

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

W.P. No. 7725 of 2019

Date: 09.12.2019

Between:

Kode Sanjay Kumar

... Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary,
Home Department,
Secretariat Buildings,
Hyderabad, and others.

... Respondents

Counsel for the petitioner : Ms. K. Kiran Mayee

Counsel for the respondent No.2 : Mr. M.V. Rama Rao

The Court made the following:

ORDER: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

The petitioner is aggrieved by the order dated 15.04.2014, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the learned Tribunal, while relying on its earlier decision in O.A.No.3048 of 2011, dated 10.04.2014, has dismissed the O.A. filed by the petitioner.

Briefly the facts of the case are that on 30.12.2008, the State Level Police Recruitment Board, Andhra Pradesh, issued a notification for recruitment in the posts of Warders (Male) in the Prisons and Correctional Services Department. Since the petitioner was hopeful of the selection, he applied for the said post. He successfully completed the physical measurement test, and the P.E.T. performance. He was called for interview *vide* Memo dated 07.09.2010. Consequently, he appeared and cleared the interview on 30.09.2010. Subsequently, he also attended the medical examination on 11.01.2011. However, despite having undergone the selection process, the petitioner was not selected for the said post. Eventually, he discovered that other candidates, who had applied for the said post, were asked to undergo nine months induction training course at the State Institute of Correctional Administration, Hyderabad, with effect from 06.06.2011. Since the petitioner was neither selected, nor directed to undergo the induction training course, he enquired from the department with regard to his non-selection. On such enquiry, he was informed that since

he suppressed the fact that he was involved in Crime No.64 of 2007 registered at Munagala Police Station, Nalgonda District, for the offences under Sections 376 r/w 109, 302, 323 and 506 I.P.C. and was shown as accused No.5 in the said case, he could not be selected for the said post. Since the petitioner was aggrieved by his not being sent to the training programme, he filed O.A., namely O.A.No.3878 of 2011 before the learned Tribunal. However, by order dated 15.04.2014, the said O.A. was dismissed. Hence, this writ petition before this Court.

The learned counsel for the respondent has raised a preliminary objection with regard to the present writ petition *inter alia* on the ground that the impugned order was passed on 15.04.2014, yet the writ petition has not been filed before this Court till 10.04.2019. During this interim period, the learned counsel claims that selections and appointments for the said posts have already been held in 2015 and 2018. Therefore, the third party rights have been created. Hence, in case this petition were to be allowed, it would upset many apple carts. Hence, the present writ petition deserves to be dismissed on the ground of delay and laches.

Secondly, since the petitioner was never appointed on the said post, his very prayer that he should be sent for the induction training course is highly misplaced. According to

the learned counsel, a person who has not been appointed to the said post is not entitled to undergo a training course.

On the other hand, the learned counsel for the petitioner has vehemently argued that although the impugned order was passed in 2014, it was not questioned till 2017, when the petitioner was acquitted in the alleged criminal case. Further, after his acquittal, he had submitted representations on 30.12.2017. Since these representations did not elicit any reaction, it is only in 2019 that the present writ petition was filed. Hence, there is no delay or laches.

Heard the learned counsel on the preliminary objection.

Admittedly, the impugned order was passed on 15.04.2014. Undoubtedly, the present petition has been filed on 10.04.2019 i.e., almost after a delay of five years. Even if the petitioner were acquitted in 2017, and even if he filed his representation to the respondent No.2 in 2017, no explanation has been offered by the petitioner with regard to the silence maintained by him from January, 2018 till 10.04.2019 i.e., almost for a period of one year and four months. Meanwhile, according to the learned counsel for the respondent, in 2015 and 2018, two recruitment processes have been completed.

Most importantly, since the petitioner was never even been selected for the said post, the very prayer of the

petitioner that the respondents should be directed to permit him to undertake the training course is highly misplaced. After all, only those who are appointed on the said post are required to undergo the training course. Since the petitioner was not selected, he could not claim that he has a right to undergo the training course. Therefore, the very prayer made by the petitioner before the learned Tribunal is highly misplaced.

Hence, this petition deserves to be dismissed only on the ground of delay and laches.

Even otherwise, on merit, the petitioner has a rather weak case.

The learned counsel for the petitioner has strenuously contended that in a criminal trial faced by the petitioner, he was charged for the offences under Sections 323 and 506 I.P.C. Hence, these were minor offences. Relying on the case of ***Avtar Singh v. Union of India and others***¹, the learned counsel has pleaded that these minor offences could be ignored by the employer. Hence, the petitioner should have been appointed, and sent to undergo the training course.

On the other hand, the learned counsel for respondent No.2 submits that prior to ***Avtar Singh's case*** (supra), the judgments of the Hon'ble Supreme Court in the cases of

¹ (2016) 8 SCC 471

Delhi Administration through its Chief Secretary and others v. Sushil Kumar², Mehar Singh v. Commissioner of Police, New Delhi³, and Devendra Kumar v. State of Uttaranchal Pradesh⁴ ruled the field. According to these judgments, if the facts reveal that the person is involved in a criminal case, the employer would be justified in rejecting the candidacy of the said person.

In catena of cases, the Hon'ble Supreme Court has opined that a litigant cannot be permitted to sit on the side lines hoping that a judgment in his/her favour would be pronounced. And once, a judgment is pronounced in his/her favour, to approach the Court of law. Therefore, according to the learned counsel for respondent No.2, the petitioner cannot be permitted to avail the benefit of ***Avtar Singh's case*** (supra).

The very issue whether the charges against the petitioner were of minor offences, or not is an irrelevant issue. For, the petitioner has never even been appointed. Merely because the petitioner has cleared the physical measurement test, and the P.E.T. performance, and the interview, he would not be entitled to an appointment by way of right. After all, a person is appointed after looking at his eligibility and "suitability". Merely by undergoing the selection process, a

² (1996) 11 SCC 605

³ (2013) 7 SCC 685

⁴ (2013) 9 SCC 363

right of appointment cannot be claimed. Therefore, this Court would not even go into the issue whether the petitioner has suppressed the relevant facts from the respondent No.2 or not.

For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall also stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 09.12.2019
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