

Tribunal Application

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay

And

The Hon'ble Justice Mr. Abdul Ghani

Judgment on 06.09.2010

W.P.S.T.439 of 2010

Jayanta Mondal

-Vs-

State of West Bengal and others

Points:

Appointment -Whether appointment can be denied on the ground of pendency of criminal case-Service Law

Facts:

The petitioner challenged the decision of the Superintendent of Police, Birbhum for not allowing the petitioner to join the service in spite of being selected to the post of Constable. The Superintendent of Police, Birbhum informed the petitioner that the prayer for appointment cannot be considered in view of pendency of a criminal case against the said petitioner pursuant to the alleged registration of the name of the said petitioner at District Employment Exchange, Suri and also at the Employment Exchange, Rampurhat.

Held:

This Court repeatedly held that mere pendency of a criminal case cannot prejudice the interest of any citizen. It is well settled that a person should be

presumed to be innocent till he is found guilty by a competent Court of Law.

Para 2

Undisputedly the petitioner herein was never found guilty in connection with any criminal case by any competent Court of Law and, therefore, the mere pendency of a criminal case could not attach any stigma to the petitioner herein. Accordingly, the respondent authorities cannot deny appointment to the petitioner herein in spite of his selection to the post of Constable upon fulfillment of the eligibility criteria as per the Recruitment Rules.

Para 5 and 6

Cases cited:

Dinesh Barik Vs. State of West Bengal & Ors. (M.A.T.298 of 2010 with CAN 2078 of 2010)

Mr. Amar Kumar Sinha.

...For the Petitioner.

Ms. Jayeeta Chakraborty,

Mr. Suryasarathi Basu.

...For the State.

The Court: The petitioner herein is aggrieved by the decision of the Superintendent of Police, Birbhum for not allowing the petitioner to join the service in spite of being selected to the post of Constable. The Superintendent of Police, Birbhum by the order dated 6th March, 2007 informed the petitioner that the prayer for appointment cannot be considered in view of pendency of a criminal case against the said petitioner pursuant to the alleged registration of the name of the said petitioner at District

Employment Exchange, Suri and also at the Employment Exchange, Rampurhat.

2. This Court repeatedly held that mere pendency of a criminal case cannot prejudice the interest of any citizen. It is well settled that a person should be presumed to be innocent till he is found guilty by a competent Court of Law.

3. We fail to understand how the pendency of a criminal case can attach any stigma to the petitioner herein.

4. In the case of *Dinesh Barik Vs. State of West Bengal & Ors. (M.A.T.298 of 2010 with CAN 2078 of 2010)*, this Court decided the identical issue. Relevant paragraphs from the aforesaid judgment is set out hereunder:

“In any event, the respondent authorities cannot refuse to appoint the petitioner on the ground of mere pendency of the criminal case...

xxx xxxx xxxx

The principle relating to presumption of innocence cannot be altogether ignored by the respondent authorities since the same is very much applicable in the facts of the present case. A person should be presumed to be innocent until and unless he is found guilty by the competent Court. A Division Bench of this Court in the case of Swapan Kumar Maity Vs. South Eastern Railways & Ors. Reported in 2007 (4) CHN 616 reiterated the aforesaid principle as hereunder:

“In our view, so long a person is not found guilty by the competent Court of law, he should be presumed to be innocent.....””

5. In the present case, undisputedly the petitioner herein was never found guilty in connection with any criminal case by any competent Court of Law and, therefore, the mere pendency of a criminal case could not attach any stigma to the petitioner herein.

6. Accordingly, the respondent authorities cannot deny appointment to the petitioner herein in spite of his selection to the post of Constable upon fulfillment of the eligibility criteria as per the Recruitment Rules.

7. There is no dispute that the petitioner herein was selected to the post of Constable and the Superintendent of Police, Birbhum did not allow him to join the duty due to the pendency of the aforesaid criminal case even though petitioner was never found guilty by any Competent Court of Law.

8. The Superintendent of Police, Birbhum has wrongfully and illegally refused to appoint the petitioner to the post of Constable and rejected the prayer of the petitioner in this regard in a most illegal and wrongful manner.

9. Therefore, the impugned order passed by the Superintendent of Police, Birbhum dated 6th March, 2007 cannot be sustained and the same is, therefore, quashed.

10. The learned Tribunal, in our opinion, has also failed to consider the issues raised before it strictly in accordance with law.

11. For the aforementioned reasons, the impugned judgment and order passed by the learned Tribunal cannot be sustained and the same is, therefore, set aside.

12. The Superintendent of Police, Birbhum is directed to offer appointment to the petitioner to the said selected post of Constable without any further delay but positively within a period of two weeks from the date of communication of this order.

13. This writ petition thus stands allowed.

14. There will be no order as to costs.

15. Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)

(Md. Abdul Ghani, J.)