

Court No. - 40

Case :- WRIT - C No. - 35988 of 2023

Petitioner :- Natwar Lal Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sheo Ram Singh, Deepak Singh Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
3. The petitioner has prayed for the following reliefs :-

"(i) issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to issue the Good Character Certificate in the name of the petitioner in pursuance of the online request no. 316252334862 dated 16.08.2023 ignoring the registration of NCR No. 0073 of 2021 under Sections 323, 504 of IPC dated 30.08.2021, within stipulated time.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondent no. 3 to fill up and sign the character certificate and antecedents certificate on prescribed format, within stipulated period."

4. Learned counsel for the petitioner submits that the petitioner was working as Constable (GD) in Indian Army and after completing his tenure of service in the Army, he has been discharged from service on 31.03.2020. Thereafter the petitioner applied for appointment in Central Industrial Security Force, Unchahar, District Raibareli under ex-serviceman quota and in anticipation of his appointment, the petitioner also applied online to the Senior Superintendent of Police, District Azamgarh (respondent no.2) for issuance of character certificate on 16.08.2023 but the same has been denied on the ground that a NOC No.0073 of 2021 under Sections 323, 504 IPC was registered against the petitioner on 30.08.2021. Finally, the petitioner has been selected on the post of Constable (GD) in the CISF and vide call letter dated 26.8.2023 he has been asked to complete all the formalities. He submits that as per provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C."), if there is no order of any Magistrate for investigation under Section 155 (1) Cr.P.C. then no police officer could investigate a non-cognizable case. He further submits that the NCR is of year 2021 and as per Section 468 Cr.P.C., if cognizance of the case could not be taken within limited period then the report of the non-cognizable case would be worthless document. In this backdrop, learned counsel for the petitioner vehemently contended that neither he was convicted in any case till date nor he is having any criminal history except the aforesaid case. It is submitted that on account of aforesaid NCR the character

certificate has been denied to the petitioner. In case the character certificate is not accorded to the petitioner within reasonable time, he would suffer irreparable loss and injury. In support of his submissions, he has placed reliance upon the judgment and order passed by this Court in **Basoo Yadav V/s. Union of India and 4 others** (Writ-C No. 29605 of 2022, dt. 16.12.2022). As such, it is sought to be contended that the present matter is squarely covered by the aforesaid judgment and the similar treatment may also be extended to the petitioner. For ready reference, the operative portion of the order dated 16.12.2022 is reproduced herein below.

"Having heard learned counsel for the petitioner and learned Standing Counsel and after having gone through the instructions which have been sent by the Director General of Police, the Court is definitely of the view that no non-cognizable report which was registered could be taken into cognizance if no investigation was ordered by the concerned Magistrate. Even though in the instant case, whether the passport can be refused on the basis of the pendency of the criminal case is not the question involved, we are of the view that even during the pendency of any criminal case, passport could be issued/renewed as per the Government Order dated 25.8.1993 if the Court passes orders for that purpose. In the instant case, we do find that the application of the petitioner was rejected on the basis of the two reports of non-cognizable cases namely NCR No.111/2012 and NCR No.114/2018. The Director General of Police has also given his view that the reports with regard to the non-cognizable cases could not be made the basis for rejecting an application for issuance of passport if they had not been investigated into.

Under such circumstances, we issue the following directions :-

(1) The passport form of the petitioner for the issuance of a passport be considered within a period of two weeks from the date of presentation of a certified copy of this order before the respondent no.2-Regional Passport Officer, Regional Passport Office, Vipin Khand, Gomti Nagar, Lucknow;

(2) Since we are finding that in quite a few cases the reports of non-cognizable cases in which the concerned Magistrate had not even ordered for investigation were being taken into account for rejection of passport, we issue a direction to the Director General of Police to instruct his officers to give a report with regard to the pendency of reports in non-cognizable cases after appropriate and proper application of mind;

(3) Outright the passport applications be not rejected under section 6(2)(f) of the Passports Act if orders of the Court, where the criminal case is pending, have been passed as per the Government Order dated 25.8.1993. The Director General of Police to issue notification in this regard also.

With these observations, the writ petition is, accordingly, allowed."

5. Learned Additional Chief Standing Counsel fairly states that in case such application is pending consideration then definitely the same would be considered in the light of the aforesaid judgement.

6. No useful purpose would be served in keeping the writ petition pending consideration.

7. Considering the facts and and circumstances and without adverting to the merits of the case, the writ petition is disposed of asking the authority concerned to look

into, examine and redress the grievance of the petitioner strictly in accordance with law and in the light of the judgment of this Court in the case of Basoo Yadav (supra) as expeditiously as possible and preferably, within ten days from the date of receipt of certified copy of this order.

Order Date :- 17.10.2023

Rama Kant