

Dd 44 12.07.2023
(ML)

WP.ST 105 of 2016

***The State of West Bengal & Ors.
Vs.
Naimuddin Sk. & Anr.***

*Ms. Tuli Sinha, Advocate
... ... For the Petitioner/State*

*Ms. Jharna Biswas,
Ms. Susmita Biswas Chowdhury, Advocates
... ... For the Respondents*

The writ petition is at the behest of the State. An order dated July 1, 2015 passed in OA 48 of 2014 by the West Bengal Administrative Tribunal is under challenge.

By the impugned order, the tribunal passed an order of acquittal in favour of the private respondent. The tribunal opined that the tribunal was bound by an order of acquittal. Considering the entire issue, the tribunal allowed the prayer of the private respondent and allowed him to join his duties.

Learned advocate for the State draws the attention of the Court to the materials on record. She submits that, the private respondent participated in a selection process for the post of constable. He was provisionally selected. The private respondent was asked to report for physical verification. At the time of physical verification it was detected that, the petitioner was not the same person as that of the photographs affixed to the selection documents. Consequently, a criminal case was lodged which resulted in an order of

acquittal. She submits that, the order of acquittal is not a complete discharge of all liabilities of the private respondent. The action of the private respondent entails both criminal and civil liabilities. So far as the criminal liability is concerned, the criminal case resulted in an order of acquittal on the ground of lack of evidence. It cannot be said that, private respondent was discharged honourably from the charges levelled as against him.

Learned advocate for the writ petitioner draws the attention of the Court to the orders passed from time to time by this Hon'ble Court. She submits that, initially an order of stay was granted by this Court. Thereafter, the Court took upon an exercise of comparing the petitioner with the photographs affixed to the selection documents. She refers to an order dated February 18, 2019 in this regard.

Learned advocate appearing for the private respondent draws the attention of the Court to the affidavit-in-opposition filed by her client. She submits that, the photograph appearing in the verification roll was affixed by her client. In aggregate 7 photographs were furnished by her client loosely to the department. According to her, all the candidates participating in the selection process handed over loose photographs which were affixed by the department. Therefore, her client was not responsible with regard to photographs appearing in the other documents apart from verification roll.

Learned advocate appearing for the private respondent submits that the private respondent cannot be visited with double jeopardy. A criminal case was lodged as against the private respondent which resulted in an order of acquittal. She refers to the first

information report which was lodged as against the private respondent. She submits that in the first information report, the allegation as against the private respondent was one of forgery and cheating in respect of the documents submitted during the selection process. She submits that the private respondent was acquitted from such charge by the criminal Court. She refers to the judgment of the criminal Court in this regard.

Learned advocate appearing for the private respondent, refers to a message dated October 24, 2007, by which, the private respondent was asked to report for physical verification which the private respondent did. It is thereafter, the criminal case was lodged. She submits that, since the private respondent was provisionally selected, the private respondent should be allowed to join his duties. She submits that no departmental proceeding was initiated as against the private respondent.

The private respondent participated in a selection process. Private respondent was required to submit his photographs in the selection process. In the affidavit-in-opposition filed in the present writ petition, private respondent states on oath that he made over loose 7 photographs to the department. Private respondent acknowledges that the photograph on the verification roll was affixed was his. The other photographs, according to the private respondent, were loosely made over to the department and that the department affixed the same.

This Hon'ble Court noticed that there was discrepancy between the natural person and the photographs of such natural person found on the documents relating to the selection process.

Consequently, by an order dated February 13, 2019, this Hon'ble Court considered the verification roll in original as filed by the private respondent, as well as registers maintained by the department containing the photographs of the aspirants for the post of constable whose physical efficiency test and interview were taken. A *prima facie* view was returned that the photograph in the verification roll differs substantially from the photographs of the private respondent as pasted on the registers. Consequently, the private respondent was directed to be personally present before the Court.

The writ petition was taken up for consideration on February 18, 2019 thereafter. The private respondent was present in Court in terms of the order dated February 13, 2019. The Court ascertained from the learned counsel appearing for the private respondent as to the veracity of the photographs in the several registers. Learned advocate for the private respondent submitted that, the photographs on the several registers produced by the writ petitioner were not the photographs of the private respondent and that the signatures on such photographs were not that of the private respondent. This was recorded. Going forward, the Court recorded that they looked at the private respondent who was present in Court and by looking at the photographs appearing in such registers, the Court returned a finding that the Court was certain that the photographs pasted at the registers were not that of the private respondent.

This order remains in the records of this writ petition without any challenge being thrown thereto.

We are faced with a situation where, a candidate, participating in the selection process was found by the

Court conclusively not to subscribe his signature on the photographs pasted on several registers and that the photographs pasted on such several registers not to be his.

The criminal case was one of forgery as against the private respondent. It did result in an order of acquittal albeit on the ground of the prosecution failing to produce relevant evidence in support of the charges. It cannot be said that, the private respondent was discharged honourably from the charge in the criminal case.

An action may result into the criminal and civil liabilities. In a criminal trial the evidence adduced is evaluated on the parameter of prove beyond reasonable doubt while in civil trial the evidence is adduced on the parameter of preponderance of probabilities. Question of the private respondent suffering double prejudice in the facts and circumstances of this case does not arise. The documents considered by this Court were apparently not considered by the criminal Court and in any event the result of evaluation can be different given the different parameters for evaluation.

That apart, the larger issue remains one of appointment.

We find from the records that at best, the private respondent was provisionally selected and was asked to report for undergoing physical verification when the anomalies were detected. It cannot be said that, the private respondent was appointed to any post. The process of appointment was ongoing. The private respondent was yet to be appointed to any post.

Consequently, since the private respondent was yet to be appointed to any post, the question of

initiation of a departmental proceeding against the private respondent did not arise.

In such circumstances, since the anomalies in the registers pertaining to the selection process, vis-à-vis the private respondent continues to remain and since there is a conclusive admission of the private respondent that, the signatures on the photographs appearing in the several registers maintained by the selection authority, during the selection process, were not his, we find that the tribunal erred in directing the private respondent to join his duties. As noted above, there was no joining letter for the private respondent to join to any post. The private respondent was yet to be appointed to any post.

In such circumstances, we set aside the impugned order of the tribunal and allow the writ petition.

WP.ST 105 of 2016 is **allowed** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)