

Court No. - 4

Case :- WRIT - A No. - 30486 of 2014

Petitioner :- Poonam Kumari

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

Counsel for Petitioner :- Sheikh Obaidullah, Upendra Upadhyay

Counsel for Respondent :- C.S.C.

connected with

Case :- WRIT - A No. - 59905 of 2012

Petitioner :- Km. Poonam Kumari

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Sheikh Obaidullah, Upendra Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard Sri Sheikh Obaidullah, 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 assailed the order dated 25th April, 2014 whereby his representation pursuant to order passed by this Court dated 25th February, 2014 in Writ A No. 11944 of 2014 to reconsider his claim for reinstatement in police service as Sub-Inspector to be sent for training on account of selection on compassionate basis, has been rejected.

It is submitted by learned counsel for the petitioner that respondents were not justified in passing the order impugned rejecting candidature of the petitioner even though petitioner had stood acquitted in the criminal case arising out of case crime no. 101 of 2010 under Section 498A, 504, 506 of the then IPC and 3/4 Dowry Prohibition Act being criminal case no. 372 of 2011 on account of fact that no evidence was available to prove her guilt beyond doubt. Copy of the judgment dated 28th January, 2014 has been placed on record by means of rejoinder affidavit. It is submitted by learned counsel for the petitioner that only ground

taken for rejecting the candidature of the petitioner is that petitioner concealed this fact in declaratory affidavit filed on 11.10.2010 as she stated that she had no knowledge of any criminal case instituted against her and that no such case was pending. Learned counsel for the petitioner submits that there is no criminal history to the credit of the petitioner and it was only a matrimonial disputes in which her sister-in-law got her implicated alongwith parent and her husband under relevant provisions of erstwhile Indian Penal Code and Dowry Prohibition Act.

Learned counsel for the petitioner further submits that if authority had rendered its due application of mind to the facts of the case in the light of guidelines laid down by the Supreme Court in the case of **Avtar Singh v. Union of India and others 2016 (8) SCC 471** and **Gyandhar Yadav v. State of U.P. and Others, Writ A No. 15156 of 2020 decided on 28.10. 2023**, it would not have arrived at conclusion at which it had arrived in rejecting representation of the petitioner to reaffirm its earlier decision not to sent the petitioner for training even though he stood selected for the post of Sub-Inspector by way of compassionate appointment. He has placed relevant paragraph of the judgment of the Supreme Court in the case of Avtar Singh, which are reproduced hereunder:

30.(10) For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11). Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

Learned counsel for the petitioner has further argued that in view of prescribed format 92 under U.P. Police Service Regulations , what required from the candidate is to give details of criminal case in which he/she has been convicted and sentenced in and procedure prescribed to undergo sentence and petitioner, therefore was not hide bound in law to disclose status of the case in view of format

prescribed and hence she cannot be held to have concealed any material fact.

Per contra, learned Standing Counsel sought to defend the order taking plea that petitioner wants appointment in U.P. Police which is a disciplined force meant for protection of civilians and in the event candidate herself is involved in criminal case, the very conduct in concealing this fact amounted to concealment of such degree that such candidate should not be placed in a disciplined force as it may erode even public confidence and trust. Thus, according to learned Additional Chief Standing Counsel, order deserves to be upheld and resultantly petitioner deserves to be dismissed.

Having heard learned counsel for the respective parties and having perused the records and the judgment cited before me as well as pleadings raised *qua* criminal case and having scrutinised and examined the order impugned very carefully, what I find is that the authority has passed the order rejecting representation in a very cursory manner. The only ground taken is that petitioner concealed the material fact. The relevant paragraph of Supreme Court authority as has been reproduced herein-above, Supreme Court cautious holds that in every case ordinarily employers should not reject candidature of the candidate on the ground of involvement in a criminal case for the alleged charge of concealment of fact.

Reading the guidelines laid down by the Supreme Court in the case of Avtar Singh (*supra*) and recent judgment of this Court and Ghyandhar Yadav (*supra*) one is bound to arrive at this conclusion that employer is required to consider every aspect of the matter and if there is no criminal antecedent to a candidate except a case for strained relations between the couple involving a third person who has no criminal history as such, then mere such an involvement in a criminal case would not result in *ipso facto* rejection of candidature of the candidate. The employer should render its due application of mind to reach out to a reasoned conclusion to justify an action if it is rejecting candidature of a selected candidate.

Coming to the facts of the case particularly judgment passed in criminal case, the Court rejected the finding that various persons got implicated in criminal case which is basically matrimonial dispute even though they were not residing with family charged against and no evidence was found to be intrinsic enough to implicate them, likewise petitioner who is sister-in-law of the complainant as has been exonerated from the criminal charge on the ground that there being no evidence to prove guilt of the lady to the hilt.

One should not be oblivious of a fact that in many cases of matrimonial disputes, there is indiscriminate implication of all members of the family and close relatives even though the grievance is basically against husband for strained relations between the couple, and therefore, if candidate is found to have been implicated in a criminal case arising chiefly out of matrimonial disputes and dowry cases and a person is directly not involved, an employer should give its thoughtful consideration and a pragmatic view should be taken in such a matter. There is difference in an offence against society offending people at large, like for instance theft, robbery, murder, grievous hurt caused to strangers and such like offences, but where implication is of a relatives in dowry cases or in matrimonial cases, employer can take lenient view as it may not have element of moral turpitude, and have may not affect working atmosphere in the employer's establishment. What therefore, I find in the order impugned to be is that except for recitals contained in paragraph 6 that petitioner gave a false declaratory affidavit to the effect that there was no criminal case, there is no consideration of case of the petitioner on the above principles and the law laid down in Avtar Singh's case (*supra*). Hence, I find the order to be unsustainable in the light of law laid down by the Supreme Court in the case of Avatar Singh (*supra*) and by this Court in the case of Gyandhar Yadav (*supra*).

Still further, nothing has come out any part of pleadings raised in the counter affidavit that petitioner involved in the said criminal case was involved in any other criminal case. In the circumstances,

therefore, the authorities are required to pass order in the light of observations made above and by the Supreme Court regarding admission of candidature of the present petitioner, more especially, when she was offered appointment on compassionate ground.

Under the circumstances, therefore, the order impugned dated 25th April, 2014 is held to be unsustainable. Writ Petition, therefore, succeeds and is allowed. The order dated 25th April, 2014 annexed as annexure 3 is hereby quashed. Respondent no. 2 is directed to give appointment to the petitioner on compassionate basis and send her for training in the event, there is no further criminal case instituted or is pending against the petitioner within maximum period of two months from the date of presentation of certified copy of this order.

Order Date :- 14.7.2025
Sanjeev