

**Court No. - 33**

**Case :-** WRIT - A No. - 7151 of 2011

**Petitioner :-** Rahul Modi

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** V.D. Dubey, Anita Singh, Birendra Singh, Ruksana

**Counsel for Respondent :-** C. S. C.

**Hon'ble Ashwani Kumar Mishra, J.**

1. Petitioner is aggrieved by an order of the District Magistrate, Mahoba, dated 18.12.2010, which records that petitioner has been punished in Case Crime No.427 of 2006, under Section 13 of the Gambling Act and a fine of Rs.100/- has been imposed and his character cannot be certified for appointment to the post of Constable. It is also observed that gambling is a serious offence amounting to moral turpitude. It is asserted in para 15 of the writ petition that petitioner has been selected for appointment to the post of Constable as an OBC candidate. The list of selected candidates is Annexure-9 to the writ petition, in which the name of petitioner figures at serial no.40 with the endorsement that petitioner has been declared unfit for appointment on account of his implication in the Case Crime No.427 of 2006. Based on the above materials petitioner has been denied appointment on the post of Constable. It is this decision which is challenged in the present writ petition.

2. The short ground on which the writ petition has been filed is that petitioner was a juvenile on the date of occurrence of the offence, and therefore being a juvenile the petitioner was entitled to the protection of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act of 2000'), as well as rules framed thereunder, which is denied to him. It is submitted that petitioner was not even competent to represent himself and the alleged confessionary statement accepting his guilt and consequential imposition of fine cannot be read against him. Reliance is placed upon a judgment of this Court in Writ Petition No.9594 of 2020 (Anuj Kumar Vs. State of U.P. and others), decided on 30.4.2021, as also a decision in the case of Rajiv Kumar Vs. State of U.P. and another, in Writ Petition No.53425 of 2007, decided on 11.3.2019. The petitioner has also placed reliance upon a Division Bench judgment of this Court in Special Appeal No.1136 of 2018 (Shivam Maurya Vs. State of U.P. and others), decided on 10.4.2020.

3. A counter affidavit has been filed justifying the impugned

action on the basis of materials, which have already been referred to above. A rejoinder affidavit has also been filed reiterating the averments made in the writ petition.

4. I have heard Ms. Anita Singh and Sri Hemant Kumar Srivastava, learned counsels for the petitioner and learned Standing Counsel for the respondents, and have perused the materials brought on record.

5. As per the petitioner's High School Certificate his date of birth is 25.12.1989. The date of alleged occurrence is 8.6.2006. It is, therefore, clear that on the date of alleged commissioning of offence the petitioner was only 16 years 06 months old and would clearly qualify to be a juvenile in terms of Section 2(1) of the Act of 2000.

6. Section 19 of the Act of 2000 provides as under:-

"19. Removal of disqualification attaching to conviction.-

1. Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

2. The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be."

7. This Court in Shivam Maurya (supra) having taken note of Section 19 of the Act of 2000, has been pleased to observe as under in paragraph 10:-

"10. Section 19 of the Act of 2000 has been incorporated in order to give a juvenile an opportunity to lead his life with no stigma and to wipe out the circumstances of his past. It thus provides that a juvenile shall not suffer any disqualification attaching to conviction of an offence under such Act. A "juvenile" on the date when the alleged offence has been committed is required to be dealt with under the Juvenile Justice Board (Care and Protection of Children) Act, 2000 which declares that all criminal charges against individuals who are described as "juvenile in conflict with law" be decided by the authorities constituted under the Act by the Juvenile Justice Board. If a conviction is recorded by the Juvenile Justice Board, Section 19 (1) of the Act of 2000 specifically stipulates that juvenile shall not suffer any disqualification attached to the conviction of an offence under such law. Further Section 19 (2) of the Act of 2000 contemplates that the Board must pass an order directing all the relevant records of such conviction to be removed after expiry of the period of appeal or reasons as prescribed under the rules as the case may be."

The Court has also observed as under in paragraph 12 to 15 of the judgment in Shivam Maurya (supra):-

"12. Section 21 of the Act of 2000 prohibits publication of the name of the "juvenile in conflict with law" with the object to protect a juvenile from adverse consequences on account of his conviction for an offence committed as a juvenile. The same reads as under:-

"21. Prohibition of publication of name, etc., of juvenile involved in any proceeding

under the Act.-

(1) No report in any newspaper, magazine, new-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published:

Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine, which may extend to one thousand rupees."

13. The sensitivity in matters relating to a juvenile or child or juvenile in conflict with law was deep embedded in the legislation as is apparent from Chapter II of the Juvenile Justice (Care & Protection of Children) Rules, 2007. Rule 3 therein gives in detail the fundamental principles to be followed in administration of the Rules.

14. The said Act is a beneficial legislation. The principles of such beneficial legislation are to be applied only for the purpose of interpretation of this statute. The concealment of the pendency of criminal case against the appellant-petitioner was of no consequence. As per the requirement of law a conviction in an offence will not be treated as a disqualification for a juvenile. The records of the case pertaining to his involvement in a criminal matter are to be obliterated after a specified period of time. The intention of the legislature is clear that in so far as juveniles are concerned their criminal records is not to stand in their way in their lives. The cancellation of the candidature of the appellant-petitioner was thus bad. The authority concerned failed to appreciate the fact that the appellant-petitioner was entitled to benefit of the provisions of Act of 2000. The cancellation of the candidature of the petitioner goes contrary to the object sought to be achieved by the Act of 2000. Section 19 of the Act of 2000 protects a juvenile and any stigma attached to his conviction is also removed. The Act of 2000 does not envisage incarceration of a juvenile which clearly shows that the intention and object was not to shut the doors of a disciplined and decent civilised life. It provides him an opportunity to mend his life for the future.

15. We thus hold that the authority concerned fell in complete error in not extending the benefit of Act of 2000 to the appellant-petitioner particularly when there are specific provisions provided therein to take care of a juvenile being implicated, tried and / or convicted in a criminal matter. We thus extend the benefit provided under Section 19 of the Act of 2000 to the appellant-petitioner."

8. The aforesaid view has been followed by this Court in the case of Anuj Kumar (supra), in which penalty of Rs.250/- based on admission of guilt was held not to be a relevant consideration for denying grant of public appointment in view of Section 19 of the Act of 2000. Relying upon the judgment of this Court in Shivam Maurya (supra), this Court proceeded to observed as under in paragraph 42 to 47 in the case of Anuj Kumar (supra):-

"42. From the preceding legal narrative, the following position of law emerges:

I. Juveniles and adults form separate classes. Criminal prosecution of an adult is a lawful basis for determination of suitability of a candidate for appointment to public office. However prosecution of juveniles is in a separate class. Using criminal prosecution faced by a candidate as a juvenile to form an opinion about his suitability for appointment, is arbitrary illegal and violative of Article 14 of the Constitution of India.

II. The requirement to disclose details of criminal prosecutions faced as a juvenile is violative of the right to privacy and the right to reputation of a child guaranteed under Article 21 of the Constitution of India. It also denudes the child of the protection assured by the Juvenile Justice Act, 2000 (as amended from time to time). Hence the employer

cannot ask any candidate to disclose details of criminal prosecution faced as a juvenile.

III. The candidate can hold his silence or decline to give information about the criminal prosecution faced as a juvenile. Denial of such information by the candidate will not amount to a false declaration or a willful suppression of facts.

IV. The conviction by a Juvenile Justice Board under the Juvenile Justice Act, 2000 of a juvenile is not a disqualification for employment. As a sequitor prosecution faced as a juvenile is not a relevant fact for forming an opinion about the criminal antecedents and suitability of the candidate for appointment. Such prosecution cannot be made a basis for denial of appointment. Non disclosure of irrelevant facts is not "deliberate" or willful concealment of material facts. Hence non-disclosure of such criminal cases cannot invalidate the appointment of the said person.

V. Clarification:

These holdings shall not apply to cases beyond the ambit of Juvenile Justice Act, 2000 (as amended from time to time) and also in cases of heinous crimes committed by persons in the age group of 16 to 18 years.

43. The undisputed facts narrated in the preceding part of the discussion establish the fact that the petitioner was a juvenile within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended from time to time), on the date of the commission of the alleged offence. He is entitled to the protection of th said Act considering the nature of the offence he was prosecuted for. Merely because the petitioner did not raise the plea of juvenility before the learned trial court, does not denude him of the protection conferred upon him by law. The offence in issue is not a heinous crime. Further the impugned order is vitiated by its failure to consider the unimpeached report of the police authorities that the petitioner enjoys a good social reputation.

44. The questions posed earlier are answered in terms of the preceding holdings.

A. Prosecution and imposition of penalty upon the petitioner by the Lok Adalat in the judgment dated 05.11.2019, rendered in Case Crime No. 104/2011, under Sections 3/4 of U.P. Public Examinations (Prevention of Unfair Means) Act, 1998, cannot be the basis of denial of appointment to the petitioner. The said proceedings are not relevant criteria for purposes of appointment of the petitioner. I find that the respondents authorities have acted in a manner contrary to law by requiring the petitioner to disclose criminal prosecution faced by him as a juvenile.

45. The competent authority had misdirected itself in law by finding the petitioner unsuitable for appointment and him appointment on the post of Constable in PAC.

46. The impugned order dated 03.09.2020 is arbitrary and illegal. The order dated 03.09.2020 passed by the respondent No.3-Commandant, 43 Battalion, Provincial Armed Constabulary (PAC), District Etah, is liable to be set aside and is set aside.

47. A writ in the nature of mandamus is issued commanding the respondents to execute the following directions:

i. The appointment of the petitioner shall be processed in light of the observations made in this judgment.

ii. The appointment letter shall be issued to him in accordance with law.

iii. The petitioner shall be given the seniority, he would have been entitled to but for cancellation of his candidature by the impugned order."

9. In view of the ratio of law laid down in the above two judgments, it is apparent that petitioner was also entitled to the protection under Section 19 of the Act of 2000, inasmuch as on the date of occurrence of alleged offence as also on the date of

passing of the order imposing fine upon the petitioner, the petitioner was a juvenile. As per the provisions contained in the Act of 2000 the petitioner could have been tried only in accordance with the provisions of the Act of 2000, which has not happened in the facts of the present case. The petitioner has been punished on the basis of alleged admission made while he was a juvenile. It is settled that law does not recognize a juvenile to be capable of making a rational decision and the alleged act of admission on his part cannot be construed against him, so as to deny the benefits admissible to a juvenile. The principle of presumption of innocence of juvenile would clearly be attracted in the facts of the present case. The authorities have clearly erred in denying the benefit of public appointment to the petitioner only on account of above criminal case. The decision of the Superintendent of Police holding the petitioner ineligible for appointment on account of non-issuance of character certificate by the District Magistrate, based upon the petitioner's implication in Case Crime No.427 of 2006, also cannot be sustained.

10. Writ petition, consequently, succeeds and is allowed. Order dated 18.12.2010 stands quashed. The respondents are directed to forthwith consider petitioner for appointment and his candidature would not be overlooked only on account of his implication in the aforesaid criminal case. The petitioner would be entitled to benefit of continuity of service from the date similarly placed persons were selected and sent for training. However, as the petitioner has not worked, he would not be entitled to any salary for the aforesaid period. The required action would be taken within a period of two months from the date of presentation of a copy of this order. No order is passed as to costs.

**Order Date :- 17.8.2021**

Anil