

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 27461 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 3rd respondent in issuing the impugned proceedings in Rc.No.67/Rectt/Genl.1/2017, dated 03.07.2017, wherein the provisional selection of the petitioner for the post of SCTPC AR (Men) was cancelled on the ground that a case is pending trial in PRC No.11 of 2015 in Cr.No.31/2015 registered for the offences under Sections 324, 498(A) of IPC and Section 4 of Dowry Prohibition Act on the file of Women PS of Nalgonda District.

Learned counsel for the petitioner submits that mere involvement in a criminal case is not a ground for disqualifying the petitioner. He submits that the clause 25 of notification in Rc.No.151/Rect./Admn.1/2015, dated 31.12.2015 provides for disqualification for appointment. Since the petitioner does not fall under any of the sub clauses of clause 25, his provisional selection cannot be cancelled on the ground of disqualification, as such, clause 25 of the notification has no application to the present case on hand. In support of his contention, he relied on the judgment reported in **Chairman and others v. B.Lokeswaraiah**

and another¹. He further submits that the charge sheet is already filed in Cr.No.31 of 2015 and same is numbered as PRC No.11/2015, in which the allegation against the petitioner is under Section 498-A of IPC.

On the other hand, learned Government Pleader for Home submits that since the petitioner is involved in criminal case, he is disqualified for appointment as per Rules in force, as such, his provisional selection was cancelled. He further submits that the allegation against the petitioner is not only under Section 498-A of IPC but also under Section 324 of IPC, as such, no interference is called for.

In order to appreciate the contentions of both the learned counsel, it is relevant to extract Clause 25 (v) of the Notification dated 31.12.2015, which reads as follows:

“25. Disqualification for appointment: The candidates falling under the following categories shall be disqualified for selection/appointment, under the rules.

(i) to (iv) not applicable.

(v) A person who has been convicted for any offence in any Court of law.

(vi) A person who is involved in an offence involving moral turpitude.

A perusal of the aforesaid provision of notification goes to show that the order cancelling the provisional selection of the petitioner does not fall under said sub clause (v) of Clause 25, since the petitioner has not been convicted under any

¹ 2015 LawSuit (Hyd) 53

offence by any Court of law. Petitioner's provisional selection was cancelled on the ground that the case is pending trial in PRC No.11 of 2015, as such, sub-clause (vi) of the Clause 25 of the notification has no application to the facts of the case. When the disqualification is alleged in the impugned order, is not falling in any of the sub-clauses of Clause 25 of the Notification as such, provisional selection of the petitioner cannot be cancelled. More so, in similar circumstances, this Court has interpreted the said clause in **Chairman and others v. B.Lokeswaraiah and another (supra)**, wherein it is held as follows:

"6. The 1st petitioner issued notification in R.C.No. 927/R&T/Rect.2/2011 dated 31-10-2011 specifying number of vacancies, pro forma of application, eligibility conditions, tests prescribed for recruitment and other necessary details but the notification did not disclose any such disqualification for being appointed as SCTPCCM. Clause No. 7 of the notification prescribed necessary eligibility for post code Nos. 21 to 28. None of the eligibility conditions for post code No. 21 disclosed that involving in any criminal case is a disqualification for being appointed. It is not even the case of the petitioners that involving in criminal case is a disqualification as per the notification but the specific case of the petitioners is that, as per Rule 3 (F) of the Rules of 1999 and Rule 12 (1) (a) (ii) of the Rules of 1996, the 1st respondent is disqualified for being appointed as SCTPCCM. For brevity, Rule 12 (1) (a) (ii) of the Rules of 1996 is extracted hereunder for better appreciation:

"No person shall be eligible for appointment to any service by direct recruitment unless he satisfied the selection authority as well as the appointing authority that his character and antecedents are such as to qualify him for such service."

But, the Rule did not disclose any bar for being appointed as a civil servant in any department due to involvement in any criminal case. However, much reliance is placed on the said Rule by learned Government Pleader. On close analysis of the Rule, it is evident that character and antecedents have to be taken into consideration to qualify him for appointment as a civil servant but what the requirements are not known even according to the Rule.

9. Learned Government Pleader for Services (A.P.) further contended that the 1st respondent is disqualified in view of Rule 3 (F) of the Rules of 1999, issued in G.O.Ms.No.97 of Home (Legal-II) Department dated 01-05-2006 in continuation of G.O.Ms.No.315

dated 13-10-1999, and, in view of Rule 12 (1) (a) (ii) of the Rules of 1996, no person shall be eligible for appointment to any service by direct recruitment unless his/her character and antecedents are such as to qualify him/her for such service. A person, who involved in an offence involving moral turpitude, is disqualified for appointment. Admittedly, the 1st respondent involved in criminal case, tried by the Sessions Court but found not guilty. The Sessions Court recorded honourable acquittal of the 1st respondent. An identical question came up for consideration before Madras High Court in D.Mahadevan Vs. The Director General of Police, 2008 4 MadLJ 88, wherein it was held that

"If acquittal of any accused is honourable acquittal then he shall not be debarred from any Government job on basis of previous involvement in crime."

In the facts of the above judgment also, the Government of Tamil Nadu amended the rules disqualifying a candidate appearing for recruitment when he involved in any criminal case but the High Court of Madras did not accept the said contention and held that it is a disqualification. Persuaded by the principle laid down in the above judgment, the 1st respondent herein cannot be disqualified for being appointed for the post of SCTPCCM.

11. The 1st respondent is denied appointment only due to his involvement in criminal case but not on the antecedents report submitted by Intelligence Department. Therefore, mere involvement in criminal case is not a ground to disqualify him, more particularly when he is acquitted honourably by the Sessions Court. In concurrence with the submissions of learned counsel for the 1st respondent and taking into consideration of the present changing circumstances in a probable perspective, implication of innocent persons in criminal cases cannot be ruled out, more particularly in faction areas like Rayalaseema. The Tribunal, therefore, rightly concluded that there is every possibility of falsely implicating innocents and, when the 1st respondent was found not guilty and acquitted for the grave charges, he cannot be disqualified."

Learned Assistant Government Pleader for submits that in the aforesaid mentioned case, the petitioners therein were acquitted in criminal case, but in the present case, the case is pending against the petitioner. In the aforesaid judgment, Hon'ble Division Bench, after considering the similar issue held that mere involvement in a criminal case, does not amounts to disqualification for appointment.

In view of above facts and circumstances, the impugned order, as far as petitioner is concerned, is set aside and the respondent authorities are directed to take

further action for appointment of the petitioner, in accordance with the rules in force.

Accordingly, this writ petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

A.RAJASHEKER REDDY,J

23-08-2017
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27461 OF 2017



Date: 23.08.2017

kvs

