



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESEVED ON : **24.07.2023**

DELIVERED ON : **29.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.433 of 2014
and
M.P.(MD)No.3 of 2014

1.Tamil Nadu Uniformed Service Recruitment Board,
Represented by its Chairman, No.807,
P.T.Lee, Chengalvaraya Naickar Maligai,
2nd Floor, Anna Salai, Chennai-002.

2.The Director General of Police,
DGP Office, Chennai-4.

3.The Superintendent Police,
District Police Office, Theni.

...Appellants

/Vs./

K.Muthueswaran

...Respondent

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 16.04.2013 in W.P.(MD)No.1519 of 2013 on the
file of this Court.



WEB COPY



For Appellants : Mr.Veera Kathiravan
Additional Advocate General
for Mr.K.S.Selvaganesan
Additional Government Pleader
For Respondent : Mr.R.Suriyanarayanan

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The State has filed an appeal assailing the order passed by the learned Judge on 16.04.2013 allowing the writ petition filed by the sole respondent (hereinafter referred to as 'writ petitioner'/'respondent').

2. We have heard the detailed submissions of Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.K.S.Selvaganesan, learned Additional Government Pleader for the State and Mr.R.Suriyanarayanan, learned counsel, for the respondent.

3. The writ petitioner was an aspirant to the post of Police Constable Grade II. He made an application on 28.03.2012 in response to call for applications from the Tamil Nadu Uniformed Service Recruitment Board. He claims to have enrolled for free coaching class



WEB COPY

for the entrance test conducted by Superintendent of Police, Theni for preparation.

4. The application filed by him contains a specific field/column as to whether any criminal case was pending at that time as against him, and the exact language is as follows:

“29. உன் மீது குற்ற வழக்கு நிலுவையில் இருக்கிறதா?

Whether any criminal case is pending against you?”

He answered in the negative.

5. A verification was filled by him on 09.11.2012, which contains a field/column as to whether the applicant had ever been concerned in any criminal case as defendant. The field reads thus:

15. Have you ever been concerned criminal case as defendant?

நீ கிரமினல் கேஸில் எப்பொழுதாவது பிரதிவாதியாக

சம்பந்தப்பட்டதுண்டா?

The Petitioner answered 'இல்லை' (no).

6. It is the writ petitioner's case that he had come to know that



WEB COPY

his father and grandfather had been engaged in a quarrel in May 2012.

On a complaint filed by his grandfather in a Police Station in Kerala, his father was arrested, remanded to judicial custody and obtained bail.

7. He claims to have heard that he would also be implicated and hence, by way of abundant caution, submitted a letter dated 20.06.2012 informing the Superintendent of Police that there was a possibility of him being implicated in a false case foisted on him, that he was unconnected with the incident and had been attending coaching classes at Theni then.

8. The writ petitioner claims never to have been summoned for enquiry or arrested. He has not approached the Court seeking anticipatory bail. Relying on this, he states that he had been wholly unaware of the fact that he had been arrayed as an accused in that crime and had, hence, replied in the negative both in the application as well as verification forms.

9. While this is so, an order had come to be passed on



WEB COPY

06.12.2012 rejecting his candidature on the ground that there had been non-disclosure of criminal case in Crime No.527 of 2012 before Kumili Police Station and hence, his conduct was found to be unsatisfactory. He had challenged that order on the ground that he had been totally unaware of the criminal case and his disclosure was thus full and true.

10. He claimed that it was only after receiving the impugned order that he had even known that he arrayed as first accused in C.C.No. 576 of 2012 on the file of the Judicial I Class Magistrate, Peermedu-II. He would claim that upon coming to know of the criminal case, he enquired with his father and was informed that there had been family feud in a property dispute, which had subsequently been compromised.

11. He then approached the Kerala High Court in Crl.M.P.No. 3871 of 2012 along with his father and the Court, noting the compromise entered into by the parties, quashed the criminal case by order dated 17.12.2012. These are the submissions of the writ petitioner in paragraph No.9 of the affidavit filed in the writ petition, which is extracted below:



WEB COPY

“9.I submit that I am not aware of the pending of criminal case against me except knowing the incident stated supra and after seeing the impugned order only I came to understand that in the said criminal case in C.C.No.576 of 2012 on the file of the Judicial I Class Magistrate,II Peermedu I was also been arrayed as first accused. Then I enquired my father and he told me that said case has been given in a family feud in a property dispute and since it was cook-up case, a compromise was arrived by my father and my grandfather and taking steps to quash the same. Then on 17.12.2012 the said case has been quashed by the Hon'ble High Court of Kerala at Ernakulam in Crl.M.C.No.3871 of 2012 under Section 782 of IPC. At present no criminal case is pending against me.”

12. The learned Judge allowed the Writ Petition by way of a common order dated 16.04.2013, passed in several writ petitions. The discussion in regard to this petitioner is at paragraphs 26 to 33. The writ petition was allowed following the decision in W.P.(MD)No.474 of 2013, which had been decided on 26.03.2013.

13. In that case, though an FIR had been filed as against those petitioners, their names had either been deleted while filing charge sheet or the cases were closed as mistake of fact. Hence, it was seen that they were not involved in the criminal cases as they had been exonerated from the charges after investigation. Following that decision, W.P.(MD)1519 of 2013 filed by the respondent was allowed.



WEB COPY

14. We find the facts arising in W.P.(MD).No.474 of 2013 to be distinguishable when compared with the facts arising in this case. Moreover, the judgment of the Hon'ble Supreme Court in the case of *Avtar Singh vs. Union of India and others* [(2016) AIR SCW 3598] has been rendered on 21.07.2016 and the ratio of the same would be applicable to this case.

15. The Hon'ble Supreme Court has held therein at paragraph No.38 that a full and true disclosure must be made by aspirants to posts in public services especially Uniformed Services. Non-disclosure of criminal antecedents would be fatal to their applications. Having made such disclosure however, discretion is always vested in the employer to decide whether the indiscretion/pendency of criminal proceedings could be condoned and the applicant be admitted into service.

16. Thus, the question that arises in this matter relates to (i) whether the writ petitioner was right in claiming ignorance of the criminal proceedings pending in his case at the time of verification and (ii) whether the non-disclosure of criminal proceedings involving the



WEB COPY

petitioner would be fatal to the application. It is the writ petitioner's specific case that he was wholly unaware of the criminal case involving his father and grandfather as he had been issued no summon or any other notices from the department.

17. He relies on letter dated 20.06.2012 and contents therein to state that even at that time, he had made a full disclosure before the authorities that there had been criminal proceedings involving his family and he only apprehended being drawn into the same. Had he intended to suppress the proceedings, there would have been no necessity, he would state, for him to have even written letter dated 20.06.2012 at all.

18. He specifically relies on para 30 (8) of the judgment of the Hon'ble Supreme Court in *Avtar Singh* (supra), wherein the Bench had stated that if the candidate had been unaware of the pendency of a criminal case at the time of filling in the form, though it still it may have adverse impact, the appointing authority would take a decision after considering the seriousness of the crime.



WEB COPY

19. Thus, the respondent argues that the authority has erred in rejecting his candidature for want of a full disclosure. They ought to have instead appointed him as he was fully eligible, taking note of the fact that the charges in the criminal case had been trivial, had been compromised by his family and the case has been quashed by the Kerala High Court. He fully supports the order of the Writ Court in allowing the writ petition.

20. The respondent would also rely on the judgment of the Hon'ble Supreme Court in *Pavan Kumar vs. Union of India and another* [Civil Appeal No.3574 of 2022, dated 02.05.2022], specifically para 13, to the effect that the discharge of a candidate from service cannot be arbitrary and the effect of suppression must be left to the employer to consider having regard to relevant circumstances.

21. At para 17, the facts of that case were noted, where, though a criminal case had been registered, it had not been disclosed in the application. However, the complainant therein had filed an affidavit in that criminal case at the very threshold that the FIR had been registered



WEB COPY

on account of misunderstanding and that he did not wish to pursue his case any further, despite which, a charge sheet had been filed.

22. On the first date of hearing, P.W.1 had not supported the case of the prosecution and that candidate had been acquitted. It was in the light of these facts that that writ petition had been allowed. The State relies, apart from the judgment in Avtar Singh, on the judgement in *Satish Chandra Yadav vs. Union of India and others* [2022 SCC online SC 1300].

23. In the present case, what needs to be decided at the threshold is the veracity of the submission of the writ petitioner that he was wholly unaware of his implication in the FIR. Letter dated 20.06.2012 stands testimony to the fact that the petitioner was aware of not just the family dispute, but of the criminal case laid as against his father. The letter reads thus:-

“அனுப்புநர்

கே.முத்தீஸ்வரன்,
த/பெ வி.குண்டுமணி
13வது வார்டு
நாட்டாண்மைகாரர் தெரு
உத்தமபாளையம்
தேனி மாவட்டம்.



பெறுநர்

உயர்திரு. மாவட்ட காவல்துறை
கண்காணிப்பாளர் அவர்கள்,
மாவட்ட காவல் அலுவலகம்,
தேனி மாவட்டம்.

மதிப்பிற்குரிய அய்யா

வணக்கம். நான் கடந்த 5 மாதங்களாக மேலே கண்ட எனது தாய்மாமன் வீட்டில் தங்கியிருந்து, போலீஸ் வேலையில் சேருவதற்கு தங்கள் அலுவலகத்தில் கடந்த 1½ மாதங்களாக பயிற்சி பெற்று வருகிறேன்.

இந்த நிலையில் எனது தந்தை குண்டுமணி என்பவருக்கும், தாத்தா விருமாண்டி மற்றும் சித்தப்பா முருகன் என்பவருக்கும் சொத்து தகராறு சம்பந்தமாக கேரளா மாநிலம், இடுக்கி மாவட்டம், ஆணவிலாஸ் - ல் கடந்த 31.5.2012 - ம் தேதி தகராறில் அடிதடியாகி பீர்மேடு காவல் நிலையத்தில் என் தந்தை மீதும், என் மீதும் எனது தாத்தா மற்றும் சித்தப்பா போய் கேஸ் கொடுத்துள்ளார்கள். மேற்படி புகாரின் பேரில் எனது தந்தை மீது வழக்கு பதிவு செய்யப்பட்டு தற்போது எனது தந்தை சிறையில் உள்ளார். மேற்படி நபர்கள் எனது வாழ்வை சீரழிக்க வேண்டி மேற்படி தகராறின் போது இல்லாத என்னையும் வேண்டுமென்றே கேஸ் கொடுத்துள்ளார்கள். எனக்கும், மேற்படி சொத்து தகராறில் ஏற்பட்ட பிரச்சனைக்கும் எவ்வித சம்பந்தமுமில்லை.

எனவே கருணைமிக்க ஐயா அவர்கள் எனது எதிர்கால நன்மையை கருதி மேற்படி சொத்து தகராறினால் ஏற்பட்ட பிரச்சனையால் மேற்படி எதிரிகள் கொடுத்துள்ள வழக்கிலிருந்து நிரபராதியாகிய என்னை விடுவிக்குமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்.

தேதி : 20.06.2012

இப்படிக்கு
தங்கள் உண்மையுள்ள
(கையொப்பம்)

கடந்த 5 மாதங்களாக மேற்படி முகவரியில்தான்
எனது தாய்மாமன் வீட்டில் தங்கியிருந்ததற்கான சாட்சிகள்

(சாட்சிகள் பெயர்கள் (2))”



WEB COPY

24. The writ petitioner has been arrayed as first accused and his father as the second accused in the FIR. His father had approached the Kerala High Court and obtained bail. The bail application would have included a copy of FIR and we thus find it hard to believe that the writ petitioner was unaware of the contents of the FIR. It does not stand to reason that he had not been informed by his family that he had been arrayed as first accused in that FIR.

25. That apart, even in letter dated 20.06.2012, he talks of the complaint filed by his relatives against his father and himself, urging that it was a false complaint.

26. It would have been a different matter, had he not written on 20.06.2012 to the authorities in which case he could have, more credibly, pleaded total ignorance. This letter however, makes it clear that, as on that date, he was fully aware of the proceedings involving his father.

27. That apart, he claims in para 9 of his writ affidavit to have come to know the existence of charge sheet in C.C.No.576 of 2012, only



WEB COPY

on receipt of order dated 06.12.2012 rejecting his application. However, Kerala High Court had passed an order in CrI.M.P.3871 of 2012 quashing the criminal complaint on 17.12.2012.

28. The above time frame also throws some doubt on the Writ petitioner's version of events. If that version is to be believed, he has approached the Kerala High Court seeking quash of C.C.No.576 of 2012, only after receipt of order dated 06.12.2012.

29. We had asked for some material in support of the position that the quash petition had indeed, been filed only after 06.12.2012 but no material has been so supplied. We are thus unable to subscribe to the view that the petitioner came to know of the criminal case only after receipt of order dated 06.12.2012, and reject the submissions on that score.

30. What is conclusive against the case of the writ petitioner is the final report filed by the Additional Sub Inspector of Police, Kumily Police Station, Virumandi on 15.06.2012 before the jurisdictional Court.



WEB COPY

The final report is in Malayalam and we have obtained a translation in respect of that portion thereof relating to the first accused in FIR, who is the writ petitioner.

31. The portion is extracted below:

*“Additional SI of Police,
Kumily.*

.....
Report:
.....

ഇതിൽ ചുരുക്കം ചില ഭാഗങ്ങൾക്ക് മലയാളം ഭാഷയിൽ പരിഭാഷിപ്പിച്ചതിന്റെ അർത്ഥം
പകർപ്പ് ഇതിൽ ഉൾപ്പെടുത്തിയിട്ടുണ്ട്. ഈ പരിഭാഷയ്ക്കു മുമ്പ്, കേസുകാരന്റെ വാദം, വാദനാ
പരമ്പരയിൽ ഉൾപ്പെട്ട കേസുകാരന്റെ വിവരങ്ങൾ ഉൾപ്പെടുന്നു.

(Signature)
Finny Vajheej
Addl. S.I. OF Police
Kumily.

31.0.2012”

32. The FIR reveals an altercation between the writ petitioner and his father on the one side and their members on the other. The presence and participation of the writ petitioner in the incident leading to the complaint, FIR and subsequent proceedings is without question. Furthermore, the final report, extracted above, reveals that attempts were



WEB COPY

being made to trace the first accused that were futile as the report states that he was absconding.

33. It is during this time that the writ petitioner / first accused in FIR states that he was undergoing training for the selection in the coaching centre in Theni. Thus, it is possible that the writ petitioner is using the coaching period as a cover to feign ignorance of the criminal proceedings against him.

34. The disclosure of the criminal case pending against him in letter dated 20.06.2012 is, in our view, merely a clever move to make it appear that the petitioner was unaware of the police proceedings while he was, in fact, well aware of the same. Thus, there is no justification for the non-disclosure of this critical aspect in the application and verification filed on 09.11.2012.

35. In the case of *Satish Chandra Yadav vs. Union of India and others* [2022 SCC online SC 1300], certain broad principles have been adumbrated as applicable to such cases and they are as follows:



WEB COPY



“90. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society’s security. [See Raj Kumar (supra)]

b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders’ conduct, should not enter the judicial verdict and should be avoided.

e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala fide.

f) Is there any element of bias in the decision of the



Authority?

g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable?"

36. In light of the above discussion, the order of the Writ Court is reversed and this writ appeal allowed. No costs. Consequently, connected miscellaneous petition is closed.

**[A.S.M.J.,] & [R.V.J.,]
29.08.2023**

NCC :Yes/No
Index :Yes/No
Internet :Yes



WEB COPY



DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

ta

Judgment made in
W.A.(MD)No.433 of 2014

Dated:
29.08.2023