

Court No. - 4

Case :- WRIT - A No. - 669 of 2025

Petitioner :- Vishwash Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ashok Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State respondents.

By means of present petition filed under Article 226 of the Constitution, petitioner has prayed for a direction to the respondents to permit the petitioner for joining pursuant to appointment order dated 10.09.2024 appointing him as forest guard.

Learned counsel for the petitioner submits that when petitioner was not being permitted to give joining as forest guard, he made a representation that only because of one criminal case and that too in a very petty matter was pending against the petitioner, could not be denied his appointment on the principle laid down by the Supreme court in the matter of **Avatar Singh v. Union of India, 2016 (8) SCC 471.**

It is submitted that in identical set of facts, writ petition was filed by one **Naveen Rajhansh being writ A No. 6543 of 2023, Naveen Rajhans, State of U.P and 5 Others, decided on 28.4.2023,** who was selected in Civil Police, but was not being offered appointment only on account of pending criminal case. This Court considered this aspect of the matter in the light of judgment of Avtar Singh (*supra*) and allowed the writ petition by setting aside the order with further direction to process appointment of that petitioner. Vide paragraph 13 to 21, the Court held thus :

"13. Thereafter, again respondent No.5 rejected the candidature of the petitioner. The perusal of impugned order reveals that respondent No.5 has noted that the District Magistrate in his report dated 03.04.2023 considered the judgment of the Apex Court in the case of Avatar Singh (supra) and recommended that the candidate can be considered for being appointed subject to result of trial in Case Crime No.368 of 2017. The said recommendation has been made by District Magistrate under Government Order dated 28.04.1958 meaning thereby that the procedure contemplated under said Government Order has been followed and the

District Magistrate exercising the power under the said Government Order has recommended the petitioner to be considered for appointment after analysing the fact of the criminal case in the light of judgment of Apex Court in the case of Avatar Singh (supra). Respondent No.5 while passing the order has ignored the recommendation of the District Magistrate and recorded one line finding that as the charge levelled against the petitioner comes within the definition of 'moral turpitude' and the such activity of petitioner is subversive activity against the State, therefore, the petitioner is not suitable for the post of Constable. The relevant portion of the order is reproduced hereinbelow:-

"अतः रिट याचिका संख्या- 21793/2022 नवीन राजहंस बनाम उ०प्र० राज्य व 04 अन्य मे मा० न्यायालय द्वारा पारित निर्णय दिनांक-17.02.2023 व 23.02.2023 के समादर में माननीय सर्वोच्च न्यायालय नई दिल्ली द्वारा Avtar Singh Vs Union of India and others, 2016 (8) SCC 471 व Satish Chandra Yadav Vs Union of India and others, 2022 SCC Online SC 1300 में दी गयी विधि व्यवस्था व संयुक्त निदेशक अभियोजन, आजमगढ़ के विधिक अभिमत व अन्य अभिलेखों का अवलोकन किया गया तो पाया गया कि याची के विरुद्ध पंजीकृत अभियोग नैतिक अधमता व शासन तंत्र को विनिष्ट करने की श्रेणी में आता है। ऐसी स्थिति में अभ्यर्थी अनुक्रमांक - 4352120096 नवीन राजहंस पुत्र श्री महात्म राम , को पीएसी जैसे अनुशासित बल में आरक्षी पीएसी के पद पर अनुपयुक्त पाये जाने के फलस्वरूप याची / अभ्यर्थी का अभ्यर्थन/चयन निरस्त किया जाता है तथा मा० उच्च न्यायालय इलाहाबाद द्वारा पारित निर्णय दिनांक - 17.02.2023 व 23.02.2023 के समादर में याची/अभ्यर्थी द्वारा प्रस्तुत प्रत्यावेदन दिनांकित-06.03.2023 एतत् द्वारा निस्तारित किया जाता है।

पत्रांक: य-86/2022

दिनांक- 03/04/2023"

14. The relevant extract of the order, quoted above, do not disclose that respondent no.5 has given any consideration to the recommendation given by the District Magistrate under the Government Order dated 28.04.1958. The order impugned does not reflect any application of mind by the respondent No.5 in rejecting the claim of the petitioner.

15. This Court may note that the perusal of F.I.R. indicates that the allegation against the petitioner in F.I.R is that he was also present in protest of about 200-250 at the time of panchayatnama of one Anil Kumar and raised slogans against the administration. Perusal of F.I.R. indicates that no specific role has been assigned to the petitioner, and allegation against the petitioner is general in nature. Respondent No.5, while rejecting the claim of the petitioner, did not consider this aspect of the matter.

16. This Court is conscious of the fact that it is exclusive domain of the appointing authority to assess the suitability of a candidate and once the suitability of the candidate is assessed on the settled principles of law, this Court should not interfere with the discretion of the appointing authority unless the said discretion has been exercised arbitrarily or mala fide.

17. This Court for the reasons given hereunder is of the opinion that the respondent No.5 has exercised the discretion arbitrarily and on extraneous consideration while rejecting the claim of the petitioner. The District Magistrate in the light of judgment of Avatar Singh (supra) has recommended the case of the petitioner for being considered for appointment under the Government Order dated 28.04.1958. The respondent No.5 has not given any reason for not agreeing with the report of the District Magistrate 24.12.2021. The impugned order reveals that it has not given consideration to the nature of the charge levelled against the petitioner in the F.I.R. Further, the F.I.R. has been lodged on 18.08.2017 and more than 5 years have passed, yet the trial has not been concluded.

18. In such view of the fact, this Court finds that the petitioner cannot be denied appointment

on the basis of criminal case more so when order impugned has been passed without application of mind.

19. Normally this Court would have remanded the matter back to the authority concerned to decide afresh but in the instant case this is the third round of litigation for the same cause of action as on earlier two occasions the petitioner approached this Court by filing Writ-A No.11788 of 2022 & Writ-A No.21793 of 2022. Further reason for not remanding the matter back is that there was a report of District Magistrate under the Government Order 28.04.1958 whereby he recommended to consider the appointment of the petitioner subject to the decision in the trial of criminal case. The respondent No.5 while passing the order has not given any reason in ignoring the report of the District Magistrate and further has not deliberated as to how charges against the petitioner fall under the definition of 'moral turpitude' and how the act of the petitioner is subversive against the interest of the State.

20. Thus, for the reasons made above, the order impugned is set aside and respondent No.5 is directed to process the appointment of the petitioner within a period of two months from the date of production of certified copy of this order, if there is no other legal impediment.

21. Writ petition is accordingly allowed with no order as to costs. "

Learned counsel for the petitioner has drawn the attention towards consequential order passed by Commandant 20th Battalion PAC Azamgarh dated 27.7.2023 whereby said Naveen Rajhansh was offered appointment. The operative portion of the consequential order passed by Commandant is reproduced hereunder:

"अतः रिट याचिका संख्या 6543/2023 नवीन राजहंस बनाम उ०प्र० राज्य व अन्य में पारित निर्णय दिनांकित 28.04.2023 के समादर में मुख्य स्थायी अधिवक्ता माननीय उच्च न्यायालय इलाहाबाद द्वारा दिये गये अभिमत दिनांकित 14.06.2023 व अवतार सिंह बनाम यूनियन ऑफ इण्डिया में माननीय सर्वोच्च न्यायालय, नई दिल्ली द्वारा दी गयी विधि व्यवस्था के आलोक में अभ्यर्थी के विरुद्ध पंजीकृत अभियोग नैतिक अद्यमता, शासन तन्त्र को विनष्ट करने व अनवरत बने रहने लायक न होने के फलस्वरूप माननीय जनपदीय न्यायालय में लम्बित अभियोग मु०अ०सं० 368/2017 धारा-147/332/341/506/336/427 भा०दं०व० व 7 सीएलए एक्ट में पारित होने वाले अन्तिम निर्णय के अधीन अभ्यर्थी नवीन राजहंस पुत्र श्री महातम राम को आरक्षी पीएसी पद पर नियुक्ति प्रदान किये जाने का आदेश पारित किया जाता है। "

Learned Standing Counsel does not dispute the legal proposition as discussed in the case of Naveen Rajhansh and also another judgment of the High Court in the case of **Sonu Yadav v. State of U.P. and 5 Others, Writ A No. 4577 of 2019, decided on 8th January, 2021.**

In view of above, this petition stands disposed of with direction to respondent to offer joining to the petitioner pursuant to order of appointment within a

period of four weeks from the date of presentation of certified copy of this order.

Order Date :- 17.4.2025
Sanjeev