



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.6233 of 2022
Date of Decision: 31.07.2025

Yog RajPetitioner

Versus

State of Himachal Pradesh & Ors. ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Angrez Kapoor, Advocate.

For the Respondents: Mr. Anup Rattan, Advocate General, Mr. Rajan Kahol, Mr. Vishal Panwar & Mr. B.C. Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General, for the respondent-State.

Sandeep Sharma, Judge(oral):

Precisely, the question, which needs to be determined in the case at hand is that "whether compassionate appointment, duly approved by the competent authority, could have been denied to the petitioner on the ground of pendency of FIR against him or not?".

2. The facts, as emerge from the pleadings adduced on record and relevant for the proper adjudication of the case at hand are that father of the petitioner, who was working in the Department of Elementary Education w.e.f 01.08.1998 to 21.10.2009 as JBT, died in harness on 21.10.2009 leaving behind eight members of his family. In the year 2010, petitioner submitted an application for compassionate

¹Whether the reporters of the local papers may be allowed to see the judgment?

appointment in the office of Block Elementary Education Officer, Salooni, District Chamba, Himachal Pradesh, who, vide order dated 04.06.2011, returned the case of the petitioner with the observation that the claim of the petitioner did not fall within the ambit of Government Policy. After receipt of aforesaid communication, petitioner, through his counsel, served a legal notice upon the respondents, who, vide order dated 26.09.2014, reviewed the case of the petitioner.

3. Vide communication dated 18.12.2019 (*Annexure P-5*), Deputy Director Elementary, Education, Chamba, Himachal Pradesh, sent the case of the petitioner to respondent No. 2 for further action. Though on 26.02.2021, Government approved the name of the petitioner for appointment on compassionate ground for the post of Class-III (JOA IT) and last date to submit fresh/latest documents was specified in communication dated 16.03.2021, but fact remains that till date no appointment letter has been issued. Though on 13.04.2021, petitioner submitted the requisite documents, in terms of Annexure P-7, to the office of Block Elementary Education Officer, Salooni, District Chamba, Himachal Pradesh, and thereafter, more than four years have passed but no appointment letter has been issued, as such, petitioner has approached this Court in the instant proceedings, praying therein for the reliefs reproduced hereinbelow:-

“(i) That the writ in the nature of mandamus may kindly be issued to the respondents, that to offer the appointment to the petitioner on compassionate ground to the post of Classs-III (JOA IT) in term of Annexure P-7, dated 16.03.2021, because as per Annexure P-7, Government has already been approved the name of petitioner for appointment on compassionate ground to the post of Class-III (JOA IT), on 26.02.2021, and name of the petitioner is figured at sr. No. 13 of the Annexure-A of the approval list of Annexure P-7.

“(ii) That writ in the nature of mandamus may kindly be issued to respondents that petitioner shall be deemed to be in service in the above mentioned post since April 2021, with all consequential benefits, because since, March, 2021, to till today more than on eyear has been elapsed, despite the fact that petitioner has been submitted all the latest documents in the month of April 2021, as required in term of Annexure P-7.”

4. On inquiry, it transpired to the petitioner that his appointment letter is not being issued on the ground of pendency of FIR. Pursuant to notices issued in the instant proceedings, respondents No. 1 & 3 have filed short reply, perusal whereof reveals that though name of the petitioner stands approved by the competent authority for appointment on compassionate ground for the post of JOA (IT), but appointment letter could not be issued on the ground of pendency of FIR No. 5 of 2019, registered at PS Kihar under Sections 323 and 325 of Indian Penal Code (in short “**IPC**”).

5. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Angrez

Kapoor, learned counsel representing the petitioner, is that mere pendency of FIR, that too under Sections 323 and 325 of IPC, cannot be a ground to delay the appointment of the petitioner on compassionate ground. Mr. Kapoor, further submitted that since there was no misrepresentation, if any, on the part of the petitioner, there was no occasion, if any, for the respondents to delay issuance of appointment letter to the petitioner. He further submitted that guilt, if any, of the petitioner in aforesaid FIR is yet to be established on record by leading cogent and convincing evidence and as such, petitioner deserves to be offered appointment letter at the earliest. In support of his aforesaid submissions, he placed reliance upon the judgment passed by Division Bench of this Court in CWP No. 9026 of 2022, titled as **Sanjay Kumar Vs. State of Himachal Pradesh and others**, which came to be decided on 10.01.2023. In afore case, petitioner therein though was selected for the post of General Duty Constable (Male), but was not issued appointment letter on the ground of his being involved in a criminal case, by placing reliance upon Clause-19 of H.P. Government Notification dated 05.08.2021 (Recruitment Rules) and Stage-08 of Recruitment Notice dated 10.09.2021.

6. Division Bench of this Court, having taken note of gravity of crime, coupled with the fact that guilt, if any, of the petitioner in that

case was to be established on record, deprecated the action of the respondents in not issuing appointment letter to the petitioner, despite his being selected. Relevant paras of the afore judgment are reproduced hereinbelow:-

"8. As regards the first ground, it has been stated that the case against the petitioner is pending and he may be acquitted or convicted by the Ld. Trial Court. But the moot question is whether, in such circumstances, the offence can be said to be of such a serious nature as may amount to moral turpitude and is by itself sufficient to deprive the petitioner of his appointment when admittedly the petitioner alone has not been arraigned as an accused in the FIR that has been lodged where a number of persons have been arraigned. The dispute therein is amongst two groups of villagers. Earlier some beatings had been given to the uncle of the petitioner which led to the registration of the FIR No.110/2019 at Police Station, Nahan, on 14.11.2019 and as many as 9 persons were named in that FIR. However, as a counterblast, the opposite party thereafter lodged an FIR No.113/2019 on 20.11.2019 i.e. after six days of lodging of the FIR by the petitioner's uncle. This fact has been duly noticed by the Court while passing the judgment in CWP No.6851 of 2022 as is evident from paragraphs 19 to 21 (supra).

9. Given the factual background, even reason No.2 in itself cannot be a sufficient ground to withhold the appointment of the petitioner, especially, when the uncle of the petitioner was the first to lodge the FIR, whereas, the FIR of the opposite party came to be registered much later i.e. after six days.

10. Likewise, even third reason by construing the word "may" as "shall" and thereby depriving the petitioner of his appointment is again contrary to the letter and spirit of the order passed by this Court in CWP No. 6851 of 2022 (supra).

11. The 3rd respondent was duty bound to have reached at a decision by taking into account the relevant considerations and should not have taken into account the wholly irrelevant and extraneous considerations. It is not the answer that 3rd respondent acted bonafide or that he bestowed painstaking consideration. The reasons as given by 3rd respondent are not good reasons as the relevant factors have been kept out of consideration and irrelevant considerations were made the basis of the consideration order.

12. In such circumstances, the instant writ petition is allowed and the impugned orders dated 09.09.2022 (Annexure P-1) and 26.12.2022 (Annexure P-5) are quashed and set aside. The official-respondents are directed to appoint the petitioner to the post of General Duty Constable (Male) forthwith with consequential benefits of seniority, the same shall, however, be subject to the outcome of the criminal case. However, since the petitioner has not worked on the post, the actual monetary benefits shall be payable to him only from the date of this judgment."

7. Mr. B.C.Verma, learned Additional Advocate General, while justifying the impugned action of the respondents in not offering appointment to the petitioner, vehemently argued that factum with regard to lodging of FIR was concealed by the petitioner at the time of his making application for the post in question and as such, no illegality can be said to have been committed by the respondents, while denying him appointment on compassionate ground. Mr. Verma, further submitted that petitioner is accused of offences punishable under Sections 323 and 325 of IPC and has been rightly denied appointment, despite there being recommendation made by

the competent authority for his appointment, in terms of Clause-19 of H.P. Government Notification dated 05.08.2021 (Recruitment Rules) and Stage-08 of Recruitment Notice dated 10.09.2021.

8. Having heard learned counsel for the parties and perused material available on record, this Court finds that there is no dispute that father of the petitioner was working with the Department of Elementary Education w.e.f 01.08.1998 till 21.10.2009 as JBT and died in harness leaving behind eight members of his family including petitioner. Since petitioner was not major at the time of death of his father, he, after having attained majority, applied for compassionate appointment in the year 2010 to the office of Block Elementary Education Officer Salooni, District Chamba, Himachal Pradesh, who, vide order dated 04.06.2011, rejected the claim of the petitioner on the ground that he does not fall within the ambit of Government Policy. Subsequently, case of the petitioner was reconsidered and vide communications dated 24.09.2016 and 18.12.2019, Deputy Director, Elementary Education, Chamba, Himachal Pradesh, sent the case of the petitioner to respondent No. 2 for further action. Vide order dated 16.03.2021, Government approved the name of the petitioner for appointment on compassionate ground on the post of JOA (IT) and asked him to submit fresh/latest documents. Though

petitioner submitted all requisite documents as were called for, but he was denied appointment for unknown reasons.

9. For the first time, respondents, by way of filing reply to the petition, have put-forth their defence that since FIR bearing No. 5 of 2019 stands registered against the petitioner under Sections 323 and 325 IPC, he could not be issued appointment letter, but such plea taken at the behest of the respondent/State is not sustainable for the reason that guilt, if any, of the petitioner in afore case is yet to be established by the prosecution by leading cogent and convincing evidence. Neither there is anything on record to suggest that petitioner ever concealed factum with regard to lodging of FIR against him nor there is any document, if any with the respondents, suggestive of the fact that petitioner was to send information with regard to pendency of criminal case, if any, against him to the respondents. It is merely on the basis of application filed by the petitioner that his case came to be forwarded to respondent No. 2 by respondent No. 3, respondent No. 2 further submitted the case to the Government, which ultimately came to be approved, vide communication dated 16.03.2021. At no point of time, petitioner was asked by the respondents with regard to pendency of FIR, if any, against him and as such, there was no occasion for him to disclose such fact, which otherwise could not have any bearing in the case at

hand for the reason that guilt, if any, of the petitioner in afore case is yet to be established on record by the prosecution by leading cogent and convincing evidence. Moreover, allegations/charges, if any, in the FIR are not so serious, where petitioner can be denied appointment, rather same appears to be on the ground of some altercation or scuffle that took place *inter se* petitioner and complainant in the FIR.

10. Division Bench of this Court, in similar facts and circumstances, in **Sanjay Kumar** (*supra*), relevant paras whereof have been reproduced hereinabove, deprecated the action of the respondents in not issuing the appointment letter to the petitioner in that case, who was selected for the post of Constable General Duty, on ground of pendency of criminal case. No doubt, pendency of criminal case and registration of FIR is to be taken into account, while considering a candidate for appointment and even at the time of training, as per the Rules, but then the gravity and nature of the offence has also to be considered and, therefore, mere registration of criminal case by itself cannot be a ground for the appointing authority to deny appointment or for that matter withhold regularization. In judgment dated 22.10.2019 passed in CWP No.2110 of 2019, titled, **Rajinder Kumar vs. Himachal Road Transport Corporation & another**, Principal Division Bench of this Court has held that mere pendency of criminal case cannot be a reason to deny the

regularization to an employee. Relevant paras of the afore judgment read as under:-

"5. Pre-condition for regularization, as per the Government instructions is that an employee, who completes three years of continuous service on contract basis, is entitled for regularization. For the purpose of regularization what has to be looked into is; firstly whether he is a fit person for regularization; secondly, whether he has completed three years of continuous service which is mandatory for regularization; and thirdly, whether his character and conduct is good in order to hold the post in Government/Corporation. When these are the facts and requirement for the purpose of regularization then merely on the ground of registration of a criminal case, a person cannot be deprived of his right of regularization. Since there are many offences which are stated in the IPC but, the Head of Office or the Appointing Authority has to look into the nature of criminal case involved. From the FIR produced, the offences against the petitioner are under Sections 341, 323 and 34 IPC. These offences are common and trivial in nature in respect of a driver, who has to negotiate his vehicle on public road and it is normal that whenever a person who has to negotiate a vehicle on a public road, touches the Government vehicle. This itself may not be sufficient to register a criminal case. Merely registration of a case itself should not be a ground to deprive the petitioner for regularization. The Head of Office is always presumed that he should protect his employees where cases are filed against its employees. The pendency of a criminal case and registration of FIR is to be taken into account but it depends upon the gravity and nature of the offence. Merely registration of a criminal case itself is not a ground and it shows that the Appointing Authority or the Head of Office has not applied its mind in the present case. Getting an employment/regularization though is not a fundamental right but consideration for regularization is a fundamental right for the purpose of Article 16 of

the Constitution of India. When such is a fundamental right for consideration then while dealing with such rights, the respondents should take all care and caution. The respondents in the present case are dealing with the right to life of an employee which ultimately affects his dependents as well. When such interest is involved, which includes the employee as well as his family members, dealing always should be with more care and caution and not in a mechanical and negligent manner.

6. The Hon'ble Supreme Court in *State Bank of India vs P. Soupramaniane*, referred supra in para-7 held as to what is the meaning of moral turpitude. It is important and beneficial for Head of the Department to take note of the observations made by the Hon'ble Supreme Court in para-7, which reads as under:

"7. Moral Turpitude' as defined in the Black's Law Dictionary (6th ed.) is as follows:

"The Act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man."

"implies something immoral in itself regardless of it being punishable by law"; "restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind."

According to Bouvier's Law Dictionary, 'Moral Turpitude' is :

"An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Burton Legal Thesaurus defines 'Moral Turpitude' as :

"Bad faith, bad reputation, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, ice, wrong."

7. In *State of Haryana vs. Ved Kaur*, referred to the Hon'ble Supreme Court has also observed in para-8, which reads as under:

"8. The instructions dated 26.03.1975 which were relied upon in the present case, had been considered by this Court in Pawan Kumar v. State of Haryana and another and paragraph 12 of the decision is relevant for present purposes. The said paragraph was as under:

"12. Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of High Court of H.P. 6 Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

"... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not; (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general. (2) whether the motive which led to the act was a base one.

(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the abovementioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not included in it but which in certain situations and circumstances may involve moral turpitude.” Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted.”

8. In the light of the observations made by the Hon'ble Supreme Court and the material placed before us, we are of the opinion that a criminal cases when comes in the way of regularization in respect of an employee, it has to be carefully scrutinized by the Head of Office or Appointing Authority, unless it is to be held it is a case of serious nature and colourable exercise of powers.”

11. Three Judges Bench of Hon'ble Apex court, while dealing with the suppression of material facts for submitting false information in ***Avtar Singh Vs. Union of India and others (2019) 8 SCC 71***, held that, in case of trivial nature, in which conviction and acquittal has 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. In the case at hand, respondents have not been able to demonstrate that petitioner concealed factum with regard to pendency of FIR against him and guilt, if any, of the petitioner is yet to be established on record by the prosecution. Relevant paras of the afore judgment read as under:-

*"18. Similar issue regarding the appointment of Constable came up before the learned Single Judge of **Hon'ble Punjab and Haryana High Court**, in CWP No.26398 of 2016 (O&M), titled **Amarjeet Singh vs. State of Punjab and another**, decided on 13.02.2020, wherein it is held that the appointment of the petitioner cannot be denied only on account of the registration of FIR in spite of being a selected candidate for the post in question. The learned Single Judge while allowing the petition observed, as under:*

"The uncontroverted factual premise is that on the date of advertisement and submission of application form there was no FIR against the petitioner. Name of the petitioner figures in FIR No.22 dated 11.07.2016 at Police Station Women Cell Firozpur under Sections 406/498-A IPC at the instance of his sister-in-law. Challan was presented in the Court after completion of investigation on 22.12.2017 and name of the petitioner had been placed in column No.2. Petitioner is not facing trial inasmuch as no charges have been framed against him. Even an application moved by the complainant under Section 319 Cr.P.C. to summon the petitioner herein to face trial as an additional accused stands dismissed by the Trial Court vide order dated 04.06.2019 at Annexure P-12.

This Court is of the considered view that mere registration of an FIR cannot be made the basis and equated with a finding of guilt recorded by a competent Court. In other words registration of a case cannot lend the colour of conviction. The action of the respondent department in not 3 of 6 issuing an appointment letter to the petitioner for the post of Constable inspite of his selection and merit position would amount to holding the petitioner guilty of the offence. Such a course of action would be totally unwarranted. In taking such view this Court would draw support from the observations made by the learned Single Judge of the Rajasthan High Court in Harsh Gupta Vs. Rajasthan State Electricity Board 1995, (1) SCT 485 and which are as under:-

"On the merits of the case, I would like, once again, to make it clear that at the time of selection, the petitioner had no blemish whatsoever against him. The only material which came into existence after his selection is in the form of registration of first information report against almost all the members of the family of the petitioner roping them in an offence under Section 498A IPC. The question is, whether mere registration of a case by the police can be made the basis for holding that the petitioner's character is doubtful or unsatisfactory. The answer of this question will depend on as to whether registration of a case by the police can be equated with a finding of guilt recorded by a competent Court or Tribunal. Registration of a case simpliciter does not automatically result in conviction of a person. It does not per se cause a stigma on character of a person. Therefore, the information which the police had forwarded to the authorities of the Board regarding the character of the petitioner was misleading. Apparently, the authorities of the Board have, without applying their mind, mechanically acted on the report sent by the police authority at Ajmer. Authorities of the Board never bothered to find out as to

what is the nature of the allegation levelled against the petitioner; what is the stage of the case and as to whether the petitioner has been found guilty of an offence. I am of the considered opinion that action which the respondent-Board has taken is not in terms of para 6 of the order of appointment dated 4 of 6 23.11.1991. This view of mine is fully supported by D.B. Judgment of this Court in Gopi Lal v. State of Rajasthan and another, [1989 (2) RLR 748]. The Division Bench has observed as under:

We may, therefore, sum up that the service of a Government servant cannot be terminated or the Government servant cannot be discharged from service only on account of the pendency of a criminal case against him. The reason is obvious. Unless the guilt is proved, one is presumed to be innocent. Moreover, criminal case may be launched out of enmity etc. It is, therefore, the conviction and not the pendency of a criminal case which should be taken into account for disciplinary action."

The judgement in Delhi Administration's case (supra) would have no applicability to the facts of the present case as in that case there was a concealment of being involved in Criminal proceedings whereas in the present case there is no concealment whatsoever as on the date of submission of application for the post by the petitioner, the FIR had not even been registered.

Rule 12.14 (1) of the Punjab Police Rules 1934 reads as under:-

12.14. Recruits - Status of.-- (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment." As per mandate of the afore-reproduced rule the recruits are to be of good character and great care has to be taken while selecting recruits. There is

no material whatsoever with the respondent authorities to conclude that the petitioner herein is not of good character. Mere registration of an FIR cannot be made the basis of invoking the Rule 12.14 (1) and particularly in a situation where pursuant to investigation having 5 of 6 been carried out, the petitioner has not even been challaned and no charges have been framed against him. Denial of appointment letter inspite of being a selected candidate on the strength of Rule 12.14 (1) of the Punjab Police Rules cannot sustain.

19. Adverting to the facts of the instant case, it would be noticed that it was not only the petitioner alone, as an accused in the FIR, but a number of persons have been arrayed as an accused. According to the petitioner, there was a dispute with respect to the cremation place between two groups of villagers. Earlier some beatings had been given to the uncle of the petitioner, which led to registration of an FIR No.110/2019, at Police Station, Nahan, on 14.11.2019 and there were as many as nine persons named in the instant FIR. As a counter blast, the opposite party lodged and FIR on 20.11.2019, being FIR No.113/2019, that too after six days, which has been lodged solely for roping the uncle of the petitioner.

20. In the facts and circumstances of the case, we are of the considered view that the respondents could not have straightway kept in abeyance the appointment of the petitioner without considering the relevant factors like the nature and gravity of the accusation because, in case, these allegations are subsequently found to be false or not proved in the trial, resulting in acquittal, the same would cause undue hardship to the petitioner, as the petitioner would then be appointed only after getting clearance during investigation and trial and would be offered appointment subsequently occurring vacancies for no fault on his part, which may take several years if not decades.

21. In the given facts and circumstances of the case, we deem it appropriate to allow the instant petition by directing the third respondent to consider the gravity and nature of offence alongwith all accumulative facts and circumstances including the FIR registered against the petitioner and may thereafter take a decision with regard to the offering appointment to the petitioner or keeping the same in abeyance until the petitioner gets clearance during investigation or trial. We further clarify that while considering the matter, the respondents shall not be influenced by what has been observed above, as the observations are only prima facie and tentative and shall not otherwise be treated as binding on the respondents. Meaning thereby, that the respondents shall take an independent decision in the matter."

12. Otherwise also, by now it is well settled that till the time charge is not framed against the accused and he is not convicted by competent Court of law, he is deemed to be innocent. If it is so, denial of appointment on the ground of mere pendency of FIR, that too for the petty offences, may not be sustainable, rather at this stage, respondents can offer appointment to the petitioner, but certainly petitioner's continuance in service would ultimately depend upon outcome of the criminal trial, if any, initiated, pursuant to FIR lodged against him.

13. In view of the above, this Court finds merit in the present petition and accordingly, the same is allowed. Respondents are directed to issue appointment letter to the petitioner on compassionate ground on the basis of approval given by the

competent authority, expeditiously, preferably within four weeks as per seniority. Pending applications, if any, stand disposed of.

**(Sandeep Sharma),
Judge**

July 31, 2025
(Sunil)

High Court of HP