

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 4487 of 2020

Date of Decision: 14.01.2021

Dalbir Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Gursharan Kaur Mann, Advocate
for the petitioners.

Mr. Ayush Sarna, Assistant Advocate
General Punjab for the respondents.

Anil Kshetarpal, J.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner prays for a direction to the respondents to appoint him on the post of Steno-typist.

Some undisputed facts are required to be noticed. The petitioner applied for the post of Steno-typist pursuant to recruitment notice (Annexure P1) issued by the Subordinate Selection Board, Punjab. He appeared in the test and was selected under sports category. Thereafter, in November, 2019, he was directed to join the Police Department, Punjab.

The petitioner has not been permitted to join on the ground that FIR No. 273 dated 03.11.2018 under Section 306 IPC has been registered at Police Station Samrala, Police District Khanna against him.

The aforesaid FIR has been got registered by Dharam Singh complaining that his son has committed suicide due to harassment by his daughter-in-law Smt.Kamaljit Kaur and his in-laws. The petitioner herein is

brother of Smt. Kamaljit Kaur. On completion of the investigation, the police has already presented the final report in the Court and no material to nominate the petitioner as an accused could be found and therefore, he and other co-accused have been placed in column No. 2 of the challan. The only accused against whom the challan has been presented is Smt. Kamaljit Kaur.

The petitioner has been denied appointment only on the ground that the aforesaid FIR is pending. Pursuant to the notice of the writ petition, reply by way of affidavit of Assistant Inspector General of Police, Personnel-3, Punjab has been filed contesting the prayer. The appointment is being opposed only on the ground that the aforesaid FIR is pending and the trial Court can summon the petitioner under Section 311 Cr.P.C. Reliance in this regard has been placed on the instructions dated 05.05.1977 (Annexure R1).

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper book.

The question which arises for consideration is as to whether in the facts and circumstances of the present case, denial of the appointment is sustainable or not. It is not in dispute that as of today, no criminal case is pending against the petitioner. The Investigating Agency has already completed the investigation and found no material to nominate the petitioner as an accused. As far as the stand of the respondents, it may be noted that under Section 311 Cr.P.C., the Court can summon anyone. The power of the Court under Section 311 Cr.P.C. is not confined to the persons placed in column No. 2 of the final report.

Still further, as noticed above, the aforesaid FIR was registered

on account of suicide committed by the petitioner's brother-in-law. Thus, it was *inter se* amongst the family members. Further, as of now, the police did not find any evidence showing his involvement in the alleged crime.

While making appointment, no doubt, the employer is at liberty to verify the character and antecedents of the persons who are proposed to be employed. However, the appointment cannot be denied on arbitrary and non-existent grounds. In such circumstances, it would not be appropriate to assume that any criminal case is pending against the petitioner. On perusal of instructions (Annexure R1), it is apparent that the same are with respect to the disciplinary action which may be taken against the employees. It is nowhere provided in these instructions that a person who has been placed in column No.2 of the challan can be refused appointment.

In view of the aforesaid discussion, the writ petition is allowed. A direction is issued to the respondents to consider the petitioner for appointment on the post of Steno-typist. The appointment shall not be refused on account of pendency of FIR No. 273 dated 03.11.2018.

(Anil Kshetarpal)
Judge

January 14, 2021
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No