

2022 LiveLaw (SC) 1008

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.**

December 02, 2022

CIVIL APPEAL NOS. 8934-8935 OF 2022 (@ SPECIAL LEAVE PETITION (C) NOS. 14571-72 OF 2022)

Pramod Singh Kirar versus State of Madhya Pradesh & Ors.

Public Employment - Rejection of candidature on the ground that he was tried for the offence under Section 498A - The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court - There was no suppression of material fact - Candidate could not have been denied the appointment solely on the aforesaid ground.

For Appellant(s) Mr. S.K. Gangele, Sr. Adv. Ms. Priya Sharma, Adv. Mr. Prathvi Raj Chauhan, Adv. Dr. Satish Chandra, Adv. Ms. Shashi Kiran, AOR

For Respondent(s) Ms. Ankita Chaudhry, Dy.AG Mr. Ankit Mishra, Adv. Mr. Sunny Choudhry, Adv. Mr. Shreyas Balaji, Adv.

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with impugned judgment(s) and order(s) dated 10.02.2020 and 04.02.2022 passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 723/2018 and Review Petition No. 672/2021 respectively, by which, the Division Bench of the High Court has allowed the said appeal preferred by the State and has quashed and set aside the judgment and order passed by the learned Single Judge allowing Writ Petition No. 18388/2014 and setting aside the order cancelling the candidature of the appellant herein as Police Constable, the original writ petitioner has preferred the present appeals.

2. Appellant herein applied for the post of Police Constable. In the verification form he disclosed of his being tried for an offence under Section 498A of the IPC. However, as he was involved in the criminal case earlier, though he was acquitted, his candidature was rejected by order dated 16.12.2014. The appellant filed the writ petition before the High Court against the cancellation of his selection/candidature and non-appointment. By judgment and order dated 21.08.2017 the learned Single Judge allowed Writ Petition No. 18388/2014 and set aside the cancellation of his candidature and non-appointment and directed the State to appoint him as a Police Constable with all consequential benefits including 50% back wages from the date on which other batchmates came to be appointed on the post of Constable.

2.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the State preferred writ appeal before the High Court. By the impugned judgment and order and relying upon some observations made by this Court in the case of Avtar Singh Vs. Union of India & Ors.; (2016) 8 SCC 471 and other decisions, the Division Bench of the High Court has allowed the said appeal and set aside the order passed by the learned Single Judge by observing that if the candidate is found to be involved in a criminal case, even in a case of acquittal and/or even in a case where the employee has made declaration truthfully of a concluded

criminal case the employer still has the right to consider antecedents, it cannot be compelled to appoint the candidate.

2.2 The review petition is dismissed by the High Court.

2.3 Feeling aggrieved and dissatisfied with the judgment(s) and order(s) passed by the High Court, the original writ petitioner has preferred the present appeals.

3. Shri S.K. Gangele, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the Division Bench of the High Court has materially erred in allowing the appeal and quashing and setting aside the wellreasoned judgment and order passed by the learned Single Judge by which the learned Single Judge quashed and set aside the cancellation of candidature and non-appointment of the appellant as Police Constable.

3.1 It is submitted that the Hon'ble Division Bench of the High Court ought to have appreciated the fact that the case against the appellant was not for the serious offence but was for the offence under Section 498A of IPC which was out of a matrimonial dispute.

3.2 It is submitted that the Hon'ble Division Bench of the High Court has not appreciated and considered the fact that the case for the offence under Section 498A of IPC was resulted in acquittal in the year 2006 in view of the settlement between husband and wife and the applications for the post of Constable were invited in the year 2013/2014 . It is submitted that the appellant could not have been punished for whatever has happened before 7-8 years and that too, at that time the appellant was aged about 18 years and pursuing his studies. It is submitted that therefore the appellant could not have been denied the appointment merely on the ground that he was involved in a case for the offence under Section 498A of IPC and that too before 7 years and which resulted into acquittal.

4. Ms. Ankita Chaudhary, learned Dy. AG appearing on behalf of the respondent – State while opposing the present appeals has relied upon the decision of this Court in the case of Avtar Singh (supra) as well as on a recent decision of this Court in the case of Rajasthan Rajya Vidyut Prasaran Nigam Limited and Anr. Vs. Anil Kanwariya; (2021) 10 SCC 136.

4.1 It is submitted that in the aforesaid decision, it is observed and held by this Court that when a candidate/employee is involved in a criminal case it is ultimately for the employer to appoint such a person having criminal antecedents.

5. We have heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that the appellant applied for the post of Constable in the year 2013 and as such was found to be meritorious and was found eligible to be appointed as Constable. In the verification form itself he declared that he was tried for the offence under Section 498 A of IPC earlier. Therefore, as such there was no suppression on the part of the appellant in not disclosing true and correct facts. It is also required to be noted that the appellant came to be acquitted for the offence under Section 498A of IPC vide judgment and order dated 30.10.2006 i.e., 7 years before he applied for the post of Constable. From the judgment and order of acquittal passed by Trial Court it appears that there was a matrimonial dispute which ended in settlement and the original complainant did not support the case of the prosecution

and was declared hostile in view of settlement out of the court and the other prosecution witness(s) examined in the case did not corroborate the prosecution story. Thus, it can be seen that the appellant did not face the prosecution for the other offences of IPC. Therefore, for whatever has happened in the year 2001 and the criminal case for the offence under Section 498A resulted in acquittal in the year 2006, the appellant should not be denied the appointment in the year 2013/2014. The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498A of IPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife).

7. Now so far as the reliance placed upon the decision of this Court in the case of Anil Kanwariya (supra) relied upon by the learned counsel appearing on behalf of the respondent – State is concerned on facts the said decision shall not be applicable. It was a case where the candidate as such suppressed the antecedents and by suppressing the material facts obtained appointment by fraud/misrepresentation and suppression of material fact. In that case the employee was convicted for the offences under Section 343 and 323 of IPC. Therefore, at the time of appointment he was found to be convicted. Therefore, his termination came to be upheld by this Court. In the present case such is not the situation. Neither there was any suppression of material fact on the part of the appellant nor he was convicted for any offence under the IPC. The alleged incident was of the year 2001 which resulted into acquittal in the year 2006 and he applied for the post of Constable in the year 2013/2014.

8. In view of the above and for the reasons stated above, the Division Bench of the High Court has materially erred in denying the appointment to the appellant on the post of Constable and has materially erred in quashing and setting aside the judgment and order passed by the learned Single Judge. However, at the same time, on the principle of no work no pay, the appellant shall be entitled to all the benefits from the date of actual appointment.

9. In view of the above and for the reasons stated above the impugned judgment(s) and order(s) passed by the Division Bench of the High Court is/are quashed and set aside. The judgment and order passed by the learned Single Judge to the extent setting aside the order of cancelling the candidature and non-appointment of the appellant as Constable is hereby restored. The respondent(s) are directed to appoint the appellant to the post of Constable, as otherwise, he was found to be meritorious and eligible for the post of Constable within a period of four weeks from today. However, it is observed that he shall be entitled to all the benefits from the date of actual appointment only. Present appeals are allowed to the aforesaid extent.

No costs.