



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

S.B. Civil Writ Petition No. 9143/2021

Jitendra Meena S/o Kailash Chand Meena, Aged About 21 Years,
Resident Of Vpo- Neendrda, Tehsil And District Sawaimadhopur
(Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, Through Additional Chief Secretary, Department Of Home, Govt. Of Rajasthan, Govt. Secretariat, Jaipur.
2. Director General Of Police, Directorate Of Police, Lal Kothi, Jaipur.
3. Additional Director General Of Police Cum Inspector General (Recruitment), Rajasthan, Jaipur (Raj.)
4. Superintendent Of Police, Grp (North), Jodhpur (Raj.)

-----Respondents

For Petitioner(s) : Mr. Kailash Jangid a/w Mr. Mohan Singh Shekhawat.

For Respondent(s) : Mr. Manish Vyas, AAG
Mr. Anil Bissa, AGC.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

17/01/2024

1. This petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"It is therefore, most humbly prayed that your Lordship may graciously be pleased to accept and allow this writ petition and call for entire record and examine entire record of the case and by an appropriate writ, order and direction:-



i) The impugned order dated 09.07.2021 (Ann.5) declare illegal and also may be quashed and set aside.

ii) The respondents may kindly be directed to give appointment to the petitioner on the post of Constable GD in GRP, Jodhpur with all consequential benefits.

iii) Any other order which this Hon'ble Court deemed just and proper in the facts and circumstances of the case may also be passed in favour of the Petitioner."



2. Brief facts of the case, as placed before this Court by learned counsel for the petitioner, are that the respondents issued an advertisement dated 04.12.2019 under the Rajasthan Police Subordinate Services Rules, 1989 for the post of Constable for various districts of the State. The petitioner, being eligible, submitted his application, in pursuance of the said advertisement. Thereafter, the petitioner participated in the examination and was declared successful in the same. The respondents issued Press Note on 10.04.2021, calling the successful candidates, including the present petitioner, for documents verification and medical test before the concerned authorities. Thereafter, the respondents issued selection list of the candidates for the post in question, wherein the petitioner's name was shown at Serial No. 22.

2.1. Subsequently, the respondents vide impugned order dated 09.07.2021 declared the petitioner ineligible for the post in question on account of registration of a criminal case against him. Thus, being aggrieved of the said order, the present petition has been preferred claiming the aforequoted reliefs.

3. Learned counsel for the petitioner submits that at the time of submission of the application form for the post in question, there was no criminal case pending against the petitioner; however, at



the time when the petitioner was a juvenile, an FIR bearing No. 250/2018 was registered against him and other persons, at Police Station, Soorwal, District Sawaimadhopur, but the petitioner being a juvenile, at the relevant time, the trial of the case qua the petitioner, was conducted before the learned Juvenile Justice Board (JJB), Sawaimadhopur for the offence under Sections 341, 323, 452 & 34 IPC.

3.1. Learned counsel further submits that the learned JJB in its order dated 05.08.2019 considered the confession of the petitioner and convicted him, with a direction for deposition of Rs. 700/- as fine, and further, the learned JJB made an observation for removal of such conviction as disqualification, as regards the petitioner's future prospects, in accordance with Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as 'Act of 2015'*).

3.2. Learned counsel also submits that in view of the aforesaid observations so made by the learned JJB, the petitioner could not have been declared as ineligible for the post in question, on count of the reason so assigned therefor in the impugned order; moreover, with the lapse of time and upon acquittal of the main accused and other co-accused, in the aforementioned FIR, by the learned Additional Chief Judicial Magistrate, Sawaimadhopur, vide judgment dated 26.07.2019, the disqualification in question no more survived.

3.3. Learned counsel further submits that the petitioner is a meritorious candidate and was selected, after due completion of the recruitment process for the post in question, and therefore, on count of the aforesaid reasons, the petitioner could not have been



declared as ineligible only on count of the aforementioned criminal case.

3.4. In support of such submissions, learned counsel relied upon the following judgments:-

(a) *State of Rajasthan & Ors. Vs Ms. Sajjana (D.B. Spl. Appl. Writ No. 684/2022, decided on 12.07.2022) passed by a Division Bench of this Hon'ble Court;*

(b) *Ms. Sajjana Vs. State of Rajasthan & Ors. (S.B.C.W.P. No. 10818/2021, decided on 09.12.2021) passed by a Coordinate Bench of this Hon'ble Court.*

4. On the other hand, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submits that at the time of submission of the application form, the petitioner submitted "No" in the column i.e. whether any criminal case has been registered against the candidate; therefore, on the ground of concealment of the material fact, the petitioner's candidature for the post in question was rightly rejected vide the impugned order.

4.1. Learned counsel further submits that the petitioner did not disclose the fact of registration of the criminal case even at the time of documents verification. Learned counsel also submits that as per circular no. 1300 dated 28.03.2017 issued by the Office of Director General Police, Rajasthan, the petitioner's matter was forwarded to the Headquarters for consideration by the Departmental Committee, whereupon, it was decided, vide order dated 09.07.2021, that the petitioner is not fit for appointment on the post in question, and rightly so.



4.2. Learned counsel further submits that as per the aforesaid circular, the respondent-Department is required to consider the criminal antecedents of the concerned candidate, and thereafter, arrive at a conclusion accordingly. Learned counsel also submits that benefit of Section 24 of the Act of 2015 as extended to the petitioner, would not render him eligible for the post in question. As per learned counsel, the petitioner has willfully and knowingly concealed the material information regarding the criminal case in the recruitment exercise in question, and therefore, the impugned order is justified in law.

4.3. In support of such submissions, learned counsel relied upon the judgment rendered by a Coordinate Bench of this Hon'ble Court in the case of ***Mahendra Singh Sisodiya Vs. State of Rajasthan & Ors. (S.B.C.W.P. No. 11769/2021, decided on 28.09.2022)***.

5. Heard learned counsel of the parties as well as perused the record of the case along with judgments cited at the Bar.

6. This Court observes that the respondents issued the advertisement in question for the post of Constable for various districts of the State. The petitioner, being eligible, submitted his application form for the post in question in pursuance of the said advertisement, submitting "No." in the column, whether any criminal case has been registered against the candidate. Thereafter, the petitioner, upon his participation in the recruitment process in question, was declared successful, and also appeared for the documents verification and medical test before the concerned authorities. In the selection list so issued thereafter by the respondents for the post in question, the petitioner's name



figured therein. Subsequently, the respondents vide impugned order dated 09.07.2021 declared the petitioner ineligible for the post in question on account of registration of criminal case against him.

7. This Court further observes that an interim order dated 22.07.2021 is operating in favour of the petitioner in this case; the same is reproduced as hereunder:

"Issue notice. Issue notice of the stay application also, returnable within six weeks.

Meanwhile, the post falling vacant on account of cancellation of petitioner's selection/appointment shall not be filled."

8. At this juncture, this Court considers it appropriate to reproduce the relevant portions of the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India Vs. Ramesh Bishnoi, (2019) 19 SCC 710***, as hereunder:

"8. From the facts, it is clear that at the time when the charges were framed against the respondent, on 30-6-2009, the respondent was well under the age of 18 years as his date of birth is 5-9-1991. Firstly, it was not disputed that the charges were never proved against the respondent as the girl and her parents did not depose against the respondent, resulting in his acquittal on 24-11-2011. Even if the allegations were found to be true, then too, the respondent could not have been deprived of getting a job on the basis of such charges as the same had been committed while the respondent was juvenile. The thrust of the legislation i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015 is that even if a juvenile is convicted, the same should be obliterated, so that there is no stigma with





regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the society as a normal person, without any stigma.

8.1. The relevant portions of the judgment rendered by the Division Bench of this Hon'ble Court in the case of ***State of Rajasthan Vs Bhawani Shankar Moorh 2023 SCC OnLine Raj 381***, are also reproduced as hereunder:-

"7. Be that as it may. A perusal of the language of Section 24 of the Act of 2015 and the corresponding provision in the Act of 2000, i.e. Section 19, would make it clear that the record of conviction of the child in conflict, cannot be preserved and has to be destroyed. **As a direct consequence, any disqualification entailing from the conviction would have to be ignored and cannot act to the detriment of the child in conflict with law in any manner, which would include a selection process for public employment.**

8. Consequently, in such a situation, **the employer is prohibited by law from referring to or taking in consideration the judgment of conviction so as to deprive a successful candidate, who was a child in conflict with law at some point of time from being employed in Government service. The view taken by the learned Single Bench, whereby rejection of the candidature of the respondent by order dated 18.12.2018 was declared to be invalid does not suffer from any infirmity warranting interference.**"

9. This Court further observes that the aforementioned FIR was registered against the petitioner and the trial of the said case was conducted by the learned Juvenile Justice Board (JJB) because the petitioner was a juvenile, at the relevant time; upon the confession application having been filed by the petitioner, the learned JJB vide order dated 05.08.2019 convicted the petitioner



and directed for deposition of Rs.700/- and also made an observation regarding removal of the disqualification, in accordance with Section 24 of the Act of 2015, as regards future prospects of the petitioner. The said Section 24 is reproduced as hereunder :



"24. Removal of disqualification on the findings of an offence.—

(1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's Court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court."

9.1. This Court also observes that the learned JJB further held that the conviction order, in light of the observations made therein, would not be considered and treated in any manner as a disqualification so far as the petitioner's future prospects are concerned.



Relevant portion of the order dated 05.08.2019 is reproduced as hereunder:-

"साथ ही यह आदेश भी दिया जाता है कि किशोर जितेन्द्र के विरुद्ध की गई उक्त दोषसिद्धि धारा-24 किशोर न्याय अधिनियम के तहत वाद गुजरने मियाद अपील किशोर किसी भी दोषसिद्धि की निर्हरता से ग्रसित नहीं होगा । अर्थात् किशोर इस प्रकरण की वजह से पढाई, नौकरी या अन्य व्यवसाय हेतु अयोग्य करार नहीं दिया जावेँ इस दोषसिद्धि के अभिलेख को भी रिकोर्ड से हटा दिया जावेँ इस दोषसिद्धि का किशोर के भविष्य पर प्रभाव वाद गुजरने मियाद अपील शून्य समझा जावे ।"

10. This Court further observes that in the aforesaid order of the learned JJB, it was held that the petitioner would not suffer any kind of disqualification on count of conviction in the aforementioned criminal case, and therefore, the petitioner, in that view of the matter, mentioned "No" in the column of the application form regarding the query, whether any criminal case has been registered against the candidate, which disclosure in the application form, in the facts and circumstances of the case, is justified in law.

11. This Court finds that the petitioner was given the benefit of Section 24 of the Act of 2015 by the concerned JJB, while ordering that the conviction shall not be treated as a disqualification in regard to any future prospects, including service prospects etc. and also the record of such conviction was also ordered to be weeded out. This Court further observes that in the present case, the petitioner was convicted in under the aforementioned provision of law, which is not as such heinous in nature, and at the time of commission of the offence, the petitioner was a minor, and



therefore, the petitioner cannot be barred and adjudged disqualified for the appointment, examination and any other public employment, including the appointment in question, on count of his conviction, in view light of the order passed by the learned JJB, as mentioned above.

12. This Court observes that in Chapter II containing Section 3 (xiv) of the Act of 2015, it is provided that the general principle for the protection of the children is to the effect that all past records of the juvenile delinquency shall be erased, except in certain special circumstances, and thus, the intention of the legislature, while incorporating such a provision, was quite clear and unambiguous to the effect that the previous conduct of the juvenile may not be considered to be a bar as regards future prospects of a juvenile, and for the same, a provision has been made for giving the benefits of Section 24 of the Act of 2015.

Relevant portion of Chapter II is reproduced as hereunder:-

"CHAPTER II GENERAL PRINCIPLES OF CARE AND PROTECTION OF CHILDREN

Section 3 - (xiv) Principle of fresh start: *All past records of any child under the Juvenile Justice system should be erased except in special circumstances."*

12.1. This Court further observes that a similar provision has also been made in Rule 14 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, wherein it is stated that the record pertaining to the conviction of a juvenile shall be destroyed after expiration of the appeal period.

The said Rule 14 is reproduced as hereunder:-





"14. Destruction of records.- *The records of conviction in respect of a child in conflict with law shall be kept in safe custody till the expiry of the period of appeal or for a period of seven years, and no longer, and thereafter be destroyed by the Person-in-charge or Board or Children's Court, as the case may be:*

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19 of the Act, the relevant records of conviction of such child shall be retained by the Children's Court."

12.2. This Court further observes that the intention of the legislature behind introducing Sections 3 (xiv) & 24 of the Act of 2015 as well as the Rule 14 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, is to extend the protection to the juvenile against the conviction, and to remove the said conviction as disqualification for future prospects of the juvenile concerned. This Court also observes that the legislative intent behind such enactment is clear that if the juvenile is convicted for the offence and the concerned Court/Board is having an option to extend the benefits of Section 24 of the Act of 2015 by removing the disqualification, coupled with the fact that the language of the said Section also requires destroying of such conviction record. After extending such benefits of Section 24 of the Act of 2015, the then juvenile concerned cannot be declared ineligible for any future employment in any government department etc. and/or any other prospects in public employment.

13. This Court is conscious of the 'right to be forgotten' which has been referred and dealt with in the order dated 12.04.2021 passed by the Hon'ble High Court of Delhi in the case of **Jorawer**



Singh Mundy @ Jorawar Singh Mundy Vs. Union of India and Ors. (WP(C) 3981/2021).

13.1. On a conjoint consideration of the 'right to be forgotten' as enumerated in the case of ***Jorawar Singh Mundy @ Jorawar Singh Mundy (supra)*** as well as the enactment of Sections 3 (xiv) & 24 of the Act of 2015 as well as the Rule 14 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 therein, this Court observes that in the cases of juvenile delinquency, if any criminal antecedent record of a juvenile is allowed to remain intact, to be accessed, amongst others, by using the technology tools, the same may not only bring humiliation and discredit to the juvenile, but may also adversely impact the future prospects of the juvenile, among other things.

13.2. This Court does not wish to enter into the realm of broader 'right to be forgotten', but, at present, is specifically considering the 'right to be forgotten' for a juvenile in the perspective of Section 24 of the Act of 2015 to be an absolute right for safeguarding future prospects of such juvenile.

13.3. Such a disclosure would not only affect the 'right to be forgotten' of a juvenile, but would also defeat the very purpose and intent of the legislature behind enacting the Act of 2015, and incorporating Section 24 therein. Arising of such circumstances, would also result into defeating the very legislative intent of the Act of 2015, more particularly, as regards the future employment and the like prospects of a juvenile, as thereby, the rehabilitation of the juvenile and his socio-economic stability would be adversely impacted, which may lead the juvenile to again resort to the



criminal delinquency. This is more so when, the present day developing societies are dynamic and self-explanatory in its complexity followed by never-ending changes, and the juvenile is no exception to it, rather much more vulnerable, because the negativity of his (juvenile's) past life, despite enactment of a much strong law like the Act of 2015, legislative intent of which is to remove his criminal antecedents from the record, rather destroying of the complete record thereof, if allowed to sustain and remain intact, the same would be revisited for obvious reasons, against the welfare and future well being of the juvenile, thereby bringing future embarrassments to the juvenile.

13.4. Section 12 of the Probation of Offenders Act, 1958, speaks of 'removal of disqualification attaching to conviction', but the language employed in Section 24 of the Act of 2015 is not only for excluding or erasing the criminal antecedent record, but goes a step forward, by laying down a provision that the criminal antecedent record of a juvenile be erased/destroyed completely, so that such previous conviction or criminal delinquency of a juvenile would not be carried forward, so as to prevent any adverse impact of his previous delinquency, upon his future prospects.

14. Now adverting to the facts of the present case in the above perspective, non-furnishing of the information by the petitioner regarding his juvenile delinquency and conviction, has to be accepted as a valid excuse under law and such previous negativity of the past / the previous criminal delinquency, cannot be permitted to be used to the detriment of the incumbent like the





present petitioner with a view to oust him from the recruitment exercise as involved herein, thereby adversely impacting the career prospects of the petitioner, despite having been extended the benefit of Section 24 of the Act of 2015.

15. This Court further observes that in the present case once in view of the clear legislative intention behind Section 24 of the Act of 2015 as above, the learned JJB though has convicted the petitioner for the offence, but has ordered that the same shall not be treated as a disqualification in regard to any future prospect of the petitioner and also ordered that the complete record of the conviction shall be destroyed, then conviction of the present petitioner, in light of the prescriptions of Section 24 of the Act of 2015, cannot be treated as a bar for entitling the petitioner for any recruitment or other future prospects, including the one involved in this case.

16. This Court also observes that the petitioner is a meritorious candidate and passed the various stages of the recruitment process for the post in question, and once the competent Court, which conducted the trial of the criminal case qua the petitioner, while recording a clear finding invoking Section 24 of the Act of 2015 that the said conviction order does not affect the future prospects of the petitioner in no manner, and therefore, the impugned order declaring the petitioner as disqualified/ineligible for the post in question on count of the conviction in the criminal case in question, cannot be sustained in the eye of law.



17. The judgment cited on behalf of the respondents also does not render any assistance to their case, as they do not deal with the juvenile delinquency.

18. This Court thus holds that once the benefit of Section 24 of the Act of 2015 was extended to the petitioner, who at the relevant time, was a juvenile, then in that case, even if the information of the conviction in question was not furnished by the petitioner during the recruitment process, the same cannot be termed as 'concealment' on his part, as the very erasure/destroying of the conviction record, as ordered by the learned JJB, while convicting the petitioner and extending him the aforesaid benefit of the legal provision, was to prevent any adverse impact of such conviction on the future prospects of the petitioner.

19. This Court further holds that the 'right to be forgotten', regarding a Juvenile, where Section 24 of the Act of 2015, shall remain a definite right and a juvenile, who has been given the benefit of Section 24 shall be entitled for erasure of his juvenile delinquency by not putting it on record anywhere, because creation or perpetuation of such record, may highlight a kind of embarrassment to the juvenile, which in turn, would certainly have an adverse impact on his future prospects, which includes a selection process for public employment, and goes against the legislative intention of juvenile laws.

20. This Court directs that the 'right to be forgotten' for juvenile by removal/destroying of the record of juvenile delinquency is an absolute right, and therefore, to give it a full meaning, the State



as well as other Bodies falling under the definition of 'State' as envisaged under Article 12 of the Constitution of India, **are hereby lawfully restrained** from seeking any information, in future, from the then juvenile about the previous record/information of his juvenile delinquency, in cases where the benefit of Section 24 of the Act of 2015 has been extended, so as to prevent any adverse impact of such delinquency on the future prospects of the juvenile.

21. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, the present petition is **allowed**, and while quashing and setting aside the impugned order dated 09.07.2021 (Ann-5), the respondents are directed not to consider the aforementioned criminal case and not giving information of criminal case as a disqualification/ineligibility against the juvenile (petitioner) for the purpose of recruitment on the post in question. The respondents are also directed to give the appointment to the petitioner on the post in question, if he is otherwise eligible and falling in merit, within a period of three months from the date of receipt of a certified copy of this judgment. All benefits shall accrue to the petitioner prospectively. All pending applications stand disposed of.

(DR. PUSHPENDRA SINGH BHATI), J.

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