

Sanjay Kumar Vs. U.P. State and ors.

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Court : Allahabad

Decided On : Jul-07-2003

Reported in : (2003)3UPLBEC2193

Judge : Y.R. Tripathi, J.

Acts : Indian Penal Code (IPC) - Sections 147, 323, 504 and 506

Appeal No. : Civil Misc. Writ Petition No. 1772 (S/S) of 1997

Appellant : Sanjay Kumar

Respondent : U.P. State and ors.

Advocate for Pet/Ap. : H.G.S. Parihar, Adv.

Disposition : Petition allowed

Judgement :

Y.R. Tripathi, J.

1. This petition has been filed for quashing the letter dated December 1, 1996 (Annexure-2) sent by the opposite party No. 3 to the petitioner informing him that he was not found fit for appointment.

2. It appears that the petitioner had applied for being appointed as Constable in P.A.C. and he alongwith certain other candidates was ultimately selected for

appointment. Thereafter papers were sent for Police verification, in which it was found that an F.I.R. at Crime No. 40/96 under Sections 147, 323, 504 and 506 I.P.C. was registered against the petitioner. The opposite party No. 3, on the basis of this information, held that the petitioner was not fit to be appointed and he accordingly issued the impugned letter which was served on the petitioner through the local Police. The petitioner has assailed the impugned Setter on the ground that mere lodging of the F.I.R, was not sufficient to hold him unfit for being appointed as Constable. The opposite parties have, in their counter-affidavit, sought to justify the impugned latter.

3. I have heard the learned Counsel for the parties and have gone through the materials on record.

4. It was conceded before me that the selection process had been completed before 20.3.1996 and the F.I.R. on the basis of which the petitioner was held unfit for appointment, was lodged on 16.5.1996. I am afraid if lodging of the F.I.R. alone is sufficient to disentitle one to appointment to a post in a Government Office. The petitioner has also filed a copy of the judgment in Crime No. 40/96 as Annexure RA-3 to the rejoinder-affidavit, a perusal of which goes to show that though the petitioner has been held guilty of the offence under Section 323 I.P.C. but has been released on probation of good conduct. Section 12 of the Probation of Offenders Act, 1958, which is applicable in the State and to the District of Raebareli to which the case pertains, provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law, provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence. In view of the said provision, the conviction of the petitioner under Section 323 I.P.C., shall not entail any disqualification to the petitioner for being appointed on the post of Constable. It is admitted to the parties that all candidates selected, except the petitioner, have been given appointment and the petitioner has been denied appointment only on the ground of the aforesaid F.I.R., having been lodged against him. I am afraid if on this ground alone the appointment of the petitioner could have been refused. I,

therefore, find that the communication,Annexure-2 to the petitioner, sent by the opposite party No. 3 to the petitioner is not legally sustainable and is liable to be quashed.

5. The writ petition is accordingly allowed and the impugned order. Annexure-2 to the petition, is hereby quashed. The opposite party No. 3 is directed to appoint the petitioner on the post of Constable if there is no other reason or ground on which the appointment of the petitioner can be refused.

6. In the circumstances of the case, I make no order as to costs.

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