

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR****S.B. Civil Writ Petition No. 14681/2019**

Badri Ram S/o Bhikha Ram, Aged About 23 Years, By Caste Mali,
Resident of Khimoliyon Ki Dhani, Sindhipura, Pipar City, District
Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through The Director General Of Police
(Recruitment), Rajasthan, Jaipur
2. The Police Commissioner, Jodhpur
3. The Deputy Commissioner Of Police, Headquarter And
Traffic, Jodhpur

----Respondents

For Petitioner(s)	:	Mr. Badri Ram, Petitioner present in person
For Respondent(s)	:	Mr. Manish Vyas, Additional Advocate General assisted by Mr. Kailash Choudhary

JUSTICE DINESH MEHTA**Judgment****REPORTABLE****14/03/2023**

1. Feeling aggrieved of the order dated 23.09.2019 (Ann.-3)
passed by the Deputy Commissioner, Headquarter and Traffic,
Jodhpur, whereby the petitioner has been removed from the
services, the petitioner has invoked writ jurisdiction of this Court.
2. Facts pertinent for the present purposes are that the
petitioner vied for the post of Constable (General) pursuant to



recruitment Notification dated 25.05.2018 by submitting an application form in the month of May/June, 2018.

3. The petitioner being meritorious and eligible was offered appointment by way of appointment order dated 26.09.2018.

4. During police verification which the respondents got done, petitioner's antecedents were found in order, whereafter, he was allowed to join the services.

5. Before the petitioner could join the services, his erstwhile wife Mrs. Saroj filed a complaint before the respondents informing therein that an FIR being FIR No. 78/2018 has been registered against him under sections 498-A, 406 and 323 of Indian Penal Code in the Police Station Borunda, Jodhpur (Rural).

6. Proceeding pursuant to such complaint, the respondent no.3 found that an FIR has been registered against the petitioner on 01.08.2018 and a charge-sheet had been filed on 25.09.2018. Having found so, the respondent no.3 removed the petitioner from government services while invoking the provisions of Rule 19(2) of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as 'the Rules of 1958').

7. The petitioner at the outset argued that the order impugned is illegal having been passed in utter disregard of Principles of Natural Justice. He submitted that had he been given a notice or opportunity of hearing, he would have satisfied the respondents that the FIR in question came to be registered not only after the petitioner submitted application form but also after the appointment order was issued. He submitted that on 11.07.2018 the criminal complaint was filed by the complainant - his wife which was sent for investigation and a charge-sheet alleging



offences under section 498-A of Indian Penal Code was filed on 21.06.2019, after the petitioner had joined the services on 29.09.2018.

8. While maintaining that the charge-sheet was filed after about a year of him having joined the services, it was argued that the charges levelled against him did not amount to moral turpitude, and the complaint in question was filed vindictively in order to settle the score as the matrimonial relationship between the petitioner and his wife got sour.

9. Petitioner highlighted that he has placed on record a copy of order dated 11.12.2019, alongwith his rejoinder which would reveal that the Judicial Magistrate, Pipar City, Jodhpur has acquitted him of the charges under section 498-A of Indian Penal Code after considering the entire evidence on record.

10. The petitioner further argued that the respondents' actions of throwing the petitioner out of employment is arbitrary as there was no reason or rationale behind his removal, particularly when the criminal case against him had been decided in his favour.

11. Mr. Manish Vyas, learned Additional Advocate General submitted that the respondents were justified in exercising powers under Rule 19(ii) of the Rules of 1958, as the petitioner's conduct disentitled him to remain in State services. Learned counsel submitted that in the light of Circular dated 28.03.2017, the petitioner was not entitled for the appointment.

12. Learned Additional Advocate General could not, however, satisfy the Court as to how an order, having serious repercussions such as dismissal/removal of an employee from the Government



services can be passed without even issuing a notice to the concerned employee.

13. Heard the petitioner and learned Additional Advocate General and perused the material available on record.

14. According to this Court, the writ petition in hands deserves to be allowed on the solitary ground of violation of principle of natural justice. It is shocking to note that an employee duly selected and taken in Government services has been expelled by the respondents in utter disregard of the first and foremost principle of law - '*audi alterem partem*'.

15. As the petitioner has been condemned unheard and scooped out of the services, his fundamental rights guaranteed under Article 14 and 16 of the Constitution of India have been infringed. The impugned action of the respondents is liable to be quashed on such count. But then, remanding the case or leaving the petitioner on the mercy of the respondents would result in failure of justice to a young man given that the facts are as clear as crystal.

16. When the petitioner submitted his application form in June, 2018, obviously no FIR was registered against him. Upon issuance of appointment order on 26.09.2018 though the petitioner had given self declaration indicating the factum of registration of FIR, yet he was allowed to join on 29.09.2018, perhaps because charge-sheet had not been filed and the same came to be filed as late as in June, 2019.

17. That apart, during the police verification, the respondents themselves had given a report that no criminal case was pending against the petitioner. As such, the petitioner's appointment cannot be said to be obtained by fraud or suppression of material



facts. The fact that the petitioner has disclosed the factum of pending case and that his character and antecedents were found in order is evident from perusal of the impugned order itself.

18. Relevant extract of the order dated 23.09.2019 is reproduced hereunder:-

“पुलिस मुख्यालय से जारी कानि. भर्ती परीक्षा 2018 हेतु श्री बद्रीराम पुत्र श्री भीखाराम, निवासी- आईटीआई कॉलेज के पास, सिंधीपुरा, तहसील पीपाड़ शहर, जिला जोधपुर ग्रामीण द्वारा लिखित आवेदन पत्र इस कार्यालय में प्रस्तुत किया, जिसके बिन्दु संख्या 20 के भाग (अ) में आपराधिक विवरण बाबत् सूचना में अभ्यर्थी द्वारा अपने विरुद्ध आपराधिक प्रकरण संख्या 78/2018 धारा 498ए, 406, 323 भा.द.सं. पुलिस थाना बोरुन्दा, जोधपुर ग्रामीण अंकित किया गया था। कानि. भर्ती परीक्षा में उत्तीर्ण होने के पश्चात अभ्यर्थी का पुलिस सत्यापन करवाया गया, जिसमें अभ्यर्थी स्वयं पुलिस थाना पीपाड़ शहर, जिला जोधपुर ग्रामीण में उपस्थित हुआ। थानाधिकारी पुलिस थाना पीपाड़ शहर, जिला जोधपुर ग्रामीण ने बाद पुलिस सत्यापन के अभ्यर्थी के विरुद्ध कोई प्रकरण दर्ज होना या लम्बित नहीं होना बताया गया।”

19. If the respondents felt that on account of filing of charge-sheet, the petitioner was to be removed from the employment, the proceedings appropriate under the Rules of 1958 were required to be adopted against the petitioner. Or otherwise, as he was still under probation, the probation period could have been extended until the decision of the criminal case. But resorting to Rule 19(ii) of the Rules of 1958 was absolutely uncalled for and unwarranted. In the present set of facts it was an arbitrary exercise of powers if not *mala fide*.

20. In the opinion of this Court, the offence under section 498-A of IPC, may, in a given case amount to moral turpitude, as the demand of dowry is not only illegal and unethical but also immoral. But, mere pendency of a criminal case against an



employee under section 498-A of IPC cannot be treated to be such a serious offence requiring State to exercise emergent and extraordinary powers under Rule 19 of the Rules of 1958 and oust an employee in the guise or under the cloak of 'state interest'.

21. The order impugned clearly shows that the State has invoked Rule 19(ii) of the Rules of 1958 which is para materia to Article 311(2) of the Constitution. Rule 19(ii) of the Rules of 1958 is reproduced hereinfra:-

“(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or”

Above quoted provision is unambiguous and does not require any indepth legal understanding to decipher that the same can be resorted to when it is not practicable to hold inquiry or the procedure prescribed in Rule 16, 17 and 18 of the Rules of 1958 is not feasible. That apart, it mandates the disciplinary authority to record reasons that it is not practicable to follow the procedure. A reading of the order and even reply does not indicate any such satisfaction arrived much less reasons recorded by the disciplinary authority.

22. Furthermore, the petitioner was regularly attending the duties and well within the administrative control/supervision of the respondents. They did not even issue a notice or propose disciplinary proceedings. He had neither been convicted nor can his conduct be said to be against the security of the State. Hence, the provision of sub-rule (i) or (iii) do not even apply. Hence, it is



clear that the impugned action under any provision of Rule 19 cannot pass muster.

23. Regardless of what has been noticed above, the facts on record clearly reveal that the petitioner has been acquitted of the charges under section 498-A of IPC vide order dated 11.12.2019 passed by the competent criminal court. A simple reading of the order dated 11.12.2019 unravels that the learned trial court has dilated upon the evidence led by the complainant Saroj (P.W.1), her father Parasram (P.W.2), her grandfather Tejaram (P.W.3) and Munni Devi (P.W.4) and has recorded a categorical finding that the allegations against the petitioner for the offences under section 498-A of IPC have not been proved.

24. Such being the position, the allegation of delinquency (if any) against the petitioner has fallen flat on the ground and the ground for which the petitioner had been removed has eclipsed. The impugned order viewed from any angle is thus, illegal, arbitrary and without jurisdiction and liable to be quashed.

25. This Court draws strength from a recent judgment delivered by Hon'ble the Supreme Court in the case of **Pramod Singh Kirar vs. The State of Madhya Pradesh : (2023) 1 SCC 423** decided on 02.12.2022, wherein it has been held as under:-

"At the outset, it is required to be noted that the appellant applied for the post of Constable in the year 2013 and as such was found to be meritorious and was found eligible to be appointed as Constable. In the verification form itself he declared that he was tried for the offence under Section 498A of IPC earlier. Therefore, as such there was no suppression on the part of the



appellant in not disclosing true and correct facts. It is also required to be noted that the appellant came to be acquitted for the offence under Section 498A of IPC vide judgment and order dated 30.10.2006 i.e., 7 years before he applied for the post of Constable. From the judgment and order of acquittal passed by Trial Court it appears that there was a matrimonial dispute which ended in settlement and the original complainant did not support the case of the prosecution and was declared hostile in view of settlement out of the court and the other prosecution witness(s) examined in the case did not corroborate the prosecution's story. Thus, it can be seen that the appellant did not face the prosecution for the other offences of IPC. Therefore, for whatever has happened in the year 2001 and *the criminal case for the offence under Section 498A resulted in acquittal in the year 2006, the appellant should not be denied the appointment in the year 2013/2014. The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498A of IPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife)."*

26. Learned counsel for the respondents have relied upon judgment in the case of **State of Rajasthan and Ors. v. Love kush Meena : (AIR 2021 SC 1610)** rendered by Hon'ble the Supreme Court so also the decision of Rajasthan High Court in the



case of **Pawan kumar vs. State of Rajasthan [D. B. Civil appeal (writ) No. 1334/ 2019]** and urged that in the light of above judgments, the petitioner is not entitled to remain in employment.

27. According to this Court, the above referred judgments do not help the case of the respondents.

28. In Love Kush Meena's case (supra) the question that arose before Hon'ble the Supreme Court was whether a benefit of doubt resulting in acquittal can create an opportunity to join services. The Court while gaining strength from judgment rendered by Supreme Court in the case of **Avatar Singh vs. Union of India and Ors. : (2016) 8 SCC 471** observed that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, it cannot make the candidate eligible for appointment.

29. Examining the controversy in the present case, the petitioner's acquittal did not occur as a result of compromise but considering the evidence and material available on record. It was a case of no evidence as a matter of fact and thus clear acquittal.

30. The above case, therefore, does not espouse the respondents' stand as the acquittal in petitioner's case was neither by giving him benefit of doubt nor on the basis of compromise.

31. Similar is the position in the case of **Pawan Kumar (supra)** because the basic question that fell for determination was, whether after being convicted and extended benefit of section 12 of the Probation of Offenders Act 1958 the candidate was eligible for appointment. The Court while answering in the negative has held that:



"The Hon'ble Supreme Court in the case of Girraj Prasad Meena Vs. State of Rajasthan [(2014) 13 SCC 674] has settled this aspect beyond pale by holding that the disqualification Under Section 12 of the Probation of Offenders Act refers to disqualification provided in other statutes. Despite grant of probation, the conviction remains. The employer is entitled to take disciplinary action on the basis of the conviction and the employee cannot claim a right to continue in service merely on the ground that he had been given benefit of probation under The Probation of Offenders Act."

32. The Court in Pawan Kumar's case (supra) also observed that the grant of benefit of section 12 of Probation of Offenders Act was of little avail to the employee, inasmuch as the question was about making false declaration in the form under the head "Character verification details".

33. The petitioner in the present case neither made a false declaration nor was it a case of non disclosure of the case registered against him at the time of submitting the application form/police verification. At the time of furnishing details of criminal case or getting appointment order, he had disclosed the fact that pursuant to a complaint, an FIR has been registered. The respondents themselves got the character verification done and being cognizant of such fact had allowed the petitioner to join. There is no allegation of concealment or non-disclosure of the facts in the extant case. Hence, the judgments cited by Mr. Vyas are distinguishable on facts.

34. As a consequence of the discussion foregoing and for the reasons mentioned hereinabove, the writ petition is allowed and



impugned order dated 23.09.2019 passed by the respondent no.3 is hereby quashed.

35. During the course of arguments it has transpired that though pursuant to interim order dated 01.10.2019 the respondents have taken the petitioner back on duties but have kept him under probation.

36. Considering that by order dated 01.10.2019, a co-ordinate Bench of this Court had stayed the effect and operation of the impugned order dated 23.09.2019 and in pursuance thereof the petitioner is continuing in services, it is hereby ordered that the petitioner shall be treated to be in continued service since his joining (29.09.2018).

37. The respondents are directed to pass order of confirmation/regularization in accordance with law, reckoning the period of two years from the date of joining, as the order dated 23.09.2019 has been quashed.

38. The petitioner shall be entitled for arrears of salary and other emoluments from the date of his confirmation in accordance with law. Requisite administrative order be passed within a period of six weeks from today. The monetary benefits including arrears be paid before 30.9.2023.

39. In case, the arrears are not paid by 30.09.2023, the petitioner shall be entitled for interest @ 9% per annum which will be permitted to be recovered from the officer responsible for such delay.

40. The petitioner shall be free to claim cost of litigation from the respondents on furnishing proof.



41. Stay application and all pending interlocutory applications,
also stand disposed of.

(DINESH MEHTA),J

31-Mak/-

