Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1820 of 2023

Applicant :- Vishnu Kumar
Opposite Party :- Sri Amit Kumar Ii,Commandant 45th Bt, Pac.
Counsel for Applicant :- Ankur Jaiswal

Hon'ble Rohit Ranjan Agarwal,J.

The writ Court on 15.11.2022 in Writ-A No. 15587 of 2022 passed the following order;

"Present petition has been filed challenging the order dated 2.7.2022 whereby the candidature of the petitioner has been rejected only on the ground of suppression of material facts i.e. pendency of a criminal case.

The facts, in brief, are that the petitioner had applied for selection to the post of Constable Civil Police/PAC in terms of the Advertisement dated 14.1.2018. It is stated that in terms of the requirement, the petitioner had filed an affidavit on 17.8.2021 which required the disclosure of any pendency of criminal case. It is stated that the petitioner did not disclose the pendency of the criminal case against him on account of matrimonial dispute only on the ground that on the date of advertisement, no case was pending against him. Subsequently, the petitioner was denied the appointment only on the ground that the criminal case was pending against the petitioner which fact he has suppressed. The petitioner preferred Writ - A No.18834 of 2021 which was disposed of vide order dated 29.3.2022 directing the respondents to reconsider the issue in the light of the directions given by the Hon'ble Supreme Court in the case of Avtar Singh v. Union of India and Ors.; (2016) 8 SCC 471. In terms of the said direction, a fresh order has been passed whereby the candidature of the petitioner has been rejected solely on the ground that the petitioner has suppressed the fact regarding pendency of the criminal case against him.

Contention of learned counsel for the petitioner is that on account of matrimonial discord, the case was pending against the petitioner under Section 498A, 323, 504 IPC read with Section 3/4 of Dowry Prohibition Act, however, subsequently the dispute has been amicably resolved. He further argues that in the impugned order, the authority concerned has non-suited the petitioner only on the ground of non-disclosure of material facts. He further argues that the authority concerned had not considered the effect of non-disclosure on the services sought to be performed by the petitioner in pursuance to his selection. He places reliance on the judgment of the Hon'ble Supreme Court in the case of Pawan Kumar v. Union of India & Anr.; 2022 SCC OnLine SC 532.

Considering the submissions made at the Bar and on perusal of the impugned, it is clear that the petitioner has been non-suited only on the

ground of suppression of material fact. The authority concerned has not gone into the suitability of the appointment sought by the petitioner, he has also not gone into the fact that the dispute has been settled in between the parties. The said order clearly falls short to the requirement of law specified in the case of Avtar Singh (supra) and subsequently reiterated in the case of Pawan Kumar (supra), as such, the impugned order dated 2.7.2022 is set aside.

The matter is remanded to the respondent no.4 to pass a fresh order considering the nature of the duties sought to be performed by the petitioner and its adverse effect on account of the pendency of the criminal case. He shall also take into consideration the effect of compromise in between the parties.

It is reiterated that the authority concerned shall not reject the claim of the petitioner merely on the ground that there was suppression of material fact. He shall also take into account the fact that the allegations levelled in the FIR did not involve any moral turpitude or any henious offence.

The fresh order, as directed above, shall be passed by respondent no.4 within a period of two months from the date of production of a certified copy of this order.

The writ petition is accordingly allowed."

From perusal of the order of writ Court, it is clear that the matter was remanded back to the opposite party to pass fresh orders.

Compliance affidavit filed today is taken on record.

It is stated by learned Standing Counsel that reconsideration has been done by the opposite party and fresh order has been passed on 11.10.2023, copy of which has been brought on record as annexure No. 1 to the compliance affidavit.

As the order of writ Court has been complied by the opposite party no case for contempt is made out.

Contempt application stands dismissed. However, leaving it open to the applicant to assail the order passed by the opposite party before the appropriate forum, if so advised.

Contempt notice stands discharged.

File consign to record.

Order Date :- 18.10.2023
Shekhar

Digitally signed by :-
SHASHI SHEKHAR PANDEY
High Court of Judicature at Allahabad