

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

SWP 44/2019[WP(C) 79/2019]  
CM(266/2019[1/2019])

**Reserved on: 13.2.2023**  
**Pronounced on:03.4.23**

**Amjid Hussain Khan**

... Petitioner/Appellant(s)

Through: Mr. M. M. Khan, Advocate

V/s

**State of J&K and others**

Through: Ms. Asifa Padroo, AAG

**CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**03-04-2023**

1. The petitioner in the instant petition filed under Article 226 of the Constitution implores for the following reliefs:

- i) Writ in the nature of Mandamus, the respondents be directed to consider the list for nomination vide No.Estt/SPO-71/2018/43175 dated: 19/12/2018 forming Annexure-"II" and issue order of appointment regardless of order of conviction contained in Annexure-"II".
- ii) The respondents be further directed to give the benefit of selection from the date conferred upon the co-selectees without any break or deduction accordingly in the interest of justice.

2. The facts those stem out from the petition, on the basis of which the reliefs aforesaid have been prayed for by the petitioner, would reveal that the petitioner had applied for engagement as Special Police Officer (SPO) in district Baramulla in response to an

invitation made by the respondents upon 2000 vacancies of SPOs came to be sanctioned by the government of India in Jammu and Kashmir for the youth living in border district areas namely Jammu, Samba, Kathua, Poonch, Rajouri, Baramulla, Bandipora, Kargil and Leh.

3. The petitioner is stated to have got selected after being subjected to the process of selection by the respondents in district Baramulla figuring at serial 108 of the said select list. It is being stated that after his selection, the petitioner presented himself for joining before the respondents, however, the petitioner was not allowed to join for the reason that the petitioner had been convicted in a criminal case by the court of law.
4. The petitioner states that he was involved in a criminal case registered under sections 279 and 337 RPC in FIR 34 of 2018 police station Boniyar, and without being subjected to any trial, the petitioner as a result of plea bargain came to be convicted under section 279, 337 RPC and was imposed a sentence/simple imprisonment till rising of the court and a fine of Rs.1500/-.

It is being further averred that the petitioner brought this fact to the notice of respondents requesting them to offer him the appointment in question which the respondents is stated to have declined to him owing to the said conviction and sentence resulting into institution of the instant petition.

5. **Objections** to the petition have been filed by the respondents wherein it is being admitted that the petitioner's engagement as

SPO came to be approved vide PHQ J&K letter no. GB/M-32/2016-IV-79764-65 dated 10.12.2018, however it is stated that the said engagement of the petitioner was subject to certain conditions including verification of his character antecedents which verification revealed that the petitioner had been involved in FIR 34 of 2018 under section 279, 337 RPC P/S Boniyar, and had been convicted and sentenced in the aforesaid FIR by the trial court till rising of the court with a fine of Rs.1500/-.

It is being admitted that the engagement order of the petitioner could not be issued owing to his conviction in the criminal case. It is also being admitted that in compliance to the directions passed by this court, the name of the petitioner has been kept intact in the list of selectees. It is, however, being denied that respondents violated any of the provisions of law or else legal or constitutional rights of the petitioner.

**Heard learned counsel for the parties and perused the record.**

6. It is an admitted fact that the petitioner came to be selected as Special Police Officer by the respondents after being subjected to the process of selection in district Baramulla vide PHQ J&K letter no. GB/M-32/2016-IV-79764-65 dated 10.12.2018. It is also admitted that the petitioner was not offered appointment/engagement owing to his conviction and sentence in a criminal case arising out of FIR 34 of 2018.
7. The positive case of the petitioner in the instant petition is that he came to be convicted and sentenced by the trial court in the

aforesaid FIR under the provisions of plea bargain as contained in Chapter XXII-A, Cr. P. C. and consequently the trial court on the consideration of application filed by the petitioner in this regard disposed of the case.

Before proceeding further in the matter it would be significant and relevant to refer to section 265-F of the Cr. P. C. which reads as under:

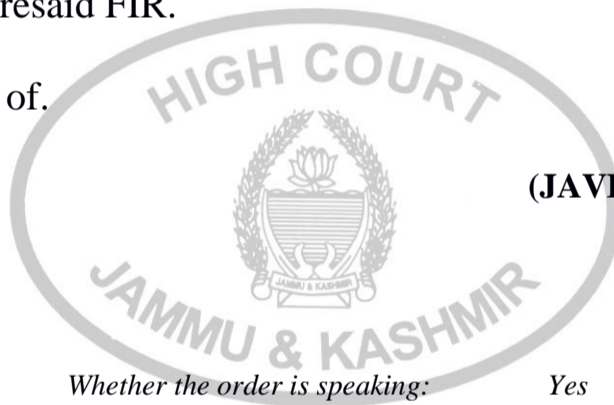
**“265-F: No disability on punishment under this chapter: Notwithstanding anything contained in any law for the time being in force, the punishment imposed under this chapter shall be considered expiatory in nature and no person punished under this chapter shall be liable to any disability under any law for the time being in force on the ground that he has been punished under this chapter.”**

8. A plain reading of the aforesaid provision would manifestly show that the language of the section is self-explanatory and *per se* does not affect the character antecedents of an individual. Admittedly, the offence the petitioner had been convicted of and sentenced, did not otherwise also involve an offence of moral turpitude, corruption or an offence of such nature having an implication on the integrity of the petitioner which would have rendered disabled him from seeking a public employment. The respondents seemingly have not considered the case of the petitioner in its correct and right perspective and have denied him the engagement as Special Police Officer for which the petitioner otherwise had been found eligible and entitled to.

9. In view of the aforesaid position as also the facts and circumstances of the case, the petition succeeds. Accordingly the respondents by issue of a writ of mandamus are commanded to reconsider the case of the petitioner for engagement as Special Police Officer for which he stands selected, notwithstanding his conviction and sentence in FIR 34 of 2018 registered in police station Boniyar, and consequently offer him the same and pay him all consequential benefits which the petitioner would have become entitled to had he not been refused his engagement as Special Police Officer owing to his conviction and sentence under aforesaid FIR.

10. Disposed of.

Srinagar  
03-04-2023  
*N Ahmad*



**(JAVED IQBAL WANI)**  
**JUDGE**

*Whether the order is speaking:* Yes  
*Whether the order is reportable:* Yes/No