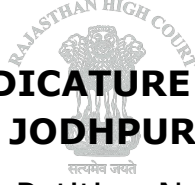


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 10079/2024

Dana Ram S/o Shri Chutra Ram, Aged About 35 Years, R/o
Dewa, District Jaisalmer (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary,
Department Of Personnel, Government Of Rajasthan,
Secretariat, Jaipur.
2. The Joint Secretary, Department Of Personnel (A/4),
Government Of Rajasthan, Secretariat, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Vivek Firoda
Mr. Jayram Saran
Mr. Bharat Singh Rathore

For Respondent(s) : Ms. Mehali Mehta for
Mr. Manish Patel, AAG

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

Reportable

24/09/2024

1. Heard learned counsel for the parties.
2. The present writ petition has been filed with a prayer that the respondent-State may be directed to issue an order of appointment in favour of the petitioner on the post as per his merit position in view of the recommendations made by the Rajasthan Public Service Commission (hereinafter referred to 'the RPSC') in pursuance of the competitive examination held in furtherance of the advertisement dated 20.07.2021.
3. Briefly, the facts noted in the present writ petition are that, while working on the post of Teacher Grade-III Level-I at the Government Senior Secondary School, Choudhariya Jaisalmer, the



petitioner applied for the Rajasthan State & Subordinate Service Examination, conducted in pursuance of the advertisement dated 20.07.2021, for direct recruitment on the post of State Services. The petitioner appeared in the preliminary examination and after clearing the same, he appeared in the main examination conducted by the RPSC. The petitioner being meritorious RPSC called him for an interview, which was held on 17.07.2023. The result of the selection was declared by the RPSC on 17.11.2023 and the petitioner's name was included in the list of successful candidates with merit No.1650.

4. Before declaration of the result by the RPSC, an FIR was registered against the petitioner being FIR No.31/2020 under Sections 498(A), 323 & 34 of the IPC. The FIR pertains to a matrimonial dispute between the petitioner and his wife and because of the marital discord, the petitioner has also filed a divorce petition, which is pending consideration before the competent Court. In the criminal case filed by the petitioner's wife, after investigation, a charge-sheet has been filed by the Police under Sections 498(A), 323 & 34 of the IPC. In these circumstances, when the petitioner did not receive the appointment letter from the State of Rajasthan, he approached the respondents and was informed that because of his involvement in the criminal case, his appointment has been cancelled and, therefore, no appointment order has been issued in his favour. Hence, the present writ petition has been filed.

5. Learned counsel for the petitioner vehemently argued that in the matrimonial case, the petitioner has been falsely implicated and, therefore, the situation is beyond his control as the Police



after investigation filed the charge-sheet. He further submits that the allegations levelled against the petitioner in the criminal case do not constitute the offence of a moral turpitude. He also submits that merely on the basis of marital discord between the petitioner and his wife, the criminal case has been filed and, therefore, on the basis of filing of such criminal case, the petitioner cannot be denied appointment by the respondents in pursuance of his selection. Learned counsel for the petitioner submits that the respondents have failed to consider the case of the petitioner in the correct perspective in the facts and circumstances mentioned in the charge-sheet and the circular/notification dated 04.12.2019 issued by the State Government.

6. Learned counsel for the petitioner also submits that a close reading of the circular/notification dated 04.12.2019 indicates that the respondents are required to meticulously examine the case of the petitioner taking into consideration the allegation in charge-sheet and only then the decision should have been taken as to whether the petitioner is entitled for appointment or not? However, the above stated exercise has not been undertaken/carried out in the case of the petitioner and straightaway a decision has been taken that because of the involvement of the petitioner in the criminal case, he is not entitled to be appointed in the State Services.

7. Learned counsel for the petitioner submits that as per the circular/notification dated 04.12.2019, even in case where conviction has been made by a Court of law, such conviction need not be taken as a ground for refusing the appointment to the petitioner on the basis of lacking good character. He further



submits that before refusing to give appointment, the circumstances of the conviction are required to be considered and if the same does not involve any moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means the Government as established by law, then mere conviction need not be recorded as disqualification. He also submits that without examining the specific details of the case mentioned in the charge-sheet, the circular/notification dated 04.12.2019 cannot be applied mechanically while rejecting the case of the petitioner.

8. Learned counsel for the petitioner further submits that the competent authority has to duly apply its mind before reaching to the conclusion that whether the petitioner is eligible to be appointed in the State Services or not in pursuance of his selection.

9. In view of the circumstances mentioned above, learned counsel submits that no decision much less by passing a speaking order has been taken in the present case. He, therefore, prays that the writ petition may be allowed and the respondents may be directed to re-examine the case of the petitioner in light of the circular/notification dated 04.12.2019 and the involvement of the petitioner in the charge-sheet in the criminal case, the same should be decided by the respondent after due application of mind.

10. *Per contra*, learned counsel for the respondents vehemently opposed the submissions made by the learned counsel for the petitioner and submits that since the petitioner has been charge-sheeted in the criminal case, therefore, as per Clause-1 Sub-

clause-(7) of the circular/notification dated 04.12.2019, he is not entitled for appointment in the State Services. Learned counsel for the respondents however, very fairly submits that no order to that aspect has been passed by the respondents and, therefore, the same could not be placed on record. She, therefore, submits that the petitioner is not entitled for appointment in light of the criminal case pending before the competent criminal court.

11. I have considered the submissions made at the Bar and gone through the relevant record of the case.

12. The fact that the petitioner is a selected candidate in the selection process undertaken by the RPSC in pursuance of the advertisement dated 20.07.2021 by placing his name at merit No.1650 and the recommendations being made by the RPSC to the respondents for giving him appointment on the suitable post is not in dispute. The respondent-State has denied to consider the case of the petitioner for appointment on the suitable post in view of the fact that he has been charge-sheeted in the FIR No.31/2020 under Sections 498(A), 323 & 34 of the IPC. The only ground for denying the appointment to the petitioner by the respondents has been reflected in their reply which is reproduced as under:-

"5. That the averments contained in para no.10 to 12 of the writ petition are not admitted in the manner the same are submitted. It is stated that the letter dated 01.03.2024 issued by the Superintendent of Police, Jaisalmer was received by the answering respondent inter-alia stating that Case No.31 dated 06.05.2020 is registered against the petitioner under Sections 498A, 354, 323/34 IPC. It was further stated that the charge-sheet dated 23.07.2020 was also filed in the Women Police Station, Jaisalmer which is pending and even the Challan was presented before the Chief Judicial Magistrate, Jaisalmer on 23.11.2020. Thus, since the case against the



petitioner is under trial, the petitioner is not entitled for appointment to the said post.

It is significant to mention here that with regards to the character selected in government service, it is mentioned in sub point 7 of point no.1 of Department of Personnel Circular dated 04.12.2019 that 'involvement in the Crime of Section 498A of the IPC (Criminal Misbehaviour towards women-dowry) will not be considered eligible for appointment. Therefore, in view of the same the appointment cancelled by the answering respondent is absolutely valid and legal in the eye of law. A copy of the circular dated 04.12.2019 is produced herewith and marked as Annexure-R/1.'

13. The reason for denial of appointment to the petitioner is the pendency of the criminal case and the Clause-1 Sub-clause-7 of the circular/notification dated 04.12.2019. It is an admitted fact that the allegations made against the petitioner in the charge-sheet in criminal case has not been considered by any Committee or the Competent Authorities of the respondent-Department as per the parameters provided in the circular/notification dated 04.12.2019. The provisions of the circular/notification dated 04.12.2019 cannot be applied mechanically by the respondents and merely on the fact that petitioner is involved in any criminal case, the respondents cannot deny the appointment to the him. A close reading of the circular/notification dated 04.12.2019 shows that each individual case, in which charge-sheet has been filed, is required to be examined by the competent authorities for the purpose of reaching to the conclusion as to whether the character of a candidate is above board or not and whether a person can be denied appointment on the ground of his bad character or whether a person is holding the certificate of good character or not?



14. This Court is firmly of the view that the respondents are under an obligation to examine each case, considering the facts and circumstances of the criminal case, as well as involvement/allegation against the candidate in order to reach a conclusion that whether a candidate/person can be said to be of good character or not in light of the guidelines set forth in the circular/notification dated 04.12.2019.

15. A close reading of 09 points mentioned in Clause-1 of the circular/notification dated 04.12.2019 shows that to deny the appointment on the ground of under trial/conviction of a candidate for certain offences could be said to be illustrative only and this list cannot be said to be exhaustive. The principle for arriving at a decision that a person is not entitled for appointment in the services of the State is based on the fact that whether the act/offence committed by a candidate/person involves moral turpitude or not? If a person has committed an act which can come in the ambit of moral turpitude and the act done by such person shall have negative impact in discharge of his duties on the post on which he will be appointed, then in these two situations that person/candidate is certainly dis-entitled for appointment on that post.

There could be violation of certain Acts under which an offence is committed which are not elaborated or mentioned in Clause-1 of the circular/notification dated 04.12.2019 but the same may constitute an offence involving moral turpitude which may dis-entitle a person for Government job. Thus, in the opinion of this Court, each individual case is required to be examined from the angle that whether the act/offence committed by such person



involves moral turpitude or not and whether a person who has committed such act can be granted a certificate of 'Good character' or not. Without examining each case on the facts and circumstances of that criminal case, the candidature cannot be rejected merely on the ground that an FIR/Charge-sheet has been filed under one of the offences enumerated in Clause-1 of the circular/notification dated 04.12.2019.

16. This Court is of the view that a person is not entitled for appointment in the State Services, if his acts constitute an act of moral turpitude and the same could affect the work negatively on the post for which he is being appointed. In the circular/notification dated 04.12.2019 for the purpose of character verification, it has been mentioned that even the 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 the same involve no moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means of a Government as established by law, the mere conviction need not be regarded as a disqualification. Likewise, other incidents in which a candidate is said to be involved may necessarily do not give an indication that the said person could not hold good character. Before reaching to the conclusion as to whether a person is unfit to be appointed in the Government job or not, each case is required to be scrutinized by the competent authorities considering the facts involved in that particular criminal case.

17. In the present case, since the respondents have not examined the case of the petitioner in light of the



circular/notification dated 04.12.2019 and have directly reached to the conclusion that since the petitioner is involved in the criminal case, he is not entitled for a Government job in pursuance of the selection, is *de-hors* the law.

18. In view of the discussion made above, the present writ petition merits acceptance and the same is allowed. The respondents are directed to consider the case of the petitioner in detail by taking into consideration the facts of the criminal case and the guidelines enumerated in the circular/notification dated 04.12.2019 issued by the State Government and decide the case of the petitioner by passing a reasoned and speaking order.

19. Needless to say, if the authorities/competent committees come to the conclusion that the act of the petitioner does not involve moral turpitude, then the appointment order as per the recommendations made by the RPSC, be issued in favour of the petitioner.

20. The entire exercise shall be completed by the respondents within a period of four weeks from the date of receipt of the certified copy of this order.

21. The stay petition as well as the other pending misc. applications, if any, stand disposed of accordingly.

(VINIT KUMAR MATHUR),J