



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

S.B. Civil Writ Petition No. 9517/2024

Neera Kanwar

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Principal Secretary, Department Of Personnel, Government Of Rajasthan, Secretariat, Jaipur (Raj.).

2. The Joint Secretary, Department Of Personnel (K.4/2), Government Of Rajasthan, Secretariat, Jaipur (Raj.).

3. The Rajasthan Public Service Commission, Through Secretary, Ajmer.

-----Respondents



For Petitioner(s)

: Mr. Anand Purohit, Sr. Adv. assisted by Mr. Mayank Roy, Mr. Sameer Pareek and Mr. Vishal Singhal.

For Respondent(s)

: Mr. Rajesh Panwar, Sr. Adv-cum-AAG assisted by Ms. Meenal Singhvi.

**HON'BLE MR. JUSTICE ARUN MONGA  
Judgment**

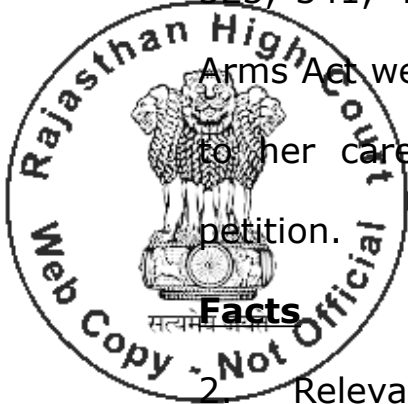
**Reserved on : 06/03/2025**

**Pronounced on : 27/03/2025**

1. Petitioner herein, a widow, whose marriage to her now deceased husband irretrievably broke down, resulting in matrimonial acrimony and collateral criminal proceedings, aspirant to be an officer in Rajasthan Administrative Service (RAS), inter alia, seeks issuance of an appropriate writ, order and/or direction commanding the respondents to accord her appointment as per her merit, which is being declined due to pending criminal proceedings against her, instituted by her estranged husband.

1.1. Owing to marital discord, petitioner-wife also got an FIR No.0164/2021, dated 19.08.2021 (a copy thereof tendered in course of prior hearing and taken on record) under Sections 354,

355, 323, 329, 404, 406, 406, 420 and 498-A read with 120-B of IPC. Whereas, her deceased husband lodged an FIR No.0530/2020 dated 04.09.2020 under Sections 452, 341, 323 & 143 of IPC read with section 27 of the Arms Act which, after investigation, led to filing of challan (final report) dated 12.02.2021 under sections 323, 341, 451 read with 34 of the IPC (allegations/charges qua Arms Act were dropped). It is the latter which has turned nemesis to her career goal and is genesis of the instant service writ petition.



Relevant facts as pleaded in the petition are that the Rajasthan Public Service Commission (RPSC) issued advertisement on 20.07.2021 for recruitment to the Rajasthan State Administrative and Subordinate Services. The petitioner, being eligible, applied and first took preliminary examination wherein she qualified for the combined written examination conducted on 27.10.2021. Being successful in the same, she appeared for an interview on 09.10.2023.

2.1. The petitioner was declared successful as per the select list published by the RPSC and she was asked to appear before the Medical Board On 25.01.2024. However, appointment letters were subsequently issued to other selected candidates, including those with lower merit than the petitioner, but the petitioner was denied an appointment as per her merit.

2.2. Upon inquiry, she was orally informed that her appointment had been withheld due to an FIR lodged by her husband. Despite multiple requests, no written reason was provided for withholding the petitioner's appointment.

2.3 Asserting that the petitioner's husband had filed a false FIR against her and her family, making omnibus allegations of atrocities against them, the petitioner has filed this petition for the relief as mentioned in the opening part of this judgment.

STAND TAKEN IN REPLY

3. Stand taken in the reply filed by the respondents, inter alia, is as below :-

3.1 It is submitted that a criminal case was registered against the petitioner vide an FIR on 04.09.2020, which subsequently led to final report dated 12.02.2021 under section 173 of the Cr.P.C. and trial qua same is presently pending before the competent Court.

3.2. Furthermore, with respect to the character verification of candidates selected for government service, in view of the pending criminal trial against the petitioner, she is deemed ineligible for appointment as per the Circular dated 04.12.2019, issued by the Department of Personnel.

4. In the aforesaid backdrop, I have heard the rival contentions of both the learned Senior counsels representing their respective parties as well as perused the pleadings along with the record appended therewith.

5. During pendency of the writ petition, vide an order dated 23.07.2024 passed by a Coordinate Bench of this Court, then seized of the matter, an interim protection was granted to the petitioner, in following terms :-

*“Heard learned counsel for the parties.*

*The present writ petition has been filed with the prayer that the petitioner may be issued appointment order in pursuance of her selection in RAS/RTS Examination held in furtherance of the notification dated 20.07.2021.*

*Learned counsel for the petitioner submits that despite the petitioner has cleared the selection process for appointment on the*



post of RAS/RTS, she is not being offered appointment on the ground that an FIR has been lodged against her by her husband for the offences under sections 452, 341, 323, 143 of IPC and section 27 of Arms Act, 1959.

Learned counsel for the petitioner submits that the FIR was lodged by her husband on account of some matrimonial dispute. He submits that even the alleged offences do not involve moral turpitude. He, therefore, prays that the writ petition filed by the petitioner may be allowed and the respondents may be directed to issue appointment order to the petitioner.

Per contra, learned counsel for the respondents submits that charge-sheet in the case has been filed against the petitioner. It is also contended that since the petitioner is involved in a criminal case, she has not been issued appointment order.

I have considered the submissions made at the bar and also gone through the relevant record of the case.

The petitioner has cleared the selection process in pursuance of the notification dated 20.07.2021, however, she is being denied appointment on the ground of pendency of a criminal case. Prima facie, this court is of the view that in the present circumstances, the FIR lodged against the petitioner by her husband on account of some marital discord cannot be a ground to deny appointment.

The matter requires consideration.

Issue notice. Issue notice of the stay application also. The rule issued is made returnable on 03.09.2024.

In the meanwhile, the respondents are directed to issue appointment order to the petitioner in the appropriate category according to her merit. The petitioner will be sent to undertake training etc. in accordance with the rules.

It is made clear that appointment of the petitioner will be provisional and the same shall be subject to the final outcome of the writ petition.

The respondents shall be free to move an appropriate application for vacation/modification of the interim order granted by this court.”

6. Before proceeding further, it is pertinent to note that the petitioner's husband, who had lodged the FIR against her and her family members, died before submission of petitioner's application form Annexure-2 on or about 16.08.2021, which shows her marital status as 'widow'.

### **Contentions on behalf of Petitioner**

7. Mr. Anand Purohit, learned Senior Counsel appearing for the petitioner, would argue as below :-

7.1. That the petitioner did not withhold any information regarding the FIR against her. She voluntarily disclosed the existence of FIR No.530/2020 dated 04.09.2020, registered at

Police Station Hanumangarh Town, District Hanumangarh, lodged by her estranged husband due to marital discord which resulted in a charge-sheet being filed against her and her family members and the trial is still pending.

7.2. There is thus no allegation of suppression or concealment on the part of petitioner. Even the offences, will not, in any manner, impinge on the nature of duties which are to be performed by the petitioner.

7.3. Reliance is also placed on the Apex Court judgment rendered by a 3-Judge Bench in ***Avtar Singh Vs. Union of India***<sup>1</sup>, holding, inter alia, that in case when fact has been truthfully declared in character verification form 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.

7.4. That there is absolutely nothing in the advertisement Annexure -1 to the effect that a candidate would be considered ineligible for appointment if a case involving any offences falling in Chapter IV was under investigation, under trial or had concluded in his conviction and sentence. To be on her own feet, she aspired for selection and appointment, completed all formalities, deposited fee and applied for the post. She struggled and worked very hard preparing for the competitive written examination followed by interview, achieved position of merit and also stood selected. Persons with lower merit than her have been appointed. She was eagerly looking for appointment when, on approaching the respondents, she was orally informed, as a bolt from the blue,

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1 2016 (8) SCC 471

that due to an FIR lodged against her by her husband she cannot be appointed.

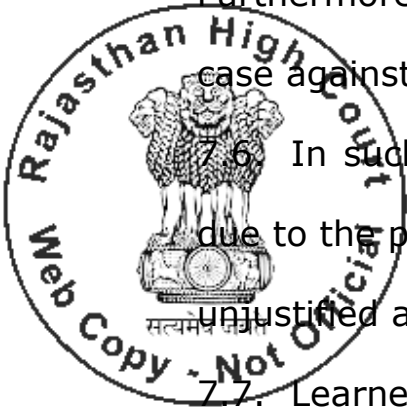
7.5. It is contended that the FIR itself, stems from a matrimonial dispute, is based on false allegations, the offences are trivial in nature and, in any case, do not involve moral turpitude.

Furthermore, the petitioner has made a truthful disclosure of the case against her.

7.6. In such circumstances, the refusal to appoint the petitioner, due to the pending trial emanating from the matrimonial dispute is unjustified and illegal.

7.7. Learned Senior also pointed out that in para-9 of the petition, where it was specifically asserted that the petitioner approached the respondents with a request to give reasons why they were not issuing appointment order in her favour. In support, she also produced copies of written application sent by registered post and through e-mail Annexure-7 (including postal registration receipt). In corresponding para 5 of their reply, the respondents did not specifically deny these averments and only stated in general terms that the same are not admitted as stated, which amounts to an implied admission of the said averments in the petition qua not providing reasons to her.

7.8. It was also contended that the rules of natural justice and fair play required that the respondents at least to convey to the petitioner in writing why despite her selection on merit, she was not being appointed. That too was not done thus depriving the petitioner even of an opportunity to question/challenge the reasons, if given.



7.9. It is also contended that Circular dated 04.12.2019 (Annex.R/1) issued by the Chief Secretary, Government of Rajasthan, in which the character verification has been dealt with, also deals with the proposition that the conviction or acquittal would have limited relevance, but the character of the candidate should have more relevance. It shall be open for the Appointing Authority to assess the character of the candidate as to whether it would be commensurate with the requirement of the post in question. The formulations made in the Circular, which would ordinarily pave way for consideration by the Appointing Authorities are also laid down. The petitioner does not fall in the category of disqualifications, which have been laid down in the Circular dated 04.12.2019.

7.10. Mr. Anand Purohit, to support his argument, also relied on the judgment rendered by the Apex Court in case titled ***Pawan Kumar vs. Union of India (UOI)***<sup>2</sup>, and judgment rendered by a Division Bench of this Court in case titled ***Jubair Bhati v. Rajasthan High Court***<sup>3</sup>.

### **Contentions on behalf of Respondents**

8. Apropos, Mr. Rajesh Panwar, learned Senior Advocate/AAG appearing for the respondents vehemently opposed the petition. He argued that once the review committee had applied its mind on the culpability and the role attributed to the petitioner, coupled with the fact that the offences alleged against her are part of Chapter XVI and XVII of Indian Penal Code(IPC), this Court ought

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2 (2023) 12 SCC 317

3 Rajasthan High Court, D.B. Civil Writ Petition No. 17047/2022, decided on 11.07.2024

not to exercise its discretionary jurisdiction by invoking extraordinary powers under Article 226 of Constitution of India.

8.1. In support thereof, he would rely on Supreme Court judgment in **Anil Bhardwaj vs State of Madhya Pradesh<sup>4</sup>**, wherein the Apex Court observed as under:



"12. The recruitment to the Judicial Service is governed by the provisions of Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994. This Court issued direction to all States to fill up the vacancies in subordinate Courts in a time schedule. The direction was issued by this Court in Malik Mazhar Sultan (3) and another vs. Uttar Pradesh Public Service Commission and others, 2008(17) SCC 703. The selection process for filling up the post of District Judge has to be completed by all the High Courts as per the time schedule fixed by this Court. After declaration of the merit list the candidates have to be given appointments in time bound manner so that they may join the respective posts. There is no dispute that on the date when the Committee declared the appellant unsuitable, criminal case against him under Section 498A and 406 IPC was pending which was registered on a complaint filed by the appellant's wife, Smt. Pooja. The mere inclusion in the select list does not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Section 498A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant unsuitable. The submission which needs to be considered is that whether in view of the subsequent acquittal of the appellant, his case was required to be reconsidered and he was entitled to be appointed.

23. Reverting to the facts of the present case, the decision of Examination-cum-Section and Appointment Committee for holding the appellant unsuitable was based on the relevant consideration, i.e., a criminal case against the appellant under Section 498A/406/34 IPC was pending consideration which was registered on a complaint filed by the wife of the appellant. Such decision of the Committee was well within the jurisdiction and power of the Committee and cannot be said to be unsustainable. The mere fact that subsequently after more than a year when the person whose candidature has been cancelled has been acquitted cannot be a ground to turn the clock backward.

8.2. Learned AAG also relied on condition No.15 of the advertisement dated 20.07.2021 as well as Circular/Notification dated 04.12.2019. According to condition no.15 of the advertisement dated 20.07.2021, it is mandated that, at the time of document verification, candidates must submit a character certificate indicating that no offence is charged against them, which defeats the very purpose of their appointment in the services. Furthermore, the condition specifically states that if any case is under trial, such a candidate would be ineligible for appointment. It is also submitted by the respondents that the petitioner has neither challenged this condition during the recruitment process nor raised any objections. Hence, the petitioner has accepted the terms and conditions of the advertisement and is therefore precluded from raising any objections at this later stage. The petitioner must adhere to the conditions outlined in the aforementioned advertisement. In light of the aforementioned condition of the advertisement, which has not been challenged by the petitioner, it is clear that the petitioner is ineligible for appointment in the State services due to an ongoing trial against him.

8.3. In support of his arguments, he would also cite Apex Court in the case of ***Bedanga Talukdar v. Saifudaullah Khan***<sup>5</sup>.

8.4. He would canvass that the circular dated 04.12.2019 has been dealt by this Court in the case of ***Ramesh Kumar Meena Vs. State of Rajasthan***<sup>6</sup> and duly upheld.

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<sup>5</sup> (2011) 12 SCC 85

<sup>6</sup> Rajasthan High Court, S.B. Civil Writ Petition No. 17972/2022

8.5. That the employer has a right to consider the suitability of the candidate in accordance with the government orders/instructions/rules at the time of making a decision for induction of the candidate in the employment which cannot be taken away. This view has been taken by the coordinate Bench of this Court in the case of **Bhinya Ram Jajra Vs. State of Rajasthan**<sup>7</sup>, which has been upheld by Division Bench while deciding **D.B. Special Appeal (Writ) No.602/2022 (Bhinya Ram Jajra Vs. State of Rajasthan)** vide order dated 2.11.2022. Further, the learned AAG would also rely on the Apex Court's judgment rendered in the case of **Union of India v. Methu Meda**<sup>8</sup>.



8.6. That there is no necessity for the screening committee to disclose the reasons for not granting the appointment to the petitioner. In this regard, the Apex Court in the case of **Baidyanath Yadav v. Aditya Narayan Roy**<sup>9</sup>, was relied upon in course of arguments.

### **Discussions and Analysis**

9. Adverting now to the merits and demerits of the rival contentions, as above. Having heard both sides, I shall now proceed to record my reasoning and discussion in the succeeding part of the order and render my opinion after analyzing the position of applicable law.

10. It is undisputed that the petitioner was declared successful in the Rajasthan Administrative Services combined Examination, 2021-22, and was called for an interview, followed by a medical

<sup>7</sup> Rajasthan High Court, S.B. Civil Writ Petition No.16998/2021

<sup>8</sup> (2022) 1 SCC 1

<sup>9</sup> (2020) 16 SCC 799

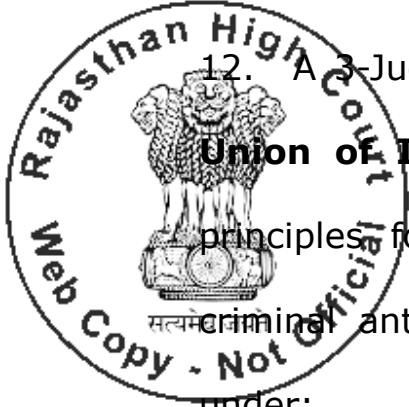
examination. However, her appointment was withheld due to the pendency of the criminal case wherein she is an under-trial.

11. The issue before this Court is whether the pendency of the said criminal case, which does not involve moral turpitude, can be a ground to deny appointment to the petitioner, especially when she has not suppressed any material facts regarding the said case.

12. A 3-Judge Bench of the Supreme Court, in **Avtar Singh v. Union of India & Ors., (2016) 8 SCC 471**, has laid down principles for considering the appointment of candidates with criminal antecedents. Relevant part of the judgment *ibid* is as under:

*“30. The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service.*

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and



*it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.*

35. *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.*

36. *What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*

37. *The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*

38. *We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*

38.1. *Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*

38.2. *While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:*

38.4.1. *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore*



*such suppression of fact or false information by condoning the lapse.*

*38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

*38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

*38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

*38.6. In case when fact has been truthfully declared in character verification form 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.*

*38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

*38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

*38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

*38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

*38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”*



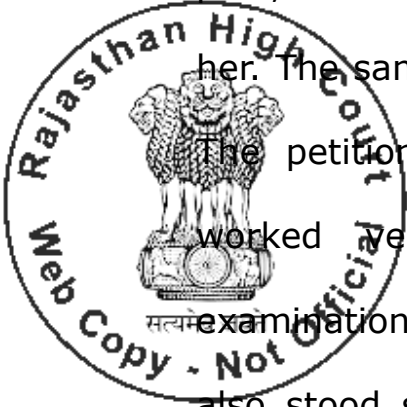
13. In the present case, the FIR itself stems from a matrimonial dispute. Furthermore, the petitioner has made a truthful disclosure of the case against her.

14. In this case, pursuant to the advertisement, admittedly, the petitioner had truthfully disclosed in her application form for the post, the facts regarding pendency of the criminal case against her. The same was duly entertained by the competent authorities.

The petitioner was issued the admit card, she struggled and worked very hard preparing for the competitive written examination followed by interview, achieved position of merit and also stood selected and the respondents also got her medically examined.

15. All along, the respondents did not raise any objection whatsoever to the petitioner's eligibility and suitability for appointment. Persons with lower merit than her's had been appointed. Yet the petitioner was denied the appointment and orally informed that her appointment had been withheld due to a complaint made by her husband regarding a pending criminal case against her.

16. Relevant part of condition no.15 of the advertisement dated 20.07.2021 relied upon by the learned senior counsel for respondents is that if any criminal case against the candidate was under trial in the court, he/she would be ineligible for appointment. The respondents have not shown any prescription under the relevant statutory recruitment rules for automatic ineligibility of a candidate if any criminal case against her was under trial in the court. Settled law of the land is that when facts



have been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, the employer in facts and circumstances of the case, in its discretion, may appoint the candidate and that though it is open to the employer to adjudge antecedents of the candidate, but ultimate action should be based on objective criteria on due consideration of all relevant aspects.

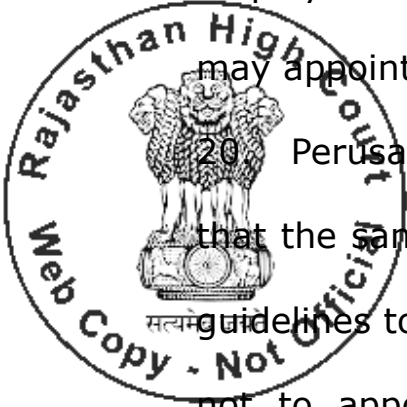


17. This being the position, I am of the opinion that the part of condition no. 15 of the advertisement dated 20.07.2021 i.e. that if in any pending criminal case, the candidate was under trial in Court, he/she would be ineligible for appointment, is untenable in law. It was wrongly inserted in the advertisement by the respondents and ought to be ignored. It thus follows that the respondents' reliance thereon cannot be accepted.

18. I have already opined above that part of condition No.15 of the advertisement dated 20.07.2021 is untenable in law and the respondents had wrongly inserted it in the advertisement. I am of the mind that, they cannot take undue and unfair advantage of their self-made wrong to deny to the petitioner the hard earned fruit of her success and merit in the competitive process of selection. In view of this and the aforesaid facts and circumstances, I am unable to accept the contention based on condition no.15 of the advertisement dated 20.07.2021 that the petition be dismissed as petitioner is wholly ineligible for appointment to the post.

19. As would be seen in *Avtar Singh (supra)*, (3-Judge Bench of the Supreme Court), it was held, *inter alia*, that though it is open

to the employer to adjudge antecedents of the candidate, but ultimate action should be based on objective criteria on due consideration of all relevant aspects and that in case when facts have been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, the employer in facts and circumstances of the case, in its discretion, may appoint the candidate subject to the decision of such case.



20. Perusal of circular dated 04.12.2019 (Annexure R-1) shows that the same is in the nature of the Government's administrative guidelines to its functionaries and the ultimate decision-whether or not to appoint a candidate is to be taken by the appointing authority taking into consideration the facts and circumstances of each case, the nature of work and status of the post on merits and that in each case, while deciding on the suitability or unsuitability of a candidate, the appointing authority should assess his (candidate's) character by taking into consideration the circumstances of the offence.

20.1. Same circular dated 04.12.2019, as aforesaid, was also subject matter of interpretation by this very Bench in a recent judgment rendered in **Kuljeet Singh Vs. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.11588/2023**, on 21.03.2025.

Relevant extract thereof is as under:-

*"13. Adverting now the main plank of defense taken by the respondents i.e. circular dated 04.12.2019 (it is part in Hindi part English), relevant part thereof is as under :-*

*"अतः शासन में सभी स्तरों पर एकरूपता बनाए रखने के हित में, इस विषय में पूर्व में जारी तत्संबंधी सभी परिपत्रों/निर्देशों के अधिक्रमण में निम्नानुसार दिशानिर्देश जारी किये जाते हैं :-*

*चरित्र सत्यापन के संबंध में विभिन्न सेवा नियमों में प्रावधान इस प्रकार हैं :-*

*Character. The character of a candidate for direct recruitment to the service must be such as to qualify him for employment in the service. He must produce a certificate of good character from the principal/Academic Officer of the University or College in which he was last educated and two such certificates written not more than six months prior to the date of application from two responsible persons not connected with the College or University and not related to him.*

- (1) *A conviction by a court of law need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object the overthrow by violent means of the government as established by law, the mere conviction need not be regarded as a dis-qualification.*
- (2) *Ex-prisoners, who by their disciplined life while in prison and by their subsequent good conduct have proved to be completely reformed, should not be discriminated against on grounds of their previous conviction for the purpose of employment in the service. Those, who are convicted of offences not involving moral turpitude or violence, shall be deemed to have been completely reformed on the production of a report to that effect from the Superintendent, After Care Home or if there are no such Homes in a particular district, from the superintendent of police of that district.*
- (3) *Those convicted of offences involving moral turpitude or violence shall be required to produce a certificate from the superintendent, After Care Home, or if there is no such home in particular district, from the superintendent of police of that district, endorsed by the Inspector General of prisons to the effect that they are suitable for employment as they have proved to be completely reformed by their disciplined life while in prison and by their subsequent good conduct in an After Care Home.*



इस संबंध में प्रकरण मान. सर्वोच्च न्यायालय में पहुंचने पर माननीय न्यायालय द्वारा दिल्ली प्रशासन बनाम सुशील कुमार (1996 (11) CC 605) में यह सिद्धान्त प्रतिपादित किया हुआ है कि "सेवा में नियुक्ति प्रदान करते समय अभ्यर्थी का चरित्र एवं पूर्व आचरण महत्वपूर्ण है। अपराधिक प्रकरण में दोषसिद्धि अथवा दोषमुक्ति अर्थात् वास्तविक परिणाम इतना सुसंगत नहीं है जितना की अभ्यर्थी का आचरण व चरित्र।"

सेवा नियमों की अपेक्षा यह है कि किसी अभ्यर्थी को नियुक्ति दिए जाने या न दिए जाने के संबंध में नियुक्ति प्राधिकारी को प्रत्येक प्रकरण के तथ्यों, परिस्थितियों एवं जिस पद पर नियुक्ति दी जानी है उस पद के कार्य की प्रकृति एवं गरिमा के अनुसार गुणावगुण पर निर्णय लेना चाहिए। पूर्व आचरण के आधार पर किसी भी अभ्यर्थी को नियुक्ति के योग्य या अयोग्य पाने का निर्णय करते समय नियुक्ति प्राधिकारी को प्रत्येक प्रकरण में अपराध की परिस्थितियों को भी ध्यान में रख कर अभ्यर्थी के आचरण का आंकलन करना चाहिए।'

उक्तानुसार यह निर्विवाद है कि किसी अभ्यर्थी को नियुक्ति दिए जाने/नहीं दिए जाने का निर्णय अंतिम रूप से नियुक्ति प्राधिकारी को ही, सुसंगत सेवा नियमों को ध्यान में रखते हुए, गुणावगुण के आधार पर लेना होगा। तथापि कुछ प्रकरण ऐसी प्रकृति के होंगे जिनमें स्पष्टतः यह माना जा सकता है कि अभ्यर्थी नियुक्ति हेतु पात्र नहीं है जबकि अन्य कुछ ऐसे प्रकरण भी होंगे जिनमें नियुक्ति से वंचित किया जाना किसी भी दृष्टि से उचित/न्यायपूर्ण नहीं माना जा सकता। अतः नियुक्ति अधिकारियों के सामान्य मार्गदर्शनार्थ निदर्शन के रूप में ऐसी प्रकृति के प्रकरणों को यहां लेखबद्ध किया जा रहा है :-

1. ऐसे प्रकरण/स्थितियां जिनमें नियुक्ति हेतु अपात्रता मानी जानी चाहिए:-

यदि किसी भी अभ्यर्थी के विरुद्ध निम्न में से किसी भी प्रकार के अपराध के तहत प्रकरण **अन्वेषणाधीन/न्यायालय में विचाराधीन (under trial)** है अथवा दोषसिद्धि उपरांत सजा हो चुकी है, तो उसे राज्य के अधीन सेवाओं/पदों पर नियुक्ति हेतु पात्र नहीं माना जाना चाहिए :-

(i) नैतिक अधमता यथा छल, कूटरचना, मत्तता, बलात्संग, किसी महिला की लज्जा भंग करने के अपराध में अन्तर्वलितता (involvement) हो।

(ii) स्वापक औषधि और मनः प्रभावी पदार्थ अवैध व्यापार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 26) में यथापरिभाषित अवैध व्यापार में अन्तर्वलितता हो।

(iii) अनैतिक व्यापार (निवारण) अधिनियम, 1956 (1956 का केन्द्रीय अधिनियम सं. 104) में यथापरिभाषित अनैतिक दुर्व्यापार में अन्तर्वलितता हो।

(iv) नियोजित हिंसा या राज्य के विरुद्ध ऐसे किसी अपराध में अन्तर्वलितता हो, जो भारतीय दण्ड संहिता, 1860 (1860 का केन्द्रीय अधिनियम सं. 45) के अध्याय 6 में वर्णित है।

(v) भारतीय दण्ड संहिता के अध्याय 16 एवं 17 में यथावर्णित अपराधों में अन्तर्वलितता हो।

(vi) भारतीय दण्ड संहिता की धारा 147, 148 (बलवा करना) के अपराध में अन्तर्वलितता हो।

(vii) भारतीय दण्ड संहिता की धारा 498 A (स्त्रियों के प्रति आपराधिक दुर्व्यवहार-दहेज) के अपराध में अन्तर्वलितता हो।

(viii) अजा/अजजा अधिनियम 1989 के तहत अपराध में अन्तर्वलितता हो।

(ix) **लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (पोक्सो), 2012 के तहत अपराध में अन्तर्वलितता हो।**

यहां यह भी स्पष्ट किया जाता है कि उक्त प्रकार के अपराधों से संबंधित कोई भी सूचना जानबूझकर छिपाने वाले अभ्यर्थियों को भी नियुक्ति हेतु अपात्र माना जाएगा।

2. ऐसे प्रकरण/स्थितियां जिनमें अभ्यर्थी को नियुक्ति हेतु पात्र माना जाना चाहिए:-

(i) जिन अभ्यर्थियों को आपराधिक प्रकरण में अन्वेषण में दोषी नहीं पाया गया हो तथा संबंधित भर्ती में परीक्षा परिणाम जारी होने के एक वर्ष के भीतर अन्वेषणोपरांत एफ.आर. न्यायालय में प्रस्तुत की जा चुकी हो।



(ii) दोषमुक्ति के मामलों में, विभाग में इस संबंध में गठित समिति जिसमें एक पुलिस अधिकारी भी सदस्य होगा, अभ्यर्थी के पूर्ववृत्त (antecedents), आरोपों की गहनता एवं दोषमुक्ति का आधार, अर्थात् क्या दोषमुक्ति सम्मानजनक रूप से प्रदान की गई है अथवा संदेह के लाभ/समझौते के आधार पर प्रदान की गई है, आदि का समुचित परीक्षण

कर, अभ्यर्थी को नियुक्ति देने के संबंध में निर्णय लेगी।

(iii) अभ्यर्थियों के ऐसे प्रकरण जिनमें न्यायालय द्वारा परिवीक्षा अधिनियम की धारा 12 का लाभ दिया जाकर परिवीक्षा पर छोड़ा गया हो। (दोषसिद्धि किसी निरर्हता से ग्रस्त नहीं/राजकीय सेवा/भावी जीवन पर किसी प्रकार का विपरीत प्रभाव नहीं)।

(iv) अभ्यर्थियों के ऐसे प्रकरण जिनमें दोषी करार दिया जाकर किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2005 की धारा 24(i) का लाभ प्रदान किया गया हो।

समस्त नियोक्ता अधिकारीगण से अपेक्षा की जाती है कि वे अभ्यर्थियों के चरित्र/पुलिस सत्यापन के संबंध में नियुक्ति के समय संबंधित सेवा नियमों के प्रावधानों एवं इन दिशा-निर्देशों के प्रावधानों को दृष्टिगत रखते हुए समुचित निर्णय लेंगे। तथा उक्त प्रकृति के प्रकरणों को न तो अनावश्यक रूप-से लम्बित रखेंगे और न ही कार्मिक विभाग को संदर्भित करेंगे।”



14. It would be seen from the text of circular dated 04.12.2019 that the same is in the nature of general guidelines to be observed by the concerned authorities and that the ultimate decision to adjudge the suitability or unsuitability of a candidate has to be taken by the appointing authority by taking into consideration the facts and circumstances of each case. Further, it has been laid down in the circular *ibid* that while appointing a candidate, his character; and previous conduct are important. The result of criminal case – whether conviction or acquittal - are not as much relevant as are his conduct and character. These guidelines also show that as per the Service Rules, there is no absolute or automatic disqualification for employment of a candidate even after his conviction and sentencing for criminal offences (obviously any offence, including those falling in Chapter XVI and XVII of the Indian Penal Code now Bharatiya Nyaya Sanhita or an offence involving moral turpitude) and that on satisfying certain conditions, such candidate can also be considered for appointment.

14.1. Circular's emphasis on individual assessment conveys, and rightly so, that it is not meant to serve as an inflexible rulebook but, rather general guidelines envisaged therein are to be borne in mind. The context Matters. Thus, the ultimate decision about a candidate's suitability must be made on a case-by-case basis. This allows the appointing authority to look at the totality of a candidate's character and past conduct, rather than relying solely on the outcome of a criminal proceeding.

14.2. It becomes far more relevant in cases where a candidate might have a minor or isolated offence, and may even be a case of strong reformation and good conduct over time, but yet he is rejected by sheer routine mechanics. The guidelines contained in the circular are not to be treated so rigidly as to not even allow for the possibility that a candidate's past, even if marred by being a suspect or under trial, may be outweighed by subsequent

*reformation and exemplary behavior. In the present case there is no other recorded criminal history other than the FIR in question, which too, seems to have arisen due to some personal dispute. More of it later. ”*

20.2. In light of above, the pertinent question which thus arises is, whether the allegations levelled by the deceased husband against his wife (petitioner herein), qua which at this stage she is

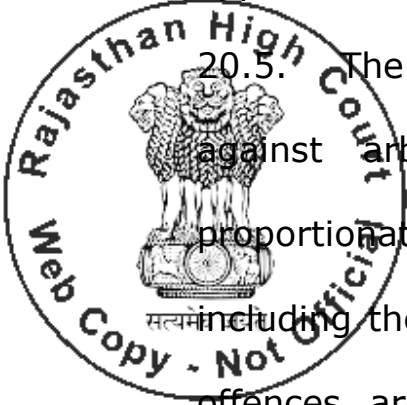
an undertrial and a suspect, can be substantiated to the point of resulting in her civil jeopardy during the pendency of criminal trial?

20.3. The answer is in the negative and lies within the circular dated 04.12.2019 itself read with the ratio enunciated by Supreme Court in Avtar Singh (supra).

20.4. The Circular *ibid*, relied upon by the respondents, no doubt stipulates that candidates against whom cases under Chapters XVI and XVII of the IPC are pending investigation or trial, or who have been convicted, should be deemed ineligible for appointment. However, this blanket disqualification must be read in harmony with the nuanced principles laid down by the three-judge bench of the Supreme Court in **Avtar Singh v. Union of India**, which emphasize that the appointing authority must assess the suitability of a candidate based on the nature of the offence, its relevance to the post, and whether it involves moral turpitude, rather than mechanically denying appointment due to the mere pendency of a case. The judgments cited by the respondents, such as **Union of India v. Methu Meda** and **Bhinya Ram Jajra v. State of Rajasthan**, no doubt, underscore the employer's discretion to evaluate antecedents, but they do not override the Avtar Singh's framework, which permits flexibility in cases of



trivial offences or those not involving moral turpitude. In the petitioner's case, the offences under Sections 452, 341, 323, and 143 IPC, arising from a matrimonial dispute, do not prima facie reflect a character flaw that would render her unfit for the RAS post, warranting such a contextual evaluation as to attract a rigid application of the Circular.



20.5. The judgment in Avtar Singh's case explicitly cautions against arbitrary denials of appointment, and requires a proportionate response after considering the factual matrix, including the absence of any suppression by the petitioner and if offences are not multiple or heinous. This approach is also reflected in and the intent of the Circular *ibid*. As already observed, the appointing authority should weigh merits and demerits specific to each case, rather than applying a blanket bar. Consequently, the High Court and Supreme Court judgments cited by the respondents, while affirming employer discretion, must yield to the broader, reformative perspective of Avtar Singh, ensuring that the petitioner's appointment is not unjustly withheld based solely on the pendency of a criminal case like the one in hand arising out of matrimonial discord and not involving any heinous offence or moral turpitude.

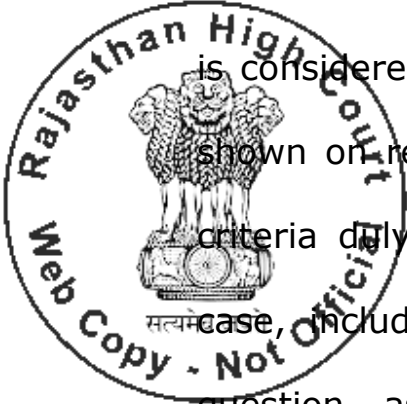
21. In view of law laid down by the Apex Court and the policy guidelines in the respondents own circular dated 04.12.2019, I am of the opinion that it was incumbent upon the appointing authority/respondents to take into consideration, on objective criteria, the relevant facts and circumstances of the case, including the nature of duties and status of the post in question,

as also the circumstances of the offence, and then decide on the petitioner's suitability or unsuitability on merits and demerits.

22. On this aspect, the respondents' have simply pleaded in reply to the petition that due to the challan being presented against the petitioner, as per point No.1 of the circular dated 04.12.2019 issued by the Department of Personnel, the petitioner is considered ineligible for appointment. It is neither pleaded nor shown on record that the competent authority had, on objective criteria duly considered the relevant facts and circumstances of the case, including the nature of duties and status of the post in question, as also the circumstances of the offence and then decided on merits that the petitioner was unsuitable for appointment.

23. The contention of the learned Senior Counsel for the respondents that a review committee had considered the question of petitioner's suitability and found her unsuitable for appointment, is wholly beyond their pleadings and even otherwise without any supporting material brought on record. There is nothing brought on record to show that any review committee had even considered the question of petitioner's suitability, let alone applied its mind on the culpability and the role attributed to the petitioner and found her unsuitable for appointment. It is not even claimed that the petitioner's appointing authority was a part of the deliberations of the Screening Committee.

23.1. In course of hearing, on a Court query, learned Senior Counsel apprised that though screening committee was constituted, but the view taken has not been placed on record, if



the time is permitted, it can be placed on record. Be that as it may, it transpires that screening committee has not taken any independent view by applying objective thinking other than a mechanical outcome of declaring the petitioner not eligible on the technical ground of circular dated 04.12.2019, which states that offences following under Chapter XVI & XVII of the IPC dis-entitle a candidate to seek Government Employment.

24. Consequently, this contention of the learned Senior Counsel for the respondents that merely because alleged offences are categorized under Chapter XVI & XVII of IPC, therefore, petitioner is ineligible *per se*, cannot be accepted.

25. In my opinion, the rules of natural justice and fair play required that the respondents at least to convey to the petitioner in writing why despite her selection on merit, she was not being appointed. That too was not done thus depriving the petitioner even of an opportunity to question/challenge the reasons, if given.

26. Even if, as contended, there was no necessity for the screening committee to disclose the reasons for not granting the appointment to the petitioner, that would not relieve the respondents of their obligation to plead and produce on record requisite material to show to the satisfaction of the Court's conscience that the appointing authority had in its discretion decided to deny the appointment to the petitioner after consideration of all relevant aspects, with due application of mind on an objective criteria. Needless to say, that the discretion so vested in the appointing authority was required to be exercised in a just, fair and reasonable manner and not arbitrarily or

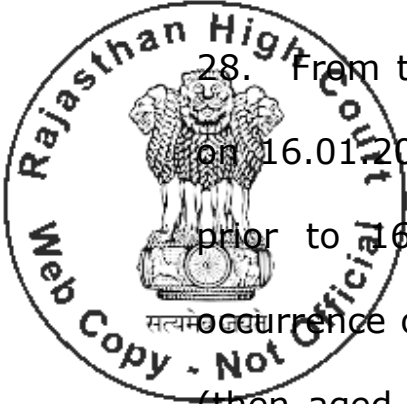


capriciously. Further, the same was also required to be demonstrated on record. The respondents have utterly failed to do discharge that obligation.

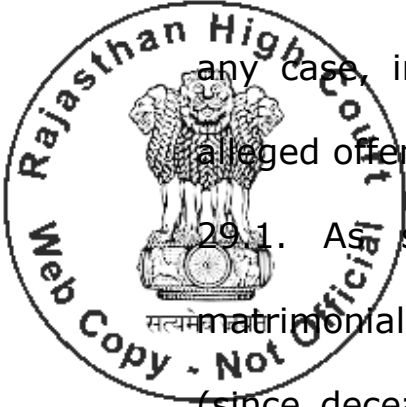
27. Qua the FIR No.530 dated 04.09.2020 lodged by the petitioner's husband-Yashvardhan Singh (since deceased), a few of the circumstances of the offences also need to be noticed here.

28. From the wed-lock of the couple, daughter Bhumi was born on 16.01.2018. As already noted, petitioner's husband had died prior to 16.08.2021. FIR shows that at the time of alleged occurrence on 04.09.2020, the petitioner with the infant daughter (then aged about 18 months), her brother Bhoj Raj Singh, their mother Om Kanwar, father Balbir Singh and another person, who was being addressed as Ugrasen, armed with a pistol had gone to the house of petitioner's husband (the complainant). FIR does not show if anyone of them except Ugrasen was carrying any weapon. The role ascribed to the petitioner is that she had joined the other assailants in beating the complainant and when his brother Praduman Singh tried to save her, the accused tried to beat him also and that the petitioner had given a kick-blow with her leg to the complainant's mother-Meenakshi Kanwar. Pertinently, FIR does not speak of any motive of the accused for commission of offences.

29. The offences alleged in the FIR are under Section 452 (House trespass after preparation for hurt, assault or wrongful restraint); Section 341 (definition of wrongful restraint, punishable under section 342, Section 323 (voluntarily causing hurt); Section 143 IPC (for being a member of unlawful assembly) and Section 27 of



the Arms Act. Vide section 320 of the Code of Criminal Procedure, the offences under Sections 323/341/342 IPC are compoundable. Qua the offence under Section 27 of the Arms Act, FIR does not show if any one of the assailants except Ugrasen was carrying any weapon. He (Ugrasen) is stated to have been armed with a pistol but there is no allegation of its having been brandished or used. In any case, in final report filed under Section 173 of Cr.P.C, the alleged offence under Section 27 of Arms Act was dropped.

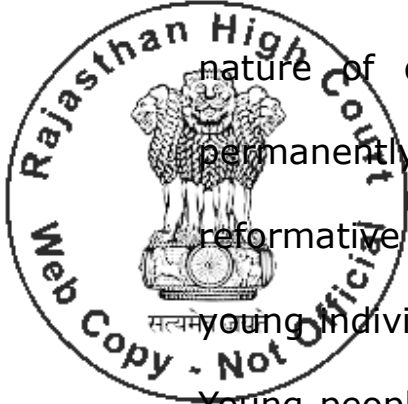


29.1. As stated above, the FIR had emanated from the matrimonial discord between the petitioner and her husband (since deceased). The offences in the FIR do not involve moral turpitude. The role attributed to the petitioner is not of such a nature so as to impinge on the nature of duties to be performed by her upon appointment.

30. To sum up, the reliance placed by the respondents on the judgment in *Anil Bhardwaj v. State of Madhya Pradesh*, is distinguishable, as in that case, the pending criminal case involved allegations under Sections 498A and 406 IPC, which, in light of allegations levelled therein, has a direct bearing on moral and financial integrity. In contrast, the present case involves minor offences arising out of a dispute between the petitioner and her husband. The contention that Condition No. 15 of the advertisement disqualifies the petitioner from appointment is also not sustainable, as the condition does not have an overriding effect on the settled principles laid down by the Apex Court in *Avtar Singh (supra)*. The appointing authority must assess whether the nature of the alleged offence disqualifies the

candidate from public service, which, in this case, does not appear to be the situation.

31. Even otherwise, one ought to be mindful that the youth need a reformative approach to the indiscretions committed in heat of the moment, which may or may not be intentional. Societal and so should the legal perspective be, of course depending upon the nature of delinquency, that youthful indiscretions should not permanently tarnish an individual's future. A compassionate and reformative approach ought to be adopted when dealing with young individuals who may have committed minor transgressions.



Young people are still in the process of emotional and intellectual development. They often act impulsively, sometimes making decisions that are not well thought out. A punitive approach that permanently brands young individuals as criminals for relatively minor mistakes contradicts the principles of justice/fairness, recidivism and reformation and reintegration into society.

32. There is no gainsaying to observe that mere registration of an FIR does not reduce a citizen to the status of either a convict or not having a good character. Every citizen is presumed innocent unless proved guilty. In the case in hand it so transpires that the alleged role attributable to the petitioner is not of such a nature so as to either impinge on the nature of duties to be performed by him or otherwise, even bordering moral turpitude.

33. Furthermore, the principle of proportionality must be kept in mind by the administrative authority. Not all offences are of the same gravity, and minor indiscretions should not be equated with serious crimes. In the present case, the petitioner's candidature

has simply been rejected on the ground that criminal cases are pending against her.

34. In view of the foregoing discussion, this Court holds that the denial of appointment to the petitioner solely on the ground of a pending criminal case, which does not involve moral turpitude, is arbitrary and unsustainable.

35. As an upshot, the present writ petition is allowed. The respondents are directed to make the appointment of the petitioner pursuant to interim order dated 23.07.2024 as absolute in accordance with her merit and category, subject, of course, to the outcome of the pending criminal case, and also furnishing an undertaking on an affidavit by the petitioner that she shall not claim any special equity by virtue of her having joined on the post in question in case of her conviction in the pending criminal trial.

36. Needless to say, if the petitioner is acquitted or discharged in the said case, there shall be no impediment in granting her all consequential benefits.

37. Pending application(s), if any, stand disposed of.

**(ARUN MONGA),J**

124-/Jitender

Whether fit for reporting : Yes / No.