

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No. 182 of 2018

ORAL ORDER: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, appellants have challenged order dated 23.08.2017 passed by learned single Judge of this Court in W.P.No.27461 of 2017.

2. Respondent herein filed aforesaid writ petition seeking mandamus to declare the action of 3rd appellant in issuing the impugned proceedings in Rc.No.67/Rectt/Genl.1/2017 dated 03.07.2017 wherein the provisional selection of the respondent for the post of SCTPC AR (Men) was cancelled on the ground that a case is pending trial in P.R.C.No.11 of 2015 in Crime No.31 of 2015 registered for the offences punishable under Sections 324, 498-A of I.P.C. and Section 4 of the Dowry Prohibition Act on the file of the Women P.S. of Nalgonda District. However, after investigation, charge sheet is filed for the offences punishable under Sections 307, 498-A of I.P.C. and Section 4 of the Dowry Prohibition Act.

3. Learned counsel appearing on behalf of the appellants submits that the respondent intends to join a disciplined force wherein a person with criminal background is not eligible for appointment, and in the present case, a case was registered against the respondent for the offences mentioned above. Thus, the order passed by the learned single Judge in W.P.No.27461 of 2017 deserves to be set aside.

4. In view of the submission made by the counsel for the appellants, it is relevant to discuss Clause 25 (v) of the Notification dated 31.12.2015 which reads as under:

*“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.”

5. The provisions of aforesaid Notification establishes that the order cancelling the provisional selection of the respondent does not fall under sub-clause (v) of Clause 25, since the respondent has not been convicted for any offence by any Court of law. The provisional selection of the respondent was cancelled on the ground that a case is pending trial in P.R.C.No.11 of 2015, as such, sub-clause (v) of Clause 25 of the Notification has no application to the facts of the case. When the disqualification alleged in the impugned order is not falling within the ambit of any of the sub-clauses of Clause 25 of the Notification, the provisional selection of the respondent could not have been cancelled.

6. Similar issue came before this Court in the case of **Chairman and others Vs. B. Lokeswaraiiah and another** wherein it is held as under:

“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 Taminadu 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.”

7. At this juncture, the counsel for the appellants argued that in the aforesaid case, the writ petitioner therein was acquitted in a criminal case. However, in the present case, a case is pending against the respondent.

8. On perusal of the aforesaid judgment, this Court held that mere involvement in a criminal case does not amount to disqualification for appointment.

9. Admittedly, there is a family dispute between the respondent and his wife, due to which, the aforesaid case was registered against the respondent. This type of case does not come under the moral turpitude as per sub-clause (vi) of Clause 25 and therefore the respondent cannot be denied the appointment. In fact, very honestly, the respondent disclosed that there is a case pending against him. In our considered opinion, that will not come in the way of appointment of the respondent.

10. In view of the above, we find no merit in the present appeal and the same is accordingly dismissed.

Consequently, miscellaneous applications if any pending in the appeal shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

5th June, 2018
cbs



THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
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W.A.No.182 of 2018
(dismissed)

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