as passed the examination, which includes written exam and the interview in recruitment in question. He was entitled to be recruited but has been deprived even when he has not concealed the information of the FIRs. The FIRs, which were in vogue at the time of the process in question, have been examined by this Court and they clearly reflect that it was a property dispute between the two parties wherein property of the school was sought to be divided and the petitioner's family being the original owners of the school, were required to share the 50% of the property and also the administration of the school



with the complainant-party. When the allegations levelled were thoroughly examined, it was found that nothing came out against the present petitioner which could bring him within the purview of disqualification from recruitment in question.

21.2 The registered society in dispute was restructured and it was envisaged that they could run the educational society together but as the fate would reflect a dispute arose in the running of the society/educational institution and the parties fell apart on the terms of contract and agreement to sale which were in existence between them. The petitioner was not in arena of the dispute, the same being one of a family property but was also consumed as a part of the joint property dispute and resultantly, the same resulted in the two FIRs bearing No.5/2021 and 249/2021 being lodged. Broadly, the FIRs do not show any kind of moral turpitude or any kind of specific involvement of the petitioner.

22) There are five factors, which have been considered by this Court. (a) First is the investigation, for which the material brought before the Court shows that the investigation has been thoroughly conducted and has been concluded qua the petitioner resulting into not finding any role of the petitioner in the allegations. (b) Second is the charge-sheet. Since the negative Final Report has been submitted, there is no charge-sheet and thus, the petitioner was never chargesheeted. (c) Third is the trial. When the charge-sheet was not submitted, the trial never began against the petitioner and therefore, the petitioner has not faced any trial in his life. (d) Fourth is the issue of conviction.

When the investigation itself did not find anything against the petitioner, there is no question of any kind of conviction. (e) Fifth is the issue of honourable acquittal. The question of acquittal and conviction does not arise, as the result of the investigation was in favour of the petitioner.

22.1 The aforesaid issues have already been dealt with in either ways in the precedent laws, which have been cited above and also in the cases where criminal antecedents of the recruited candidates were adjudicated in the Court of Law.

23) This Court weighing all the aforesaid considerations finds that even on the strictest parameters, none of the FIRs or the dispute involved in the present case would result into this Court persuading itself not to continue the petitioner with the appointment in question. The statutory position has been examined by this Court. This Court began with examining the advertisement and the condition which have been reproduced in this judgment, the same clearly reflects that if there is a conviction and there is an offence of moral turpitude, it might result into the disqualification, which is laid down elaborately in the advertisement. This Court has also examined the Rules in position. The Rules of 2010 are very clear and same as that of the advertisement requiring disqualification only on count of conviction and any offence involving moral turpitude.

24) This Court has examined the character issue, which is to be determined within the four corners of the Rule 19 of the Rules of 2010 and while understanding that the parameters of character are much wider than a simple criminal antecedent, this

Court finds itself to believe that in the given material, which is on record, the dispute was a property dispute between two families or a family dispute and the complainant and the family of the petitioner was involved, which began from his grandfather and the role of the petitioner even on documents was born after the year 2017 when his grand-father expired and he became a part of the society in question.

25) This Court further does not find that the material on record which has been placed by the respondents and the petitioner themselves could reduce the stature of the petitioner, even a point down, disabling him from the recruitment as a Civil Judge. This Court is fully conscious of the fact that the petitioner did not conceal anything while filing the information in the form pursuant to the advertisement in question. This Court finds that the parameters of law, statute circulars and precedent law are nowhere creating any shadow of doubt as to whether the petitioner was a fit candidate to be recruited as Civil Judge or not.

26) The Rules of 2010, on these two parameters, have been considered threadbare by this Court and the conclusion arrived at is that there is no barring which could preclude the petitioner from making his advent as a Civil Judge. The parameters, which are there in the Circular and have been relied upon by the respondents particularly for the purpose of qualifications and disqualifications for appointment are also exhaustive in nature and do not reflect any kind of disqualification for the petitioner.

26.1 The disqualifications, in overall legal scenario, includes investigation being carried out, convictions, trials, charge-sheets, offences having been made out but none of the disqualifications are touching the present factual matrix as the petitioner was neither tried nor convicted nor faced any kind of trial nor any charge-sheet but merely there was an allegation which culminated into an FIR and the FIR after thorough investigation qua the petitioner having resulted into no offence having been made out against the petitioner.

26.2 Thus, after overcoming all the disqualifications in the statute book as well as the Circulars what remains to be seen by this Court is how far the precedent laws cited would make any impact in the present case. The precedent laws cited by the learned counsel for the petitioner in the cases of **Mohd. Imran, Gajendra Narayan Patidar (supra) and Ravindra Kumar (supra)** clearly reflects that it is the factual matrix of the case that shall be borne in the mind of the Courts while adjudicating such precarious kinds of litigation and looking into the duties, which are offered to the recruitee on his merits, the Court has to decide as to whether he would be suitable for such a post or not. This Court on such threadbare examination finds that the property dispute between two parties which culminated into an FIR and then, after thorough investigation by competent authority having been found that no case qua the petitioner is made out. In such circumstances, none of the disqualifications are hitting the present petitioner.

27) The precedent law in the case of **Akashdeep Morya (supra)** laid down by the Hon'ble Supreme Court also in a way helps the petitioner because it is only laying down that a very strong parameter has to remain in application while the person is being considered to be recruited as a Civil Judge and without qualifying such strong parameter of criminal antecedent/character, a person cannot be judged fit to be a candidate to serve the constitutional duties of a judge. We have arrived at a firm conclusion that even the strict parameters, which are there in the case of **Akashdeep Morya (supra)**, are qualified by the petitioner to be recruited in the examination in question.

28) As far as the question of the vacancy is concerned, it is noticed that the petitioner came and filed a writ petition, which was at an appropriate time in November 2022, as soon as being aggrieved, we find that at that time, the unfilled vacancies were there in the present recruitment. Even if going by the statistics provided by the respondents today, this Court finds that there are 5 vacancies, which remained unfilled due to resignations and were carried forward in the next recruitment, which is going on but has not yet culminated even to the stage of final examination and thus, at a preliminary stage, one of these vacancies can be given to a candidate, who is otherwise qualified on merits and law.

29) This Court is conscious of the fact that no interim order is operating in the present case, but it is a settled law that in such cases, where an interim order is operating during pendency of the litigation, the same are subject to final decision in the matter.

In case, the matter is dismissed without any observations on merits, the interim order, even if there is one, is automatically dissolved, and if the concerned litigant is successful in his litigating pursuit, then the interim order if there, stands merged in the final order, and therefore, it is clear that the importance of final order carries all protections of process of adjudication and even if the Court is not granting the interim order, then also it does not affect the merits of the case at the time of final decision, if the case is genuine and the litigant's rights are lawfully established.

29.1 This Court is also conscious that the maxim **actus curiae neminem gravabit** is founded upon the principle that **due to court proceedings or acts of court, no party should suffer**. The cases which are pending for many years and no interim order is operating, then the merits of such cases cannot be ignored, simply because no interim order was operating, and therefore, in the interest of justice, such cases are required to be decided on merits, and without being influenced from non-operation of the interim order.

30) This Court is of the considered opinion that the majesty of Rule of Law requires that a person who has approached the Court in time without any delay and who has laid threadbare all his details without any failure and remains under the umbrella of the adjudication for a long time, cannot be denied the benefit on count of time lapse during which the matter remained pending. Unless a person who approaches the Court well within time is always put under a minimum protective shield, the concept of



Rule of Law is likely to diminish, which cannot be permitted by this Court.

31) For the aforesaid reasons and looking into the pendency involved, the time has come when the rights of a person have to be strengthened and protected, against any dilution of such rights due to the passage of time. Thus, this Court lays down the principle that in cases, where the adjudication remained pending since long and no interim order is operating, but the final relief is strong enough to be sustained in the eye of law, the long pendency and prolonged adjudication shall not act to the detriment of the cause of justice, which is earned by the litigant(s) on the merits of their case. Thus, one of the five posts arising out of the same advertisement which is yet to be filled and is at the preliminary stage of fresh recruitment, shall be offered to the present petitioner.

32) The writ petition is **allowed**. The respondents are directed to give appointment to the petitioner after completing all the necessary formalities. All the actual benefits arising out of such appointment shall be notional in nature though the petitioner's appointment and seniority shall relate back to his merit in the over all merit prepared in the Civil Judge Cadre of the year 2021. It shall be open for the respondents to conduct the training of the petitioner alongwith the fresh batch of 2024, training of which is likely to be conducted anytime later in this year. The appointment shall be accordingly granted. All the notional benefits shall accrue from the date of appointment which shall be given to the petitioner within a period of three months

from receiving the certified copy of this order. The respondents are directed to utilize one seat for such appointment from fresh recruitment going on for the year 2024, which has been carried forward from the recruitment process of the year 2021.

33) All pending interlocutory applications, if any, shall stand disposed of.

(MUNNURI LAXMAN),J

(DR. PUSHPENDRA SINGH BHATI),J

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