



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.219

CWP-24683-2019
Date of Decision: 23.09.2024

Suresh Kumar Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Anurag Goyal, Advocate for the petitioner.

Mr. Harish Rathi, Sr. DAG, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

The issue being decided is whether a selected candidate, who has been convicted for offences not involving moral turpitude and released on probation, can be declined appointment.

2. The petition has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to allow the petitioner join service as Junior Basic Teacher (JBT)/Primary Teacher (PRT) in the Department of Elementary Education on the basis of letter of appointment, dated 30.05.2019, Annexure P-6.

3. Facts of the case in brief are, applications were invited for the post of PRTs (Group-C) in the respondent-Department vide advertisement 2/2012, published on 08.11.2012, Annexure P-1. The petitioner applied in response thereto under BCA category. He was duly selected at merit no.7321-A, and recommended for appointment also. A letter of appointment, dated 30.05.2019, was accordingly issued to him for the post of JBT in the pay scale of ₹9300-34800+4200 grade pay, and was allotted a Government

school in village Phool.



3.1. After issuance of appointment letter, as per requirement, the petitioner filed an affidavit, Annexure P-7, disclosing the pending criminal case against him, and that he stood convicted for offences under Sections 323 and 506(ii) of IPC vide judgment in appeal passed by Additional Sessions Judge, Fatehabad, dated 30.11.2012, titled *Shera Ram and others v. State of Haryana*. Also, that his Criminal Revision Petition challenging the judgment was pending before this Court. Pursuant to the medical examination conducted on 31.05.2019, he was found fit to join service; the medical examination report is appended to the petition as Annexure P-8.

3.2. Accordingly, the petitioner submitted his joining report, dated 03.06.2019, Annexure P-9, to the fourth respondent/Block Education Officer, Ratia, but he was not allowed to join. In these circumstances, the petitioner was forced to file the instant petition.

3.3. During pendency of this petition, the revision petition against his conviction, i.e., CRR No.3880 of 2012, was finally decided, vide judgment dated 19.04.2023, holding that the petitioner-Suresh Kumar alias Bittu, who had undergone more than four months of sentence out of total two years, deserved concession under provisions of the Probation of Offenders Act, 1958. Accordingly, upholding the conviction, he was ordered to be released on probation by reducing the sentence awarded to him to the extent actually undergone.

4. In this factual background, learned counsel for the petitioner has contended that the offences petitioner has been convicted for do not involve moral turpitude; besides, vide final judgment dated 19.04.2023, passed in the Revision Petition, he has been released on probation. Therefore, there is no restrain on appointing him. Reliance in this regard has been placed upon Government Instructions, dated 02.02.1973, Annexure P-11, regarding



“Rehabilitation of ex-convicts released from Jails-question of making them eligible for appointment under Government”, which is to the effect that persons released on probation should not suffer from any disability for obtaining government jobs.

5. *Per contra*, learned State counsel has objected to the petitioner’s prayer by referring to the written statement, which is as under:

Keeping in view of the above facts that the petitioner i.e. Suresh Kumar stands convicted for involving in an offence of causing simple hurt and extending threat of criminal intimidation, it becomes crystal clear that the petitioner is not a fit person to be appointed in Govt. Service. Moreover it also depicts there (that) the petitioner is a short tempered person who indulged in the incidence of violence as if there has been any history of cross version of causing injury to him by the opposite party, in that eventually (eventuality), the same would have definitely been mentioned in the present CWP No.24683/2019 but there is no such case. So the department is of the considered opinion that such type of person may not be appointed in the Government job specially for teaching the children. Hence, he cannot be appointed.

Therefore, once the Department found the petitioner was not fit for government service on account of his conviction, he cannot be considered suitable for appointment, and there is nothing wrong in not permitting him to join service.

6. Heard.

7. The undisputed facts on record are, the petitioner was duly selected as PRT in response to the advertisement in question, and was placed

at merit position 7321-A. Despite the letter of appointment, dated



30.05.2019, having been issued, he was not allowed to join service only on account of a pending criminal case wherein he stood convicted for offences under Sections 323 and 506(ii) of IPC. It is also apparent on record that this Court, vide judgment dated 19.04.2023, has ordered the petitioner's release on probation by reducing his sentence while maintaining the conviction. The conviction is for offences of simple hurt and criminal intimidation, which do not constitute moral turpitude, as it does not show wickedness of character, dishonesty, immoral or depraved conduct, etc. by him. Even as per Government Instructions, dated 02.02.1973, offences under Sections 323 and 506(ii) of IPC do not constitute moral turpitude.

8. Further, as per these Instructions the Government has taken the following decision:

2. The State Government have considered this matter accordingly and have taken the following decision-

(i) Persons who are detained under the Borstal Act or after conviction, are released under the Probation of Offenders Act instead of being confined to Jail, should not suffer any disability in respect of obtaining Government service.

(ii) With regard to the employment of ex-convicts on release from jail, a uniform policy will not be possible and each case should be considered on its own merits. The appointing authority should, in such cases make detailed enquiries and satisfy himself fully that the ex-convicts has reformed himself after release from Jail, and nothing adverse about his conduct has come to notice after his conviction, and he is thus suitable for Government service. The enquiries should invariably be made through the Police Department and, if the Police Department consider it necessary to obtain a report from any other department, they should proceed to do so.

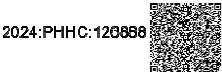
(iii) Ex-convicts who were convicted of offences involving moral turpitude should not however be taken in Government Service.



9. As apparent from para 2.(i) of the Instructions, it has been decided by the Government that the persons released on probation after conviction should not suffer any disability in obtaining jobs, provided the conviction is not for offences involving moral turpitude. Besides, under para 2.(ii), before giving employment the appointing authority is required to satisfy itself of ex-convict's suitability for Government service by making detailed enquiries through Police Department ascertaining that the ex-convict has reformed himself/herself after release from jail, and nothing adverse has come to notice about his/her conduct post-conviction. Even if the petitioner is to be treated as ex-convict, as he was confined to jail, and his case is to be considered under para 2.(ii) of the Instructions, there is nothing on record to indicate even *prima facie* that he has not reformed himself after release from jail or that there is anything adverse about his conduct. Resultantly, he cannot be declared unsuitable for service, as has been done by the respondents while denying appointment to him. Merely because he has been convicted for offences under Sections 323 and 506(ii) of IPC, it cannot be said he is not a fit person to be appointed in service, especially because the offences do not involve moral turpitude, as already discussed. Besides, the Instructions, dated 02.02.1973, do not declare a person unsuitable for government service after conviction for an offence not involving moral turpitude.

10. Further, the respondents' assertion that the petitioner's conviction depicted he was short tempered and indulged in incidence of violence without provocation by the opposite party, and was therefore not fit to be appointed as teacher, is imaginary and deserves rejection. There is no basis to conclude that the petitioner was short tempered, as there is no such finding against him in the judgment of conviction; even if it had been so,

being short tempered is no ground to declare a person unfit for government



service. No Rule, Regulation or Instruction to that effect has been referred to by the respondents. Accordingly, there is no legal basis to prevent him from joining service.

11. For the reasons aforementioned, the petition is allowed. The respondents are directed to permit the petitioner join service as PRT/JBT in terms of the letter of appointment, dated 30.05.2019, and give all service benefits notionally from the date other selected candidates pursuant to the selection in question joined, and actually from the date of joining service. These directions are to be carried out within two weeks of receiving a certified copy of this order. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

23.09.2024
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No