



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

D.B. Spl. Appl. Writ No. 816/2022

1. State Of Rajasthan, Through The Secretary, Home Department, (Group-I) Government Of Rajasthan, Secretariat, Jaipur.
2. The Director General Of Police, Police Head Quarters, Rajasthan, Jaipur.
3. The Inspector General Of Police (Recruitment), Rajasthan, Jaipur.
4. Commandant 1St Battalion Rac, Jodhpur.

----Appellants

Versus

Bhawani Shankar Moorh

----Respondent

For Appellant(s)	:	Mr. Sandeep Shah, Senior Advocate-cum-AAG, assisted by Mr. Nishant Bafna
For Respondent(s)	:	Mr. Praveen Vyas

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Judgment

Date of pronouncement : 13/02/2023

Judgment reserved on : 25/01/2023

BY THE COURT : PER HON'BLE MEHTA, J.

The instant intra court writ appeal is preferred by the State of Rajasthan questioning legality and validity of the order dated 09.02.2022 passed by the learned Single Bench, whereby the writ petition filed by the respondent was accepted and the communication dated 18.12.2018, whereby the candidature of the respondent for the post of Constable pursuant to the notification



dated 25.05.2018 was rejected on the ground that a criminal case was pending against him, which fact came to light during police verification. The rejection of the candidature of the respondent writ petitioner was assailed on the ground that the criminal case, which was registered against him, was of the year 2011, at which point of time, he was a juvenile within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, hereinafter referred to as "the Act of 2000") and as such, by virtue of the mandate of Section 24 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, hereinafter referred to as "the Act of 2015"), the writ petitioner was entitled to protective umbrella against use of criminal antecedents in any future recruitment process. A ground was also put forth in the writ court that on the date of passing of the impugned order, the case was under trial and the writ petitioner was not convicted for any offence. Additionally, it was contended that even in a case of conviction, protection of Section 24 of the Act of 2015 was required to be extended to the writ petitioner as the factum of conviction could not act as a disqualification as per the clear language of Section 24 of the Act of 2015.

The respondents (appellants herein) contested the writ petition on the ground that the respondent writ petitioner was later on, convicted for the offence punishable under Section 302 IPC amongst others, which being a crime of heinous nature, he could not have been considered for appointment on the sensitive post of Police Constable.



Learned Single Bench considered the entirety of the facts and circumstances; prevailing legal position and held that Section 24 of the Act of 2015 includes in its ambit, the cases of juveniles, who have been convicted and protects such juveniles from any disqualification and thus, a juvenile, who is facing trial, stands on a better footing and would definitely be entitled to protective umbrella of Section 24 of the Act of 2015. The learned Single Bench applied the ratio of the judgment rendered by Hon'ble Supreme Court in the case of ***Avtar Singh Vs. Union of India [(2016) 8 SCC 471]*** to the facts of the case and held that the respondent writ petitioner was entitled to protection of Section 24 of the Act of 2015 and as such, rejection of his candidature in subject selection process on the ground of the registration and proceedings of the criminal case was invalid. The writ petition was allowed with these observations by the order dated 09.02.2022, which is assailed in this intra court appeal.

Shri Sandeep Shah, learned Senior Advocate-cum-AAG, assisted by Shri Nishant Bafna, representing the appellants, vehemently and fervently contended that the respondent writ petitioner had applied for post of constable in the highly disciplined Police Force and that the department has absolute discretion to reject the candidature of a person having criminal antecedents. It was his contention that the learned Single Bench was not justified in applying the provisions of Section 24 of the Act of 2015 because the criminal case against the respondent writ petitioner was registered in the year 2011 and since the provisions of the Act of 2015 are not retrospective, the benefit of Section 24



of the Act of 2015 could not have been extended to protect the respondent against disqualification entailing from the pendency of a criminal case for the heinous offence of murder. He further submitted that after rejection of the candidature of the respondent by order dated 18.12.2018, the Juvenile Justice Board concluded the enquiry and held the respondent guilty of the offences punishable under Section 302 & 201 IPC. The appeal too has been rejected and as such, the learned Single Bench was not justified in exercising the powers of judicial review so as to interfere in the just and rightful decision of the employer in rejecting the candidature of the writ petitioner. On these grounds, Shri Shah implored the court to accept the appeal; reverse the impugned order and affirm the decision of the employer to reject the candidature of the respondent.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

At the outset, we may note here that the charge-sheet was filed against the petitioner in the Juvenile Justice Board, Bikaner on 12.09.2011 for the offences punishable under Section 302 and 201 IPC. The respondent herein was a young boy of about 14 and half years on the date of the incident and thus, enquiry was held against him in the Juvenile Justice Board concerned as per the provisions of the Juvenile Justice Act, 2000. A perusal of the judgment dated 07.02.2019, whereby the Juvenile Justice Board held the respondent guilty, reflects that the



case of the prosecution was based purely on circumstantial evidence. Though this court is not called upon to comment on the merits of the criminal case registered against the respondent or the judgment of the Juvenile Justice Board dated 07.02.2019 (Annex.5 to the writ petition), whereby he was held guilty, but still we are compelled to make a brief reference thereto. A perusal of the Board's judgment would reveal that the respondent herein was held guilty of the charge purely on the basis of circumstantial evidence and that too, the sole circumstance of his last seen. However, the allegation of last seen together was not incorporated in the first report of the incident given to the police, i.e. the Missing Person Report (Ex.P/14), wherein it was alleged by the complainant Deepdaan that his son Master 'H' left home on 22.05.2011 at about 12.30 p.m. saying that he was going out to play, but did not return till lodging of the report. It is thus, an admitted position that the allegation regarding the deceased being lastly seen in the company of the respondent was not incorporated in the Missing Person Report. Whether or not this significant omission would invalidate the prosecution allegations, would be for the competent court to consider, before which the judgment of conviction is assailed, but we definitely are of the prima facie opinion that this allegation has been incorporated in the prosecution case through a sheer improvement.

Be that as it may. A perusal of the language of Section 24 of the Act of 2015 and the corresponding provision in the Act of 2000, i.e. Section 19, would make it clear that the record of conviction of the child in conflict, cannot be preserved and has to



be destroyed. As a direct consequence, any disqualification entailing from the conviction would have to be ignored and cannot act to the detriment of the child in conflict with law in any manner, which would include a selection process for public employment.

Consequently, in such a situation, the employer is prohibited by law from referring to or taking in consideration the judgment of conviction so as to deprive a successful candidate, who was a child in conflict with law at some point of time from being employed in Government service. The view taken by the learned Single Bench, whereby rejection of the candidature of the respondent by order dated 18.12.2018 was declared to be invalid does not suffer from any infirmity warranting interference.

Hence, the appeal fails and is dismissed as being devoid of merit.

No order as to costs.

(YOGENDRA KUMAR PUROHIT),J

(SANDEEP MEHTA),J

Pramod/-