

236 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-1827-2019

Date of Decision: 31.10.2022

Mandeep Kaur

..... Petitioner

Versus

Canara Bank and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Birender Singh Rana, Senior Advocate, with
 Mr.Amit Khatkar, Advocate,
 for the petitioner.

 Mr. Rakesh Gupta, Advocate,
 for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned order dated 10.04.2018 (Annexure P-8) and order/communication dated 17.10.2018 (Annexure P-10), whereby offer of appointment issued to the petitioner for the post of Probationary Officer has been cancelled; along with certain other prayers.

The facts, as pleaded in the petition, are that the petitioner had applied for the post of Probationary Officer in the respondent-Bank. The petitioner participated in the process of selection and was ultimately selected as per her merit. Thereafter, the petitioner was issued the appointment letter by the respondent-Bank. Accordingly, the petitioner was deputed to the induction training at Gurugram. When the petitioner joined the training, she informed the respondent-Bank that during the period of the process of

selection, a criminal case, i.e. FIR No.83 dated 20.02.2017, under Sections 147, 149, 323, 452 and 506 of the Indian Penal Code at Police Station Thanesar Sadar, District Kurukshetra, was registered; involving the name of the petitioner as well, along with other family members. Then the respondent-Bank had informed the petitioner that the petitioner should get clearance in the said criminal case. Later on, the petitioner was asked to report for training at Lucknow. However, the petitioner could not join because earlier the respondent-Bank had told her to get clearance in the criminal case, but the criminal case was still pending at that time. However, the same has now been quashed by this Court, vide order dated 20.07.2022 passed in **CRM-M-27571-2022 (Bali Ram Hari and others Vs. State of Haryana and others)**. In the meantime, the petitioner had filed CWP-28038-2017 which was disposed of by directing the respondents to take a decision on the representation of the petitioner. Vide the impugned order dated 17.10.2018 (Annexure P-10), the respondents have denied the appointment to the petitioner on the ground that the criminal case against the petitioner has not attained finality and also relying upon Clause 9 of the appointment letter issued to the petitioner; which stipulated that the appointment was subject to satisfactory report regarding her character and antecedents from the Police Authorities and non-pendency of any criminal case/prosecution against her. The said clause also provided that her conviction, though released on probation and the compounding of offence shall also be treated as report adverse to her. Therefore, in essence, the petitioner has been denied to joining on the post; on the ground of pendency

of the criminal case without recognizing the fact that the case against the petitioner already stands quashed.

Arguing the case, the learned Senior counsel for the petitioner has submitted that the action of the respondent-Bank is totally baseless. When the petitioner applied for the job, there was no criminal case registered or pending against her. It was during the period of the process that a false case had come into being involving the name of the petitioner as well, along with her entire family. Even that case stands quashed by this Court. Therefore, there was no basis left for the respondents to deny the appointment to the petitioner. Learned Senior counsel for the petitioner has relied upon a judgment rendered by Hon'ble the Supreme Court in the case of **Avtar Singh Vs. Union of India and others, 2016(3) S.C.T. 672**. Hence, it is submitted that the petitioner is entitled to the appointment to the post of Probationary Officer along with all consequential benefits. The writ petition deserves to be allowed.

On the other hand, learned counsel for the respondents has submitted that the petitioner, undisputedly, was involved in a criminal case. The appointment letter issued to the petitioner specifically contained a stipulation that any pendency of the criminal case or conviction or compounding of the offence would be taken as adverse to the petitioner; and she will not be entitled to be appointed to the post of Probationary Officer. Therefore, the respondents have rightly denied appointment to the petitioner in view of the above-said clause in the appointment letter. Learned counsel has further submitted that mere selection does not confer any right upon a

candidate to be appointed. In any case, the selection was subject to the satisfactory report regarding character and antecedents on the part of the petitioner. Hence, the respondents have rightly declined the appointment to the petitioner. The petition deserves to be dismissed.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned Senior counsel for the petitioner. Undisputedly, there was no FIR or criminal case registered or pending against the petitioner when she applied for the post of Probationary Officer and when she participated in the process. It is only during the process of the selection that an FIR came into being. The registration of the FIR was also disclosed by the petitioner to the respondents on the first available opportunity. Therefore, it is not even the case of the respondents that the petitioner had concealed the registration of pendency of a criminal case against her. Moreover, the case already stands quashed by the order of this Court. Hence, there is absolutely no criminal case pending against the petitioner as on the date when the appointment is declined to the petitioner.

So far as the mere registration or pendency of a criminal case against the petitioner, is concerned, needless to say that FIR is merely a report regarding an alleged incident which may or may not involve commission of some offence. Therefore, mere factum of the receipt of first information by the police cannot be raised to the level of a fact rendering a candidate ineligible for the public appointment. A person is to be presumed to be innocent till proved otherwise upon a trial conducted as per the law. This presumption of innocence cannot be eclipsed in any other collateral

process or for any other purpose. Reading anything adverse to a person only for registration of an FIR is nothing but a systemic bias based upon a negativism arising from the frustration due to the facts that the criminal cases remain pending for years together and the courts are not in a position to take the trial to a logical end within reasonable time. Hence, a convenient method has been devised to deny benefits to citizen by putting factum of registration of FIR against him in the forefront. In this way, an irrelevant fact is made a ground to deny to the citizen right to equality guaranteed by Article 14 and Article 16 of the Constitution of India. This approach is sworn enemy of the rule of law, and thus has to be disapproved. Therefore, mere registration of a criminal case against the candidate can never be a ground for denying the rights of such a candidate to participate in the process and to secure a public appointment in his/her favour. Moreover, even the said FIR now stands quashed. Therefore, the very basis on which the action of the respondents was based, has been extinguished by the due process of law. Therefore, the eclipse cast upon the rights of the petitioner, even if so perceived by the respondents, though without any basis, already stands removed. The reliance of the learned counsel for the respondents upon the terms of appointment letter is totally irrelevant and non-sustainable. It is not even in dispute that there is no rule/regulation applicable to the respondents which prohibits the appointment of a candidate merely on registration of the criminal case. Therefore, induction of a term in the appointment letter; to the effect that if a criminal case is registered then the appointment would be denied, would be totally without any legal

sanction. The respondents cannot introduce a condition in terms of the appointment which is not supported by any statutory provision; and it also goes against the right to equality of the candidate to participate in the process of selection and to secure a public appointment as per his/her merit. Such a condition is an artificial device created by the respondents; which militates against the fundamental rights of the petitioner and against more than one jurisprudential principles. Therefore, the same deserves to be deprecated with the contempt it deserves.

In view of the above, the impugned order/action of the respondents is quashed and the writ petition is allowed. The respondents are directed to issue appointment letter to the petitioner, effective from the date the candidate immediately lower to her in the merit of selection was appointed. The petitioner shall also be, accordingly, entitled to all service benefits including seniority and pay fixation on notional basis. However, she will not be entitled to arrears of salary upto the date she actually joins. However, this denial of arrears shall not be taken as adverse to the petitioner for any other purpose whatsoever; or for the purpose of grant of any other benefits, including the pensionary benefits at the end of her tenure. The respondents are directed to issue the necessary appointment letter to the petitioner within a period of two months from the date of receipt of the certified copy of this order.

(RAJBIR SEHRAWAT)
JUDGE

31.10.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No