

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No. 30762 OF 2017

Between:

P.Neelavathi

... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Home Department, A.P. Secretariat,
Velagapudi, Amaravathi,
Guntur District, and others

... Respondents

Date of Order Pronounced : 23-10-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the order? Yes/No

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

+WRIT PETITION No. 30762 OF 2017

%Dated: 23-10-2017

#P.Neelavathi,

W/o M.Madhava, 32 years,

Woman Head Constable, Central Crime Station,

Srikakulam, R/o H.No. 2-176,

Podugu Narayanamma Colony, Srikakulam ... Petitioner

VERSUS

\$The State of Andhra Pradesh,

Rep. by its Principal Secretary,

Home Department, A.P. Secretariat,

Velagapudi, Amaravathi,

Guntur District, and others ... Respondents

!Counsel for the petitioner : Sri K.Narsi Reddy

^Counsel for the respondents : G.P. for Services (A.P.)

<GIST:

>HEAD NOTE:

1. AIR 1990 SC 987

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No. 30762 OF 2017

DATED 23RD OCTOBER, 2017

Between:

P.Neelavathi

... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Home Department, A.P. Secretariat,
Velagapudi, Amaravathi,
Guntur District, and others

... Respondents

Counsel for the petitioner : Sri K.Narsi Reddy

Counsel for the respondents : G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for *certiorari* to quash order dated 04-08-2017 in O.A.No. 1789 of 2017 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'). The petitioner also sought for a consequential direction to the respondents to declare that she is entitled to be deputed for Stipendiary Cadet Trainee Sub Inspector of Police (Civil) (Men & Women) (for short, 'SCTSIP') training on the basis of her valid selection.

2. We have heard Sri K.Narsi Reddy, learned counsel for the petitioner, and learned Government Pleader for Services (A.P.) and perused the record.

3. The petitioner was initially appointed as a Woman Police Constable (Civil) in Srikakulam District on 17-08-2005. A crime was registered against her *vide* crime No. 53 of 2008 of II Town Police Station, Srikakulam. The said case was taken cognizance as C.C.No. 322 of 2008 for the offence under Section 324 read with Section 34 of the Indian Penal Code (for short, 'I.P.C.') on the file of the Court of Special Judicial Magistrate of I Class for Prohibition and Excise Offences, Srikakulam (for short, 'the criminal Court'). The criminal

Court found the petitioner, who was accused No. 2, guilty of the offence under Section 324 I.P.C. and accordingly convicted her under Section 248 (2) of the Code of Criminal Procedure. However, having regard to the age of the petitioner and the other two accused, who were convicted for the offence under Section 323 I.P.C, they were ordered to be released under Section 4 of the Probation of Offenders Act, 1958 (for short, 'the Act'), on their executing a bond each for Rs.5,000/- with two sureties for the like sum. A further direction was also issued to keep them under the supervision of P.Tirupathirao, District Probation Officer, Srikakulam, for a period of one year and that in the meantime, the accused shall keep good conduct and behaviour. It appears that simultaneous with the criminal case, departmental proceedings were also initiated by framing a charge on 24-08-2011 which reads as under:

"She exhibited gross mis-conduct by involving as an accused in Crime No. 53/2008 U/s.324 r/w. 34 IPC of Srikakulam II Town P.S."

After dismissal of the criminal case, the Superintendent of Police, Srikakulam, issued proceedings *vide* C.No. 60/P.R./2011 dated 11-01-2012, whereby he dropped further action. A perusal of these proceedings shows that the disciplinary authority has taken into

consideration the judgment of the criminal Court releasing her under the Act. After closing of the departmental proceedings, the petitioner was promoted as Woman Head Constable (Civil) on 15-11-2013 and has presently been working in Central Crime Station, Srikakulam.

4. Respondent No. 3 issued notification dated 17-09-2016 inviting applications from eligible women candidates for recruitment for filling up certain posts including SCTSIP. The petitioner, who belongs to Scheduled Caste category, applied for and she cleared Preliminary Written Test, Physical Measurements Test/Physical Efficiency Test and also final Written Test and Medical Test. In pursuance of her provisional selection, *vide* Memo dated 28-06-2017, respondent No. 4 deputed the provisionally selected candidates for training. However, he has not included the name of the petitioner in the list of the candidates sent for training. When the petitioner approached respondent No. 3 with a representation on 30-06-2017, the latter informed her that as she was an accused in C.C.No. 322 of 2008 and convicted, she is disqualified for being appointed to the post of SCTSIP. Assailing the said action, the petitioner filed O.A.No. 1789 of 2017 before the Tribunal.

5. Respondent No. 3 filed a counter affidavit in the O.A., wherein he *inter alia* averred that as per Rule 25 (v) of the Notification dated 17-09-2016, a person who has been convicted for any offence in any Court of law shall be disqualified for selection/appointment. He also relied on Rule 3 (G) (v) of the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules, 1999 (for short, 'the Rules'), notified *vide* G.O.Ms.No. 315 dated 13-10-1999 as amended by G.O.Ms.No. 97 dated 01-05-2006 which envisaged disqualification for appointment of a person convicted of an offence. Accepting the pleas of the respondents that on account of her conviction the petitioner incurred disqualification, the Tribunal has dismissed the O.A. Aggrieved by such dismissal, the petitioner filed this Writ Petition.

6. The sheetanchor of the petitioner's case is that under Section 12 of the Act, if an accused is found guilty of an offence and dealt with under the provisions of Section 3 or 4 thereof, he/she shall not suffer disqualification if any attaching to a conviction under such law. Learned counsel for the petitioner laid strong emphasis on this provision and submitted that both the respondents as well as the Tribunal completely overlooked this provision. Learned Government Pleader has strongly relied on the judgment of the

Supreme Court in *Union of India and others Vs. Bakshi Ram*¹ in support of her submission that in spite of Section 12 of the Act, the petitioner is not entitled for appointment as SCTSIP.

7. We have carefully considered the aforementioned respective submissions of learned counsel for both parties. It is not in dispute that the criminal Court, while finding the petitioner guilty of the offence under Section 324 I.P.C., released her under Section 4 of the Act. Section 12 of the Act reads as under:

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law." (Emphasis added)

A plain reading of this provision would leave us in no doubt that if a person is convicted and released under the provisions of Section 3 or 4 of the Act, he would be freed from disqualification attaching to a conviction of an offence. The phrase "under such law" in Section 12 of the Act, in our understanding, is referable to the law which envisaged such disqualification upon a person's conviction. As noted

¹ AIR 1990 SC 987

hereinbefore, the respondents have relied upon Rule 3 (G) (v) of the Rules which reads as under:

"(G) Disqualification for appointment: The candidates falling under the following categories shall be disqualified for appointment, under these rules:

- (i)*
- (ii)*
- (iii)*
- (iv)*
- (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.*

As could be seen from the aforementioned provision, a disqualification has been attached for being appointed to any post covered by the aforementioned Rules if he/she has been convicted for any offence in any Court of law. Therefore, the said Rules fall under the phrase "under such law" in Section 12 of the Act. Section 12 thus removes any such disqualification in favour of a person who was convicted but dealt with under Section 3 or 4 of the Act. The case of the petitioner precisely falls within the contours of Section 12 of the Act and by operation of the said provision, the disqualification under Rule 3 (G) (v) of the Rules does not affect the petitioner.

8. As regards the judgment of the Supreme Court in ***Bakshi Ram*** (*supra*), the said case pertains to an employee dismissed from service

following her conviction under Section 10 of the Central Reserve Police Force Act. However, she sought for reinstatement into service as she was released under Section 4 of the Act. In that context, the Supreme Court in para No. 13 held as under:

"Section 12 is thus clear ad it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to stage that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained."

It is noticeable from the above reproduced para that the Supreme Court has drawn a distinction between the case of a person seeking appointment to any office or election to any authority or body and a person seeking reinstatement into service after his dismissal from service. In the former case, the Supreme Court held that disqualification under Section 12 of the Act stands removed and the

convicted person released under the Act is entitled for appointment while in the latter case, the said provision would not come to the aid of a person for reinstatement. With due respect, while such a distinction may not flow from Section 12 of the Act, for the present case, it is not necessary for us to dwell into the latter situation because the petitioner is only seeking her appointment as SCTSIP based on the provisions of Section 12 of the Act and her case is therefore amply supported by the judgment of the Supreme Court in ***Bakshi Ram*** (*supra*).

9. Another interesting aspect which is quite apparent in this case is despite the petitioner's conviction, departmental proceedings initiated against her were dropped following her release under the provisions of the Act and the petitioner was even promoted as Head Constable thereafter. We are at a loss to know, if her conviction did not come in her way of being promoted as Head Constable and continuing as such in the department, how would it disqualify her for being appointed as SCTSIP?

10. For the aforementioned reasons, the action of the respondents in not sending the petitioner for training in pursuance of her

selection as SCTSIP is unsustainable. Equally the impugned order of the Tribunal cannot also be sustained. Both the said orders are accordingly set aside and the Writ Petition is allowed as prayed for.

11. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 38350 of 2017 shall stand closed as infructuous.

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

Date: 23-10-2017.

Note:

L.R. Copies to be marked.

B/O

JSK

