

## **Pankaj Pandey Vs S.B.I. Central Recruitment and Promotion Department and Another**

**Court:** Allahabad High Court

**Date of Decision:** Dec. 1, 2011

**Acts Referred:** Dowry Prohibition Act, 1961 " Section 3  
Penal Code, 1860 (IPC) " Section 323, 324, 325, 34, 352

**Citation:** (2012) 4 ADJ 50 : (2012) 4 AWC 3818

**Hon'ble Judges:** S.R. Alam, C.J; Ran Vijai Singh, J

**Bench:** Division Bench

**Advocate:** N.K. Pandey and H.L. Pandey, for the Appellant; Satish Chaturvedi, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

1. This intra-Court appeal arises from the judgment and order of the learned Single Judge dated 2nd November, 2011 rendered in Civil Misc.

Writ Petition No. 62473 of 2011, dismissing the appellant's writ petition. We have heard learned counsel for the appellant and the learned counsel

for the respondents.

2. The short facts giving rise to the present appeal, briefly stated, are that the State Bank of India advertised few vacancies of Clerk-cum-Cashier

for selection and appointment. Pursuant to the said advertisement, the appellant also applied for the said post and appeared in the written

examination and was declared successful hence called for interview, which was to be held on 7th May, 2010. However, in the declaration form, he

disclosed about the pendency of three criminal cases against him, i.e. (1) Case No.....of 2000 under Sections 323, 504 and 506 IPC, (2) Case

No.....of 2007 under Sections 323, 498A, 504, 506 IPC and Section 3 of the D.P. Act, and (3) Case No.....of 2008 under Sections 323,

504 and 506 IPC. The respondent Bank, therefore, keeping in view his involvement in the aforesaid criminal cases involving moral turpitude,

decided not to appoint him and, therefore, vide letter dated 23.9.2011, the offer made to appoint him was withdrawn/cancelled. The aggrieved

appellant, therefore, filed aforesaid writ petition for quashing of aforesaid order dated 23.9.2011 and further for a direction commanding the

respondents to appoint him as Clerk in Gaurabadshahpur, Jaunpur Branch or any other Branch of the State Bank of India of the Zone and to pay

salary as and when it falls due.

3. The learned Single Judge was of the view that it is not desirable to issue letter of appointment to a person against whom criminal cases are

pending even if he has cleared the written examination, interview and has provisionally been selected. The learned Single Judge, therefore,

following the judgment of the Apex Court in Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, , dismissed the writ

petition. The appellant, therefore, preferred this appeal under the Rules of the Court.

4. Learned counsel for the appellant vehemently contended that the alleged offences against the appellant, which are pending trial and being of

trivial nature, the respondents are not justified in withdrawing the offer of appointment to the appellant. He placed reliance on the judgments of the

Apex Court in Commissioner of Police and others v. Sandeep Kumar, (2011) 1 SCC (L&S) 734 and Ram Kumar v. State of U.P. and others,

2011 (4) ESC 634.

5. We do not find any force in the submission and the authorities cited has no application in the facts of the present case, as we are of the view that

it is within the sole domain of the Appointing Authority/employer to verify the antecedents of a person before issuing appointment letter.

Admittedly, the appellant is facing criminal charges which are pending trial. The respondents, keeping in view his involvement in the aforesaid

offences involving moral turpitude, decided not to offer him appointment.

6. In Commissioner of Police and others (supra), the Apex Court has observed that the Court should condone minor indiscretions made by young

people rather than to brand them as criminals for the rest of their lives. In that case, the selection of Sri Sandeep Kumar (the respondent therein)

was cancelled on the ground that he had not disclosed in the declaration form the pendency of criminal case against him registered as F.I.R. No.

362 under Sections 325/34 IPC. The Apex Court, observing that since it was a minor offence, therefore, lenient view should have been taken by

the authorities, quashed the order of cancellation of selection. Similarly, in Ram Kumar (supra), Ram Kumar was appointed as Constable.

However, subsequently, it was found that he was involved in a criminal case under Sections, 324, 323 and 504 IPC and, therefore, his

appointment was cancelled on the ground that he withheld the information about his involvement in the aforesaid criminal case. The Apex Court, in

view of the fact that before applying for selection and appointment, since Ram Kumar was already acquitted, following the judgment in

Commissioner of Police and others (supra), set aside the order cancelling his appointment. Therefore, in the aforesaid cases, whereupon reliance

has been placed by the counsel for the appellant, admittedly, the selected candidates, at the time of issuance of appointment letter, were not facing

any criminal charges nor any criminal case was pending trial, whereas in the case in hand, it is not in dispute that three criminal cases are pending

against the appellant and some of them involves moral turpitude and, therefore, looking to the past antecedents of the petitioner-appellant, the

Appointing Authority did not consider it fit to issue appointment letter to him.

7. More so, it is settled law that mere selection does not confer indefeasible right to claim appointment. In The State of Haryana Vs. Subash

Chander Marwaha and Others, , the Apex Court held as under:

... One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment The examination is for the

purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the

Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a

mandamus that he be appointed.

8. In Shankarsan Dash Vs. Union of India, , the Hon"ble Supreme Court held as under :

Even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an

indefeasible right to be appointed. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on

their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all

or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the

vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the

comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

9. A Division Bench of this Court in U.P. Public Service Commission, Allahabad and Another Vs. State of U.P. and Another, , took the similar

view and observed as under :

Moreover, even in the case of a select list candidate, the law is well settled that such a candidate has no indefeasible right to claim appointment

merely for the reason that his name is included in the select list as the State is under no legal duty to fill up all or any of the vacancy and it can

always be left vacant or unfilled for a valid reason.

10. Otherwise also, it is within the domain of the Appointing Authority/employer to verify, before issuing the letter of appointment, the antecedents

of a person to whom it is going to offer letter of appointment. Therefore, in the facts of the case, even if the appellant was selected, since the

respondents have decided not to offer him appointment because of his involvement in criminal cases, we have no reason to differ with the view

taken by the learned Single Judge. No other point has been urged before us. The appeal, being without merit, is dismissed. However, there shall be

no order as to costs.