

**HIGH COURT OF RAJASTHAN****S.B. Civil Writ Petition No. 17972/2022**

Ramesh Kumar Meena -----Petitioner

Versus

State of Rajasthan, Through The Secretary, Department Of Revenue, Government Of Rajasthan, Jaipur, Rajasthan.

The Board of Revenue, Ajmer Through Its Registrar, Ajmer, Rajasthan.

The District Collector, Land Records, District Udaipur, Rajasthan.-----Respondents

**Legislation and Rules:**

Rajasthan Revenue (Land Records, Settlement and Colonization) Subordinate Service Rules, 1970.

Probation of Offenders Act, 1958.

Circulars dated 15.7.2016 and 4.12.2019 by the Department of Personnel, Government of Rajasthan.

**Subject:**

Writ petition challenging the cancellation of the petitioner's appointment as Patwari based on his past criminal convictions, despite being given the benefit of probation under the Probation of Offenders Act, 1958.

**Headnotes:**

**Petitioner's Appointment and Subsequent Cancellation –** Petitioner appointed as Patwari following advertisement dated 17.1.2020 – Appointment cancelled due to past criminal convictions revealed during police verification – Petitioner convicted in two cases under IPC sections 147, 149, 447, 323, 325 but given probation under the Probation of Offenders Act, 1958. [Para 1-2]

**Legal Challenge to Cancellation –** Petitioner argued that mere conviction should not be a disqualification for appointment, citing the Rajasthan Revenue (Land Records, Settlement and Colonization) Subordinate Service Rules, 1970 – Relied on Supreme Court judgments in Pramod Singh Kirar Vs. State of Madhya Pradesh & Ors. and Ashok Ram Parhad & Ors. Vs. The State of Maharashtra & Ors. [Para 3]

**Respondents' Defence –** Respondents cited circulars by the Department of Personnel, specifying ineligibility for government service for candidates with certain offences – Referenced a similar case (Bhinya Ram Jajra Vs. State of Rajasthan) where the court upheld the employer's right to consider suitability for employment based on government orders/instructions/rules. [Para 4]

Court's Analysis and Decision – The Court referenced guidelines from Supreme Court in Avtar Singh case regarding the employment of candidates with criminal antecedents – Concluded that the petitioner's past offences fall within the prohibited categories as per the circulars dated 15.7.2016 and 4.12.2019 – Upheld the respondents' decision to cancel the petitioner's appointment. [Para 5-7]

**Referred Cases:**

Pramod Singh Kirar Vs. State of Madhya Pradesh & Ors. (2023)1 SCC 423.

Ashok Ram Parhad & Ors. Vs. The State of Maharashtra & Ors., Civil Appeal No.822/2023.

Bhinya Ram Jajra Vs. State of Rajasthan (S.B. Civil Writ Petition No.16998/2021).

D.B. Special Appeal (Writ) No.602/2022 (Bhinya Ram Jajra Vs. State of Rajasthan).

Avtar Singh case

**Representing Advocates:**

Mr.Keshav Bhati for the petitioner.

Mr.Mrigraj Singh Rathore, Dy.G.C. for the respondents.

**Decision:**

**ORDER**

**21/11/2023**

By way of filing instant writ petition, the petitioner has prayed for following reliefs:

“It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed:-

- A. By an appropriate writ, order or direction, the Order dated 20.10.2022 (Annex.07) passed by the respondents, cancelling the appointment of the petitioner for the post of Patwari while declaring the petitioner as ineligible may kindly be quashed and set aside.
- B. By an appropriate writ, order or direction, the respondents may kindly be directed to treat the petitioner as eligible for the purpose of appointment on the post of Patwari for TSP Area while considering the Rule 18 of the Rajasthan Revenue (Land Records, Settlement and Colonization) Subordinate Service Rules, 2019.

- C. By an appropriate writ, order or direction, the respondents may kindly be directed to allow the petitioner to join the services on the post of Patwari in pursuance of the Appointment Order dated 08.07.2022 (Annex.02) along with all consequential benefits.”

The petitioner applied pursuant to the advertisement dated 17.1.2020 for the post of Patwari and was accorded appointment vide order dated 8.7.2022 (Annex.2) issued by the Office of District Collector (LR), Udaipur.

During the course of police verification, the petitioner herein was found to have been convicted after trial by the competent criminal court in the following matters:

S.No.	Sessions	Judgment dated	Offences under sections	Case No.
1.	187/2007	16.06.2009	147, 149	IPC
2.	1429/2016	24.09.2021	147, 149, 447, 323, 325	IPC

However, in the above mentioned cases, he had been given the benefit of probation as per the Probation of Offenders Act, 1958.

After receiving police verification report, the District Collector (LR), Udaipur vide order dated 20.10.2022 (Annex.7) has rejected the appointment order issued in favour of the petitioner.

Learned counsel for the petitioner while challenging the order impugned dated 20.10.2022 submitted that the conviction of the petitioner by a court of law cannot be made a sole ground to reject the petitioner's candidature particularly when under the Rajasthan Revenue (Land Records, Settlement and Colonisation) Subordinate Service Rules, 1970 it has been specifically provided that mere conviction of a person would not be a disqualification. Learned counsel further submitted that the petitioner was falsely implicated in the said criminal cases at a very young age and therefore, the same should not be made a basis for rejection of his candidature. In support of above contention, learned counsel placed reliance on the judgments passed by Hon'ble the Supreme Court in the case of ***Pramod Singh Kirar Vs. State of Madhya Pradesh & Ors.*** reported in **(2023)1 SCC 423** and ***Ashok Ram Parhad & Ors. Vs. The State of Maharashtra & Ors.*** passed in **Civil Appeal No.822/2023 decided on 15.3.2023.**

Per contra, learned counsel for the respondents submitted that the Department of Personnel has issued circulars dated 15.7.2016 and 4.12.2019 laying down the conditions for appointment of the selected candidates. Learned counsel submitted that in the aforesaid circulars, the circumstances in which the candidate should not be declared ineligible, have been mentioned in detail. Drawing attention of the Court towards circular dated 4.12.2019 issued by the Department of Personnel, learned counsel submitted that any candidate who has committed offences under Sections 147, 148 IPC is ineligible to be appointed in the government service. Learned counsel submitted that a coordinate Bench of this Court in the case of ***Bhinya Ram Jajra Vs. State of Rajasthan (S.B. Civil Writ Petition No.16998/2021)*** has been pleased to consider exactly similar controversy and has held that the right of the employer to consider the suitability of the candidate as per government orders/ instructions/rules at the time of making a decision for induction of the candidate in employment, cannot be taken away. Learned counsel submitted that the aforesaid judgment rendered by coordinate Bench of this Court has been upheld by Hon'ble 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.***

The operative portion of the judgment passed by Hon'ble Division Bench is reproduced herein below for ready reference:

“Suffice it to say that the appellant-writ petitioner seeks appointment on the post of Teacher Grade III pursuant to the selection process initiated vide recruitment notification dated 11.09.2017. He was selected and his name was reflected in the merit list. An appointment order was also issued in his favour. During mandatory police verification, it came to light that he had been charge-sheeted for the offence punishable under Section 8/18 of the NDPS Act. A copy of the charge-sheet has been annexed with the writ petition which reflects that the appellant-writ petitioner was apprehended while peddling opium. Apparently thus, the appellant-writ petitioner is facing trial for a very serious offence against the society and involving grave moral turpitude.

Hon'ble the Supreme Court, while answering the reference in the case of ***Avtar Singh (supra)***, laid down following guidelines governing the principles of entering into Government Service of candidates with criminal antecedents:

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(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.

(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.

**(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.**

(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 recourse appropriate to the case may be adopted : -

(a) 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.

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

**(c) 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.**

**(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.**

**(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.

**(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.

**(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.

**(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.

**(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.

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

**(Emphasis supplied)**

Apparently thus, Hon'ble the Supreme Court has clearly laid down that the employer is required to take into consideration the Government orders/instructions/rules applicable to the employee at the time of taking the decision.

Since the charges against the respondent writ petitioner in the pending criminal case pertain to grave offence of moral turpitude, the circular/instructions dated 15.07.2016 and 04.12.2019 issued by the Department of Personnel, Government of Rajasthan clearly operate against him and hence, he cannot be employed in Government Service. There is no merit in the contention that the trial has not resulted in conviction. As per the guidelines laid down in the case of **Avtar Singh (supra)**, the employer is entitled to take into consideration the Government orders/instructions/rules applicable to the employee, at the time of taking the decision. Even if, the employee has been acquitted in a case involving offence of moral turpitude or an offence of heinous/ serious nature on technical ground, the employer can still take a decision to take appropriate action for continuation of the employee in service. In the case at hand, the Government instructions, referred to supra, clearly prohibit the entry into Government service of an individual who is involved in an offence of moral turpitude. Indisputably, the trial for the offence punishable under Section 8/18 of the NDPS Act is pending against the respondent and hence, he is having such criminal antecedents which dis-entitled him to be appointed as a Teacher.

The judgment in the case of **Mahendra Singh Rathore vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.19152/2018, decided on 11.02.2019)** on which, Dr. Bhati placed reliance was challenged by the State of Rajasthan by filing D.B. Special Appeal (Writ) No.1377/2019 which has been accepted by this Court vide order dated 15.09.2022 and the order passed by learned Single Bench has been reversed.

In the case of **Love Kush Meena (supra)**, Hon'ble the Supreme Court accepted the appeal filed by the State and inspite of the acquittal of the respondent, upheld the decision of the authorities in denying appointment to the employee on the ground of his criminal antecedent.

In the case of **Rajkumar (supra)**, the peculiar facts of the case and nature of trivial offences attributed to the aspirants who had been acquitted by compromise, persuaded Hon'ble the Supreme Court to grant discretionary relief. Thus, the facts and circumstance of this judgment are totally distinguishable.

In the case of **Mehu Meda (supra)**, the appeal preferred by the Union of India was dismissed and the judgment of the High Court granting relief to the employee who had been denied appointment despite attaining honorable acquittal in the criminal case was affirmed. Thus, the facts of the said case are also distinguishable. In the case of **Akashdeep Morya vs. Rajasthan High Court & Anr.**, the aspirant applied for selection in the judicial services. He was arraigned as an accused for trivial charges and was acquitted/exonerated. The appointing authority i.e., the Rajasthan High Court refused to give appointment to the candidate who approached the Division Bench of this Court by filing writ petition (No.12290/2017) which was accepted and the claim of the aspirant for appointment was upheld. However, the said judgment of Division Bench was challenged before Hon'ble the Supreme Court by filing a SLP and the judgment of the Division Bench was reversed vide judgment dated 16.09.2021. Thus, even where, the candidate had been acquitted/exonerated in cases involving trivial offences, Hon'ble the Supreme Court reversed the decision



of the Division Bench denying opportunity of joining services as a judicial officer to the said candidate. The case of the appellant-writ petitioner is much more onerous because he is facing trial for the offence under the NDPS Act which is a grave offence against the society and has all attributes of moral turpitude.

In the case of **State of Rajasthan & Ors. vs Gajendra Narayan Patidar (D.B. Special Appeal (writ) No.543/2021, decided on 19.05.2022)**, the Division Bench of this Court considered the import of the Government circulars dated 15.07.2016 & 04.12.2019 and the Supreme Court judgment in the case of **Avtar Singh** (supra) in *extenso* and observed as below:-

“As per Point No.3, Government orders/instructions/rules applicable to the employee would have to be taken into consideration at the time of taking the decision. It has been observed at Point No.4(C) that in a case involving moral turpitude or offence of heinous/serious nature, even if acquittal had been recorded 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. At Point No.5, it has been observed that in case where the employee has made a declaration truthfully of a concluded criminal case, the employer still has right to consider the antecedents and cannot be compelled to appoint the candidate.

Since the charges against the respondent writ petitioner in the pending criminal case pertain to offences of moral turpitude covered under Chapters XVII, XVIII and VA of the IPC, the circular/instructions dated 15.07.2016 and 04.12.2019 issued by the Department of Personnel, Government of Rajasthan clearly operate against him and hence, he cannot be employed in Government Service on this ground alone.

The Judgment in the case of **Mahendra Singh Rathore Vs. State of Raj. & Ors. (S.B. Civil Writ**

**Petition No.19152/2018), decided on 11.02.2019** on which, reliance was placed by learned Single Bench while allowing the writ petition of the respondent writ petitioner, has been assailed in **D.B. Special Appeal Writ No.1377/2019**.

Learned counsel representing the respondent writ petitioner placed reliance on the Division Bench Judgment in the case of **Akashdeep Morya vs. Rajasthan High Court & Anr. (D.B.Civil Writ**

**Petition No.12290/2017), decided on 21.03.2018** wherein, the candidate was granted the relief sought for despite pendency of four criminal cases. A perusal of the said Judgment indicates that three criminal cases, which were registered against the writ petitioner, pertained to the trivial offences under the Indian Penal Code. One case was registered when the writ petitioner was a minor. Only one case involved the offences punishable under Sections 420 and 406 IPC wherein also, the police had given a negative Final Report which was accepted by the Court concerned.

Apparently thus, the factual matrix involved in the case of **Akashdeep Morya (supra)** is totally distinguishable from the case at hand and hence, the ratio of the said judgment does not help the cause of the respondent writ petitioner. In the case of **State vs. Mahendra Singh Meena (supra)**, the writ appeal filed by the State was dismissed by the learned Division Bench and the direction given by the learned Single Bench to offer appointment to the writ petitioner despite pendency of the criminal case was affirmed. In the said judgment, the Division Bench pertinently observed that the offences attributed to the candidate did not involve allegations of moral turpitude. Thus, the said judgment is also of no avail to the respondent writ petitioner Gajendra Narayan Patidar.

As a consequence of the above discussion, the impugned order dated 23.01.2020 passed by the learned Single Bench does not stand to scrutiny and hence cannot be sustained. Thus, the same is reversed. The special appeal is allowed accordingly. Stay application is disposed of.”

As a result of the above discussion, we are of the firm view that the action of the respondents in denying appointment/posting order to the petitioner is perfectly in accordance with law. The impugned judgment of the learned Single Bench affirming the said decision is unassailable on facts and in law, hence, the same does not warrant any interference whatsoever. Accordingly, the instant intra-court appeal is dismissed as being devoid of merit.”

Having considered the rival submissions advanced at the bar; the precedent law cited at the bar and the fact that the offences allegedly to have been committed by the petitioner fall within the prohibited offences, for which the circulars dated 15.7.2016 and 4.12.2019 have been issued by the Department of Personnel, in the considered opinion of this Court, the action of the respondents cannot be faulted on any count.

Consequently, the writ petition is dismissed as being devoid of any merit.

All pending applications if any are also dismissed.

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