



[2024:RJ-JD:48477]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 13198/2024

Amrit Pal S/o Shri Harbans Singh, Aged About 37 Years, R/o
Ward No. 4, Village Goluwala Niwadan, Pilibanga, District
Hanumangarh (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary,
Department Of Rural Development And Panchayati Raj,
Government Of Rajasthan, Secretariat, Jaipur (Raj.).
2. Principal Secretary, Department Of Personnel, Main
Building, Secretariat, Jaipur (Raj.).
3. The Chief Executive Officer, Zila Parishad Bikaner,
District Bikaner (Raj.).

----Respondents

For Petitioner(s) : Mr. Surendra Thanvi.

For Respondent(s) : Mr. Kuldeep Vaishnav, Govt. Counsel.

**HON'BLE MR. JUSTICE ARUN MONGA
Judgment (Oral)****27/11/2024**

1. The petitioner herein is before this Court seeking quashing of an order dated 08.03.2024 (Annex.8) and a report dated 01.03.2024 (Annex.11), and for issuance of directions to the respondents to grant a suitable appointment forthwith by declaring the circular dated 04.12.2019 (Annex.9) illegal to the extent of debarring the petitioner from seeking appointment in government service.

2. The facts leading to this writ petition are summarized as follows:-

2.1. The petitioner, being eligible, applied and participated in the recruitment process for the post of Lower Division Clerk in the year 2013. However, the selection process was delayed for years



and finally on 04.10.2022, a provisional list was issued. The petitioner was shown at serial number 68.

2.2. During the document verification, the petitioner informed about pending criminal case under Sections 498A, 406, 323, and 494 of the IPC arising out of matrimonial dispute with his wife. After the verification, petitioner was declared ineligible, citing the pending criminal case under Sections 498A and 323 based on a State Government circular dated 04.12.2019. The petitioner challenged this decision by filing S.B. Civil Writ Petition No. 17771/2022, which was allowed by the Court. The Court directed the respondent to form a committee and reconsider the petitioner's case, considering the judgment in Avtar Singh v. Union of India.

2.3. Following the Court's order, the petitioner's candidature was rejected again, citing the same circular without providing a justified reason.

2.4. Furthermore, upon reviewing the committee's report, the petitioner discovered that the committee was not constituted as per the Court's direction. And, the committee did not even consider the Avtar Singh's judgment. After receiving the committee's report on 25.07.2024, the petitioner has filed this writ petition without delay.

3. In the aforesaid backdrop, I have heard learned counsel for the petitioner as well as learned counsel for the respondents and have gone through the case file.

4. It transpires that despite so many opportunities given in the past on 14.08.2024, 11.09.2024, 25.09.2024 and 16.10.2024, no



reply has been filed. In fact, the respondents were cautioned vide order dated 06.11.2024 passed by this Court, that in case, reply is not filed before the next date of hearing, cost of Rs. 25,000/- will be imposed. The said order dated 06.11.2024 being apposite is reproduced herein below:-

“Issue notice.

Mr. Kuldeep Vaishnav, appearing on behalf of Ms. Neelam Sharma, AGC, accepts notice on behalf of the respondents. Service is thus dispensed with.

Post it on 21.11.2022, to be shown in the supplementary cause-list.

It transpires that the matter has been taken up as many as 9 times in past and despite directions issued by this Court, reply has not been filed.

Last opportunity is granted to file reply. If the same is not filed before next date, it shall then be entertained on payment of cost of Rs. 25,000/-.”

Apropos, no reply was filed and further opportunity for same is being sought yet again. I do not find any justification for granting further time in view of order dated 06.11.2024, *ibid*. Right to file the reply is, therefore, closed.

5. Learned counsel for the petitioner contends that this second round of litigation before this Court seeking appointment on the post of Lower Division Clerk, on which he has otherwise been eligible and meritorious as per the select list. However, the pendency of a matrimonial dispute between him and his wife has resulted in a criminal trial under Section 498-A read with Section 323 of the Indian Penal Code, pursuant to an FIR No. 0123 dated 04.06.2020 lodged by her after 9 years of marriage. Petitioner has been non suited only on that ground, which not tenable in law, he would urge.

6. It so transpires that vide an earlier order dated 25.04.2023 passed by the co-ordinate Bench of this Court in SBCWP No.



17771/2022, the respondents were directed to re-consider the case of the petitioner by passing a speaking order.

7. Prima facie, having seen the impugned order dated 08.03.2024 which is being termed as a speaking order, it is anything but speaking. It does not clarify as to how the nature of pending criminal trial in any manner impeached the duties to be performed by the petitioner and/or how does it amount to a moral turpitude without there being any finding of facts and or criminal culpability. At best, the petitioner is merely an under trial and his fate is yet to be governed depending on the outcome of the trial. Furthermore, possibility of a compromise between husband and wife cannot be ruled out at subsequent stage. Be that as it may, mere break down of a marriage cannot be treated as if the husband is the sole erring party just because his wife has chosen to press criminal charges against him, which are yet to be proved.

8. Learned counsel for the petitioner also rightly relies on a co-ordinate Bench judgment rendered in Mukesh Kumar vs. State of Rajasthan & Ors¹, wherein, it was held that on account of pendency of criminal case the petitioner cannot be denied appointment. In the case of Mukesh Kumar (supra), the coordinate bench of this court after considering various aspects of the matter laid down as under:-

“15. Viewed in light of the above factual scenario, it is evident that the Rules not post any hurdle against the petitioner’s right to be appointed in the police services. At best, a rider can be imposed in the petitioner’s appointment order that in the event of conviction in the above criminal case, he may be liable to be terminated from service without holding

¹ 2016 (3) WLC 345



any enquiry and an undertaking in this regard can be procured from him in this regard.

16. *In view of the aforesaid discussion, the writ petition deserves to be and is hereby allowed. The respondents are directed to offer appointment to the petitioner on the post of Sub Inspector of Police in the questioned selection process ignoring the pendency of the above criminal case against the petitioner. However, the appointment order shall bear a condition that the petitioner's services may be terminated in the event of his conviction and he shall also submit an undertaking to this effect before joining to the post. Since the petitioner was gainfully employed as a Teacher during the intervening period, he is not entitled to any consequential benefits. However, the respondents shall grant him all notional services benefits from the date of the order Annex.6 dated 22.12.2009."*

9. I am in respectful agreement with the views expressed in the judgment *ibid* and see no reason why the benefits thereof be not given to the petitioner.

10. I am unable to convince myself with the insipidity of the argument adopted by the learned counsel for respondents that since the charge-sheet has been filed, therefore, petitioner does not deserve to be appointed. Despite allegations under IPC Sections 498A, 406, 323, and 494, the petitioner is presumed innocent until proven guilty. The circular dated 04.12.2019 and the impugned order unjustly bar his appointment based solely on pending criminal charges. The action of respondents infringes upon the petitioner's rights under Articles 14 and 21 of the Constitution, denying equal treatment and personal liberty without a fair trial. Moreover, failure to apply the Supreme Court's guidelines in *Avtar Singh* (Supra) regarding pending criminal cases indicates nothing else but a flawed decision-making on the part of the respondents.



11. The impugned order (08.03.2024) and committee report (01.03.2024) rejecting the petitioner's candidature for the Lower Division Clerk post are thus arbitrary, unreasonable, and lack proper consideration, necessitating judicial intervention herein to quash the same. It is accordingly so ordered. Pertinently, at the time of the job advertisement, no trial proceedings were pending. The respondent's delay deprived the petitioner of a rightful appointment. In any case, pending criminal trial, unless of course proven guilty by way of conviction, cannot bar appointments.

12. For the reasons recorded in the preceding part of the order, the petition is allowed. By way of interim order dated 09.10.2015 one post was directed to be kept vacant for the petitioner in the selection process. The respondents are directed to issue appointment letter to the petitioner, upon his approaching them with web print of instant order, within a period of 30 days thereof, which shall be subject to the final outcome of the pending criminal trial. The petitioner shall also give an undertaking that in case, he is convicted in the criminal trial, he shall not claim any equity on the basis of the instant order.

(ARUN MONGA),J

275-AK Chouhan/Mohan

whether fit for reporting : Yes / No