

Court No. - 4

Case :- WRIT - A No. - 947 of 2024

Petitioner :- Mahesh Kumar Chauhan

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Arun Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Shri Arun Kumar, learned counsel for petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has assailed the order dated 19.12.2023 whereby his claim for compassionate appointment has been deferred only on the ground that there is criminal case pending against him and his claim for compassionate appointment could be reconsidered only after his acquittal in the pending criminal case and another order dated 02.01.2024 whereby the Executive Engineer has expressed view that his character certificate issued by the District Magistrate shall be liable to be considered only after his acquittal in the criminal case as the character certificate itself contained a rider that there was criminal case pending against the petitioner and upon his conviction in the said criminal case, the character certificate would lose its relevance. Copy of the character certificate on the basis of which the impugned orders

have come to be passed has been brought on record as annexure No. 14 to the petition.

3. It is argued on behalf of the petitioner that in the criminal case in which the petitioner has come to be implicated was only on account old standing enmity between the families and there was no role assigned to the petitioner in the first information report which may have given an impression to the authorities that petitioner would be liable to be held guilty of moral turpitude so as to dis-entitle him for any appointment in government service. It is further argued that there is no criminal history to the credit of the petitioner and in the light of the guidelines laid down in the case of **Avtar Singh v. Union of India 2016 (8) SCC 471** petitioner's claim for compassionate appointment could have been considered, moreso in the circumstances when the District Magistrate has not recalled his character certificate issued to petitioner till date.

4. Learned Additional Chief Standing Counsel on the contrary tried to defend the impugned order for the reason assigned therein however, he could not dispute the fact that District Magistrate, Deoria while issuing the character certificate on 24. 07.2023 did not observe anywhere that the character certificate as on that date was meaningless or irrelevant for the purpose for which it was issued.

5. Having heard learned counsel for respective parties and having perused the records I find the only question arising for consideration of this Court is, whether only on the basis of criminal case being registered against the petitioner under certain sections of erstwhile Indian Penal Code, petitioner's claim for compassionate appointment could have been rejected, more especially in the circumstances when there was no criminal history to his credit and the District Magistrate had issued character certificate in his favour.

6. In order to find answer to this above question I am reminded of settled principle regarding the object for incorporation of the rule for compassionate appointment and that is with the purpose to provide immediate succour to the bereaved family. If the appointment is deferred only for flimsy grounds or only on the ground that the employer does not find in its discretion it to be appropriate to issue appointment order and to defer it for a long period to wait till the final outcome of the criminal trial, the very purpose and object to provide compassionate appointment would get defeated. Petitioner's father died on 31.01.2023 while working with the respondent establishment as Group D employee and was the only earning member of his family. He was survived by his widow, present petitioner and one other son and a married

daughter. Thus, there was liability of two sons upon a widow who herself was not gainfully employed anywhere. It is in this background if I proceed to examine the legal question that I have framed above, I find the character certificate issued by the District Magistrate should have carried weight more especially when character certificate was qualified only with a rider that it would not be effective in the event petitioner was found subsequently convicted in the criminal case so as on 24.7.2023. Thus on the date of consideration of the character certificate of the petitioner the character certificate was very much valid, it being duly issued by the competent authority. In these circumstances therefore, the applicant could have been offered compassionate appointment in order to provide immediate succour to the family and such appointment could have been made subject to the final outcome of the criminal case as was also observed by way of condition given in the character certificate issued by the District Magistrate, Deoria. For the purpose of appreciation the last two paragraphs of the character certificate are reproduced hereunder:

"मा० सर्वोच्च न्यायालय ने अवतार सिंह के मामले में पैरा 386 में स्पष्ट उल्लिखित किया है कि "In Cases when fact has been truthfully declared in character verification from Regarding Pendency of a Criminal Case of trivial nature, employer in facts and circumstances of the case, In its discretion, may appoint the candidate subject to decision of such case." में मा० न्यायालय के निर्णयाधीन के शर्त पर नियोक्ता प्राधिकारी द्वारा सहमति की दशा में उक्त मुकदमें के तथ्यों , परिस्थितियों, को

दृष्टिगत व सेवा शर्तों को दृष्टिगत रखते हुए विचार कर सकते हैं।

अतः संयुक्त निदेशक अभियोजन देवरिया की विधिक अभिमत आख्या दिनांक 19.07.2023 कम में अभ्यर्थी श्री महेश कुमार चौहान पुत्र स्व० बैजनाथ चौहान ग्राम - मूडाडीह थाना कोतवाली सदर जिला देवरिया के चरित्र सत्यापन की संस्तुति इस प्रतिबन्ध के साथ की जाती है कि यदि उक्त मुकदमें में मा० न्यायालय द्वारा अभ्यर्थी श्री महेश कुमार चौहान को दण्डित किया जाता है तो यह चरित्र सत्यापन की संस्तुति मान्य नहीं होगी।। अग्रेत्तर नियुक्ति प्राधिकारी अपने स्तर से निर्णय /आवश्यक कार्यवाही करना सुनिश्चित करे।"

7. I have also perused the first information report which has been brought on record as annexure No. 8 and I find there to be no specific role assigned to the petitioner for the alleged assault upon informant and his family. The informant himself admitted in the first information report that there was old enmity between the two families. It has come to be pleaded in the petition that there is no other criminal case in which the petitioner has been implicated and thus there is no criminal history to the credit of the petitioner. In such circumstances therefore, the principles as laid down to be the guiding factors for the employee to offer appointment to the candidate in the case of **Awtar Singh (supra)** becomes relevant and the same is reproduced hereunder:

“27. Suppression of ‘material’ information presupposes that what is suppressed that ‘matters’ not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.”

8. Looking to the directions/ guidelines issued by the Supreme Court as above, I find that though there is no indefensible right vested in the candidate to seek appointment while he is implicated in the criminal case but mere pendency of criminal case itself cannot be a ground to generally deny appointment to a candidate more especially in a case of compassionate appointment. Thus, it becomes a so discretion of the employer to exercise power in offering appointment but exercise the same objectively.

9. In matters of general appointment it can of course be observed that discretion be exercised more stringently as many candidates are available to the employer to give employment and the person who is facing criminal case could be identified and singled out but where a candidate is seeking appointment on compassionate ground, the employer is supposed to take a pragmatic view of the matter. Thus, considering the guidelines if the pragmatic view had been taken in the mater by the respondent, the respondent would not have denied compassionate appointment to the petitioner.

10. From the recitals contained in the orders impugned, I find that the appointment of the petitioner has been deferred only on the ground of a pending criminal case and for the reason that the character certificate contains recital to the effect that character certificate was only subject to the final outcome of the criminal

case. In such circumstances therefore, a candidate seeking appointment could have been offered appointment as the employer did not find any other reason to deny the same except the character certificate and the pending criminal case. Thus, I find the question framed above deserved to be answered in favour of the petitioner. In matters where criminal case is pending and character certificate has been issued by the District Magistrate may be subject to the final outcome of the criminal case, it should not become a guiding factor for the employer to deny compassionate appointment to a candidate as the nature of compassionate appointment is quite distinguishable from general category appointment and also which are offered in service matters.

11. In view of the above, writ petition succeeds and is allowed. The orders dated 19.12.2023 and 02.01.2024 are hereby quashed. The matter is remitted to the authority to pass order afresh offering compassionate appointment to the petitioner on a suitable post. However, it is left upon for the authority to make appointment subject to final outcome of the criminal case. The appropriate orders shall be passed by the competent authority within a period of two months of presentation of certified copy of this order.

Order Date :-3.7.2025

Nadeem

