



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

S.B. Civil Writ Petition No. 6136/2015

Ranveer Kumar S/o Shri Raja Ram, aged 24 years, resident of
Ward No.12, Nukera, Tehsil Sangaria, District Hanumangarh

----Petitioner

Versus

1. Jodhpur Vidhyut Vitran Nigam Ltd., Jodhpur through
Chairman Cum Managing Director

2. Secretary (Admn), Jodhpur Vidhyut Vitran Nigam Ltd.,
Jodhpur

----Respondent

For Petitioner(s) : Mr. S.K. Verma
For Respondent(s) : Mr. Vipul Dharnia

HON'BLE MR. JUSTICE FARJAND ALI

Order

Order pronounced on : ___/08/2024

Order reserved on : 30/07/2024

REPORTABLE

1. The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved of the action of the respondents in denying him appointment on the post of Technical Helper on the ground that a criminal case is pending trial against him.

2. Succinctly stated, facts of the case are that the respondents published an advertisement in the month of October 2013 inviting applications for appointment on the post of Technical Helper, out of which, 984 posts were advertised for Jodhpur Vidhyut Vitran Nigam Ltd. The petitioner, who was possessing the requisite



qualifications for the post, applied in the SC category. The petitioner was issued admission card and he appeared in the written examination and he secured 128 marks. The respondents prepared a list of meritorious candidates upto 1.5 times of the vacancies to call for document verification for final selection. In the said list, the petitioner was placed at S.No.1119. He was issued a call letter directing him to appear for document verification on 16.04.2015. In the call letter it was mentioned that a declaration that no criminal case is pending against him in any court and he has not been convicted in any criminal case has to be furnished and if he has been convicted or any criminal case is pending against him, then the details of the same should be mentioned. The petitioner appeared before the respondents on the scheduled date for document verification. On that day, he submitted an affidavit to the effect that a criminal case for the offences under Section 447 and 323 of the IPC is pending against him in the Court of Additional Chief Judicial Magistrate, Sangaria, District Hanumangarh. After verification of the documents, the respondents published the marks of the candidates. As per the cut off marks, the candidate of SC category, who has secured 114 marks, has been given appointment as Technical Helper, whereas the petitioner who secured 128 marks has been denied appointment on the ground that a criminal case is pending against him. Being aggrieved of the said action of the respondents, the petitioner has preferred the instant writ petition.





3. Learned counsel for the petitioner submits that the action of the respondents in denying appointment to the petitioner is wholly illegal, arbitrary and unjust inasmuch as mere pendency of a criminal case cannot be the sole ground to deny appointment to a meritorious candidate. Learned Counsel submits that the petitioner has not been held guilty of the charge and trial is still underway. He further submits that the offences alleged against the petitioner do not involve moral turpitude, in fact, the same are petty in nature. It was a dispute on trivial issue with the fellow villagers and the petitioner has been implicated in the case only because he is family member of one of the party involved in the case. Be that as it may, the parties have now settled to dispute amicably and have arrived at a compromise and in every probability, the petitioner shall be acquitted from the charges. The further contention of the learned counsel for the petitioner is that in the matter of appointment in Government service, there is not a complete bar for a person having criminal antecedents. Even a convicted person can be given appointment in Government service if the appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness. However, such is not a case in the present matter as the petitioner has not been convicted. The trial of the case may still take a long time and if the petitioner is denied appointment at this stage, then even in the case of acquittal, he would not be able to get an opportunity to get appointment in Government service. Learned counsel in support





of his contentions has placed reliance on the following judgments :-

(1) State of Gujarat and Anr. v. Suryakant Chunilal Shah
[1999(1) SCC 529]

(2) Pawan Kumar vs State Of Haryana And Anr
[1996 SCC (4) 17]

(3) *Brijendra Singh Meena v. State of Rajasthan and Ors.*
[1997(7) SLR 655]

On these grounds, learned counsel for the petitioner prayed for acceptance of the writ petition.

4. Per contra, learned counsel for the respondents vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that it is the discretion of the Appointing Authority to see that a fit person enters into the Government employment which is based on character and antecedents and circumstances prevailing should be taken into consideration. In the case at hand, admittedly the petitioner is having criminal antecedents as a criminal case is pending against him. As per learned counsel, the petitioner is not having sound character as required under the relevant rules, thus, he is not eligible for appointment in the respondent Nigam. The action of the respondents in denying appointment is well within their rights and no interference is called for therein. In support of his contentions, learned counsel has placed reliance on the following judgments :-

(1) Union Territory, Chandigarh Administration & Ors. Vs. Pradeep Kumar & Anr. **[(2018) 1 SCC 797]**





(2) Bheeya Ram Jajra Vs. State of Rajasthan & Ors. **[D.B. Civil Special Appeal (Writ) No.602/2022 decided on 02.11.2022]**

With these submissions, learned counsel for the respondents prays that the writ petition may be dismissed.

5. Heard learned counsel for the petitioner and the learned counsel for the respondents and perused the material placed on record as well as the judgments cited by the learned counsel for the parties.

6. There is no denial from the fact that in Government service it is expected that the persons having their character above board, free from any moral stigma, are to be inducted. Verification of character and antecedents is a condition precedent for appointment to a Government service. The question here is whether petitioner could be deprived of his chance to serve the Government merely because a criminal case is pending against him for the offences under Section 447 and 323 of the IPC. Normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for Government Services. Here though the petitioner is not convicted for the offences alleged, rather a trial is underway, but still this court has considered the aspect whether the offences for which he is charge-sheeted involve moral turpitude or not. The Hon'ble Supreme Court in case of Pawan Kumar (supra), while dealing with a case where a person has been sentenced of a fine of Rs. 20 for an offence under Section 294 IPC, while deliberating on the



issue of moral turpitude and admissibility or an impediment to Government service, took a pragmatic view and held as follows:

"12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2.2.1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in Government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26.3.1975 explained the policy decision of 2.2.1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led to the act was a base one.



(3) *whether on account of the act having been committed the perpetrator could be considered to be a depraved character or a person who was to be looked down upon by the society.*

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not included in it but which in certain situations and circumstances may involve moral turpitude.

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted."

The petitioner herein is facing trial in a case involving the offences under Section 447 and 323 of the IPC. The case appears to have been filed on a trivial issue and it is very common to implicate many family members of other party whether they actively participate in the offence or not. Further as stated by learned counsel for the petitioner, the parties have settled the dispute and there is every chance that the petitioner shall be acquitted from the charges. Both the offences under Sections 447 and 323 of the IPC are bailable and compoundable and thus, as per Section 320 of the CrPC, the trial Judge has no option but to acquit the accused based on compromise. Be that as it may, this court is of





the considered opinion that the present one is not a case where the petitioner can be said to be an accused of committing an offence involving the mortal turpitude. The judgment cited by learned counsel for the respondent in the case of Bheeya Ram Jajra (supra) is clearly distinguishable inasmuch as the petitioner therein was facing the charge for the offence under the NDPS Act, which is an act against the society and thus, he was not found fit for appointment as a Teacher. The judgment in the case of Pradeep Kumar (supra) is also not applicable in the facts of the case as the petitioner has not been convicted and is just facing trial and it is well recognized principle of criminal jurisprudence that until the guilt is proven; the accused shall be presumed innocent.

7. Now we come to the question whether the petitioner can be denied appointment on the ground of pendency of a criminal case. Our criminal justice system is founded on the Code of Criminal Procedure, Indian Penal Code and Evidence Act to lay norms for admissibility of evidence. Unless a person is held guilty by conviction in a trial held by the Court the presumption of his innocence has to be construed. Mere involvement in a criminal case when the trial is still underway is not a mirror to reflect the criminal or unsound character of a person. The Hon'ble Supreme Court in the case of Suryakant Chunilal Shah (supra) has made the following observation regarding involvement in criminal case on the basis of an FIR:-

"The involvement of a person in criminal case does not mean that he is 'guilty'. He is still to be tried in Court of





law and the truth has to be found out ultimately by the Court where the prosecution is ultimately conducted."

8. In the present time, when the population of our country has increased multifold, it is very difficult to find a Government Job. In such a situation, when a person by his hard work qualifies the competitive examination with his village background where there are customary and recurrent property disputes, feuds etc. and the name of entire family is dragged as accused, such involvement which is yet to be observed as false or otherwise, cannot be taken as a touchstone or determinative factor to hold the character of the person unsatisfactory to deprive him from his hard earned employment. It is worthwhile to point out that due to huge pendency of cases before the trial courts, the trials in many cases take long time. If a deserving person is denied appointment, then even if later on he is acquitted by the trial court, there is very little scope for him to get the Government employment. The fact that the offences alleged are compoundable and parties have resolved the dispute amicably and accordingly, a compromise has also been executed in between them cannot be lost sight of. On the other hand, pendency of a criminal case, which does not involve moral turpitude, cannot be construed as an impediment in appointment and performance of duties by such person.

9. As an upshot of the above discussion, this court is of the considered opinion that the action of the respondents in denying appointment to the petitioner on the ground of pendency of a criminal case is unjust, arbitrary and unreasonable. The petitioner is declared entitled for appointment on the post of Technical



Helper if he is otherwise eligible for the post. Accordingly, the writ petition is allowed. As per Annexure-R/1 dated 08.01.2016, the petitioner has been appointed on the post of Technical Helper in pursuance of the interim order passed by this court. He shall be allowed to continue in service with all deserving benefits. The stay petition is disposed of.

10. No order as to costs.

(FARJAND ALI),J

274-Pramod/-