

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writs No. 353/2017

Kailash Chand Jat S/o Shri Rameshwar Lal Jat, Village  
Kakaniawas, Tehsil Kishangarh, District Ajmer Raj.

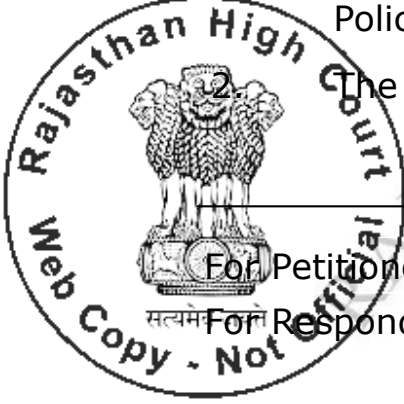
----Petitioner

Versus

1. State Of Rajasthan Through Director General Of Police,  
Police Headquarter, Lalkothi, Jaipur Raj.

The Superintendent Of Police, Jhalawar Raj.

----Respondents



For Petitioner(s) :

Mr. Samit Bishnoi

For Respondent(s) :

Dr. AS Khangarot, Addl. Government  
Counsel

**HON'BLE MR. JUSTICE ALOK SHARMA**  
**Judgment**

**03/12/2018**

**Reportable**

The petitioner is aggrieved of the arbitrary denial of appointment despite merit in the select list on the post of Constable against the vacancies of 2013.

The facts of the case are that the Director General of Police issued an advertisement on 14.7.2013 calling for application forms from eligible candidates for appointment to the post of Constables in various Districts in the State of Rajasthan under Rajasthan Police Subordinate Service Rules, 1989 (hereafter 'the

Rules of 1989'). The petitioner eligible as per prescribed qualifications applied for the post of Constable in District Jhalawar under the OBC category. He participated in the written examination which he passed. And then found satisfying the requisite physical standards participated in the Physical Efficiency Test - also successfully. On the basis of his merit evaluated as aforesaid the petitioner found place among the meritorious in the select list of those to be appointed as Constable.



The case of the petitioner is that despite his name finding place in the select list, while other candidates in the list were appointed as Constable in District Jhalawar, he was denied the appointment. Enquiries indicated that the reason for the petitioner's exclusion from appointment as Constable despite his being in the select list was his disclosure of a FIR No. 133/2013 against him at Police Station, Bandar Sindri, District Ajmer for offences under Section 323, 341 and 143 IPC for which he has been challaned under charge sheet no. 15/2014 on 29.1.2014 before the Court of ACJM No.2, Kishangarh, District Ajmer. It has been submitted that the pending criminal case against the

petitioner, is on account of inter-se disputes between the extended family members and does not partake of any inherent criminality of the petitioner rendering him as an unsavory character and unsuitable for being appointed as a Constable in the Rajasthan Police. Instead the petitioner was so entitled in view of his merit in

the select list. It has been submitted that Rule 13 of the Rules of 1989 in fact provides that the circumstances of the conviction

should be taken into account and if they involve no moral

turpitude or association with crimes of violence or with a

movement, which has its object to overthrow by violent means a

Government as established by law, the mere conviction need not

be regarded as a disqualification. Exclusions of successful

applicants where they are alleged to be involved in petty offences

without an iota of moral turpitude, moreso when in the

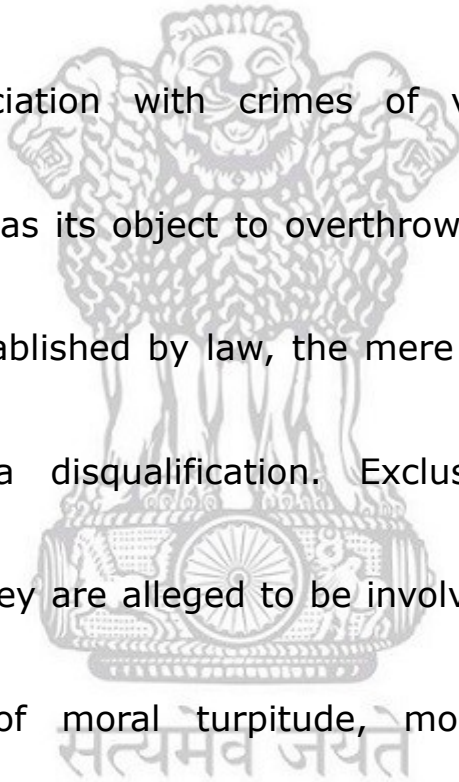
background of a family dispute (and which fact has been disclosed

alongwith the application forms by the candidates – as the

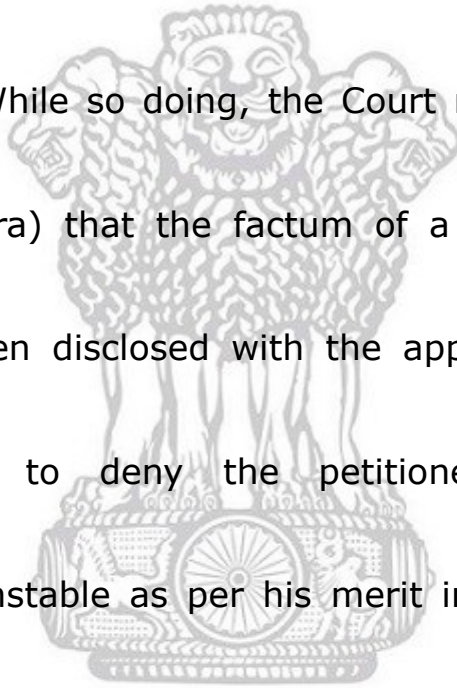
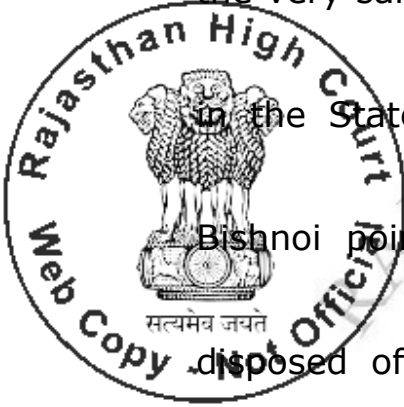
petitioner did) cannot work to the petitioner's disastrous

disadvantage and nip his career in police force in the bud and

deny him a livelihood.



Mr. Samit Bishnoi appearing for the petitioner in support of the case set up in the petition referred to the judgment of this Court in S.B. Civil Writ Petition No. 10455/2015 titled Gaurav Singh Versus The State of Rajasthan and Ors. relating to the very same 2015 recruitment of Constables in District Jhalawar in the State of Rajasthan under the Rules of 1989. Mr. Samit Bishnoi pointed out that the Gaurav Singh's writ petition was disposed of alongwith two other connected matters vide order dated 14.9.2016. While so doing, the Court noted in the case of Gaurav Singh (supra) that the factum of a petty criminal case pending having been disclosed with the application form, there was no occasion to deny the petitioner (Gaurav Singh) appointment as constable as per his merit in the select list. Mr. Samit Bishnoi submitted that the only differentiating fact in the petitioner's case with that of Gaurav Singh is that a letter of appointment had been first issued in favour of Gaurav Singh which was subsequently cancelled – but the cancellation was quashed by the Court. In the case of petitioner the appointment letter has not been issued. Mr. Samit Bisnoi then pointed out that however in



SBCWP No. 10147/2015 titled Saurabh Singh Versus State of Rajasthan which was also allowed vide the same order dated 14.9.2016, the appointment letter was issued only following the court's direction that a petty criminal case without moral turpitude registered as a FIR and which had been disclosed to the appointing authority could not entail denial of appointment to a meritorious candidate in a select list. Resultantly albeit no order of appointment was issued to Saurabh Singh, he was subsequently appointed by the respondents pursuant to the court's order. It was submitted that the petitioner's case is at par with that of Gaurav Singh (supra) and Saurabh Singh (supra), and there was no warrant by the appointing authority to subject him to a different discriminately treatment and deny him appointment for reasons of the petty criminal case under Sections 323, 341, 143 IPC against him arising in the context of family dispute.

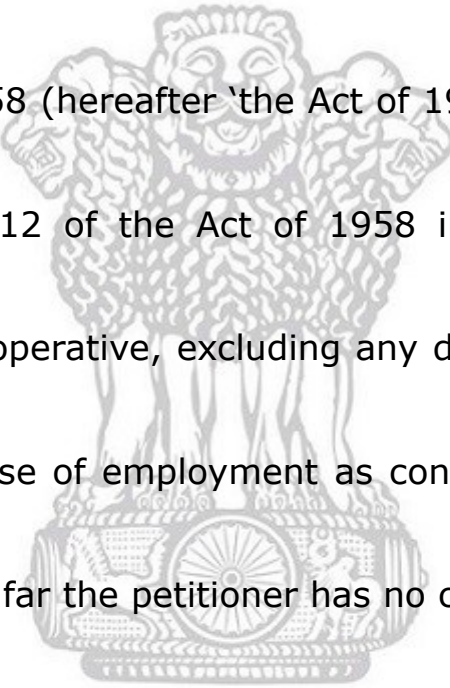
Mr. Samit Bishnoi further submitted that the advertisement dated 14.7.2013 under which the petitioner sought appointment categorically spelt out conditions of unsuitability. Para 9(viii) of the advertisement consonant with Rule 13 of the Rules of





1989 provided that conviction for offence/s entailing moral turpitude would render a person unsuitable for appointment as constable. Mr. Samit Bishnoi submitted that the offences for which the petitioner is under trial aside of being in the background of an inter-se family dispute will not even remotely entail moral turpitude even if in the most unlikely event, the petitioner were to be convicted thereunder. And thereon he would in any event not mandatorily be entitled to probation under the Probation of Offenders Act of 1958 (hereafter 'the Act of 1958') as also Section 360 CrPC. Section 12 of the Act of 1958 in that circumstance would evidently be operative, excluding any disability from such a conviction for purpose of employment as constable. All this aside of the fact that thus far the petitioner has no conviction at all.

Reply to the petition has been filed. It has been submitted that verification of character and antecedents of a person seeking appointment in police is an important criteria to ascertain whether the candidate is suitable for the post of constable and whether on account of his antecedents and character it was not desirable to appoint him as a constable, a



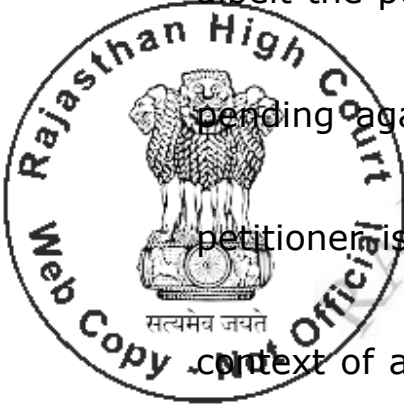
part of the discipline force. It has been submitted that an employee in the uniformed services is required to be of higher level of character as he is expected to uphold the law and be an example to the citizens he is to police. It has been submitted that

albeit the petitioner had disclosed the factum of the criminal case pending against him and albeit the criminal case for which the petitioner is under trial is a petty case apparently arising in the context of a family dispute, yet it suffices for the petitioner being

- in the discretion of the appointing authority - not found suitable for appointment despite his merit in the select list for appointment as Constable in District Jhalawar.

Heard. Considered.

In (2016) 8 SCC 471 - Avtar Singh Versus Union of India & Ors, a 3 Judge Bench of the Apex Court dealing with the issue of the effect of a pending petty criminal case and even conviction therein on the suitability / employability of a candidate otherwise meritorious and liable to be appointed held (to the extent relevant to the case at hand) as under:



38.3 The employer shall take into consideration the government orders / instructions / rules applicable to employee at the time of taking decision.

38.4. 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 recourses appropriate to be case may be adopted.



38.4.1. 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.

38.6. 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.

Para 38.6 above attracts to the facts of the case.

In consideration of a candidate for appointment in public employment, aside of his eligibility and merit / his suitability is indeed an aspect which the appointing authority is to weigh in; yet the discretion to evaluate suitability of a candidate for appointment is not at large, has to be within Rule 13 of the Rules of 1989 and cannot entail palpable arbitrariness and justify



a conclusion perverse and vitiated by non application of mind to facts obtaining and relevant law. This discretion to ascertain suitability of candidate for appointment has to be reasonably exercised with reference to the facts of the given case or else it stands vitiated for reason of legal malice. In this regard reference

can be made to (1986) 4 SCC 378 – Suraj Pal Sahu Versus State of Maharashtra, where a 3 Judge Bench held that an order can also be malafide where there is malice in law though not in fact. It

was held **“malice in law to be inferred when an order is**

**made contrary to the objects and purpose of the Act.”** In the

instant case, it has been admitted that the petitioner had disclosed the factum of FIR No. 133/2013 for offences under Section 323, 341 and 143 IPC pending against him. The contents of FIR indicate that it has been laid in the background of inter-se family dispute. All the offences alleged therein against the petitioner are petty in nature, bailable and triable by a Magistrate.

The petitioner was never sent to jail therefor and probably never will be in view of Section 360 and 361 CrPC, 1973 as also the Act of 1958. The offences alleged against the petitioner are not of

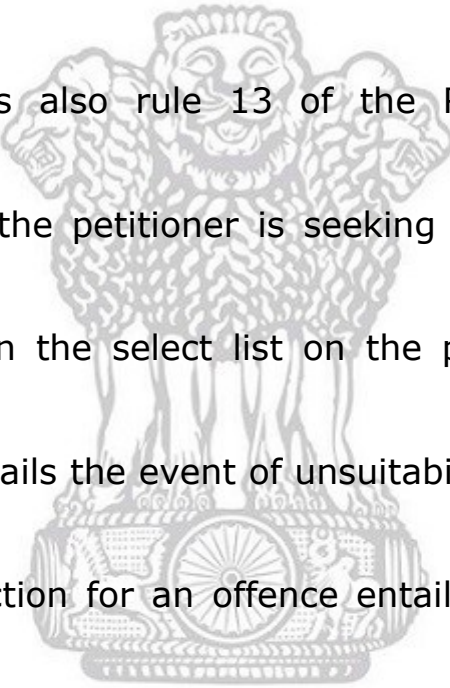


moral turpitude. They do not exhibit baseness vileness or depravity of the character. There is nothing to show from the record that there is any possibility of the petitioner to take to a life of crime or his appointment would entail grave repercussions on social order and / or public interest. In fact law itself treats the

alleged offences against the petitioner as disclosed by him to be petty - all bailable and triable by Magistrate with benefit of probation if convicted. Condition no. 9(viii) of the advertisement

dated 14.7.2013 as also rule 13 of the Rules of 1989 with reference to which the petitioner is seeking appointment on the basis of his merit in the select list on the post of Constable in District Jhalawar details the event of unsuitability for appointment. It speaks of conviction for an offence entailing moral turpitude.

The petitioner does not at all suffer that disability of being appointed for reasons of a less than required character. Mere allegation for offences under Sections 323, 341 and 143 IPC against the petitioner are no where near moral turpitude. None of the alleged offences in issue even closely or remotely exhibit depravity vileness or baseness of the petitioner's character or his



psyche being rooted in criminality to render him unsuitable for appointment to the post of Constable.

The Apex Court in the case of Pawan Kumar Versus State of Haryana (1996) 4 SCC 17 was dealing with a case of removal from service for reason of a conviction under Section 294

IPC (obscene acts and songs) where the accused had entered into a plea of guilty and paid a fine of Rs. 20/-. The Court thereupon

considered as to what rendered one unsuitable for government

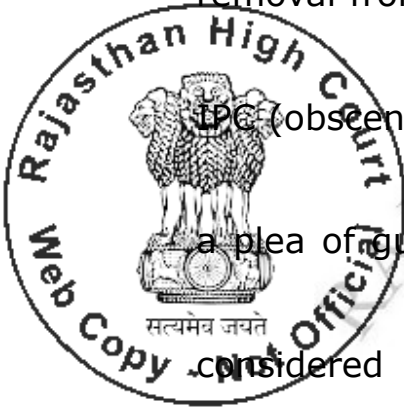
appointment (albeit Class-IV then before Court). The Court then

proceeded to delineate what moral turpitude rendering unsuitable

for appointment was. In this context it observed in para 14 as

under:

“Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; [Penal Code](#), mostly committed by the young and/or the inexperienced. **The cruel result of a conviction of that kind and a fine**



**of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this** (underlying mine). Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."



The Apex Court in the paragraph reproduced above has exhibited the crying need for justice oriented approach and sensitivity to an individual's life, hope and aspirations such that they are not stymied by a heartless interpretation of law with the potential of perpetuating injustice. And in the instant case with reference to facts obtaining, there is also a need for justice through sensitivity in human affairs, [as the Apex Court requires in Pawan Kumar Versus State of Haryana (supra)], taking a pragmatic not pedantic view of law and resurrecting the

petitioner's hope in life by extricating him from the morass of laws' otherwise labyrinthine interpretations.

Aside of the aforesaid, the petitioner has an ironclad unanswerable case in the context of the judgment of this Court in

the case of Gaurav Singh (supra) where Gaurav Singh despite a

pending criminal case, also petty, at the time of applying for the

post of Constable in District Jhalawar was appointed and his

appointment having then been cancelled by District

Superintendent for reason of a pending criminal case, was

restored by this Court with the order of cancellation being set-

aside. Saurabh Singh (supra) who was denied appointment

altogether for a pending petty criminal case was directed by this

Court to be appointed as Constable in District Jhalawar if he

otherwise did not suffer any other ineligibility and was meritorious

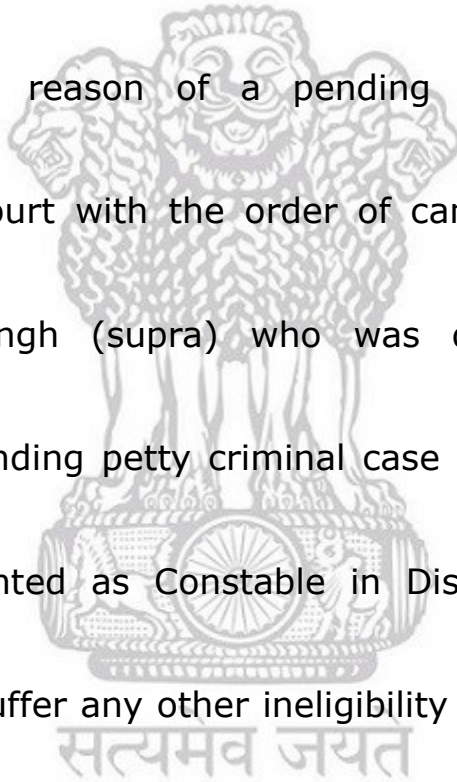
as per the select list for appointment of Constables in Jhalawar

district. It is also relevant to note that the petitioner is seeking

appointment as Constable in district Jhalawar where Gaurav Singh

and Saurabh Singh similarly placed have been appointed under

the orders of this Court despite a FIR then pending against each of





them. Parity in adjudication of identical cases as the case of the petitioner is with that of Gaurav Singh and Saurabh Singh is fundamental to the administration of justice. Inconsistent orders on similar facts can lead the litigating public looking askance and speculating the reasons for differential treatment met out, to the similarly situate persons, by the Court.



The upshot of the aforesaid discussion is that the petitioner is entitled to succeed. It is accordingly allowed. The

respondents are directed to consider the petitioner's case for appointment as Constable in District Jhalawar in terms of his merit prepared pursuant to the select list under the advertisement dated 14.7.2013. That be done within a period of 8 weeks from the date of receipt of certified copy of this order.

सत्यमेव जयते

(ALOK SHARMA),J