

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

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THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.13083 of 2016

and

W.M.P.Nos.11451 & 11452 of 2016

N.Sivamurugan

... Petitioner

Vs.

1.Union Territory of Puducherry
rep. by the Inspector General of Police,
Puducherry.

2.Recruitment Cell for selection and
appointment to the honorary post
of Home Guards in Police Department
rep., by Chairman,
Office of the Senior Superintendent of Police,
Puducherry.

3.The Superintendent of Police (Headquarters),
Puducherry. Respondents

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the third respondent relating to the order in memorandum No.2853/A1/Estt. I(B)/Pol/2014 dated 20.02.2016 to quash the same and to issue consequential directions to the respondents to confirm the provisional selection of the petitioner as Home Guard (Honorary Post) vide Sl.No.32 of the provisional select list published in No.2853/A1/Estt. I (B)/Pol/2014 dated 15.09.2015 and appoint the petitioner as such with retrospective effect from the date of appointment of the petitioner's immediate junior with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.Syed Mustafa,
Government Pleader (Puducherry)

O R D E R

This Writ Petition has been filed by the petitioner seeking a Writ of Certiorarified Mandamus, calling for the records of the third respondent relating to the order in memorandum No.2853/A1/Estt I(B)/Pol/2014 dated 20.02.2016, to quash the same and to issue consequential directions to the respondents to confirm his provisional selection as Home Guard (Honorary Post) vide Sl.No.32 of the provisional select list published in No.2853/A1/Estt. I (B)/Pol/2014 dated 15.09.2015 and appoint him as such with retrospective effect from the date of appointment of his immediate junior with consequential benefits.

2.Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.R.Syed Mustafa, learned Government Pleader (Puducherry) for the respondents.

3.The learned counsel for the petitioner submitted that at the time of submitting his application through on-line, the petitioner has brought to the notice of the authority about the pendency of the criminal case vide S.No.14 and the order of anticipatory bail obtained in connection to the same in Cr.No.43 of 2008 under Sections 143, 336, 333, 332 r/w.149 IPC on the file of the Thavalakuppam Police Station, Puducherry and therefore, it cannot be construed that the petitioner had misrepresented the facts and further submitted that the criminal case in SC.No.42 of 2009 was also decided in his favour and acquitted by order dated 13.07.2011. Hence, the stand taken by the Superintendent of Police, (Headquarters) Puducherry that the petitioner is not fit for police service as he has involved in a criminal case of assaulting and causing injuries to the police personnel is untenable and unsustainable.

4.Continuing his argument, the learned counsel for the petitioner submitted that in view of Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, disqualification is always found against the person inspite of getting the benefit of doubt, but there is no such rule for Puducherry Territory.

5.Adding further, the learned counsel for the petitioner contended that there was no overt act against the petitioner who was arrayed as A3 in the said occurrence dated 09.03.2008. Even the Investigating Officer has also admitted during his cross examination that there are about 700 persons in the occurrence and in that occurrence, no public had sustained injuries and therefore, in the above circumstances, the learned Trial Court has rightly held that no doubt P.W.1, P.W.8 to P.W.10 deposed false statement before the Court and if the statement of witnesses are to be believed, they ought to have stated as to who among the accused had caused the injury. In this case, P.W.8 to P.W.10 categorically stated in their cross examination that about 4 to 5 persons assaulted them with stone. As per the

evidence of P.W.1, P.W.8 to P.W.10, it was proved that the accused had not caused any injury to them. On that basis, the learned counsel for the petitioner requested this Court to take some lenient view in favour of the petitioner.

6. In regard to the aforesaid submission, this Court is not able to close its eyes to the finding given at Paragraph No. 11 of the Judgment dated 13.07.2011, wherein, it was stated that the petitioner/A3 joined hands with A4 and alleged to have pushed P.W.1 down at the time of occurrence and in the same occurrence, A2, A5 to A8 caused injuries to P.W.8 and P.W.9 with the help of M.O.1 series. Subsequently, the injured went to the police station and lodged a complaint.

7. Be that as it may, when the learned trial Court on entertaining the case, raised a doubt whether M.O.1 Series was used by the accused for committing the offence and as such has arrived at the conclusion that the prosecution has not proved the case and hence, the benefit of doubt has been given to the accused, this Court, while agreeing with the judgment stated supra, but, being bound by the ratio laid down by the Hon'ble Apex Court is not inclined to entertain this Writ Petition.

8. Again citing the order passed by the learned Central Administrative Tribunal, Madras Bench in O.A.No.700 of 2013, the learned counsel for the petitioner further contended that in a similar circumstances, a direction was given by the learned Central Administrative Tribunal to appoint a candidate involved in a criminal case and when the same was implemented by the very same Puducherry Government, the petitioner alone cannot be discriminated. Again, the learned counsel for the petitioner made a submission that even in the order passed by the learned Central Administrative Tribunal, it has been mentioned that the candidates involved in the criminal case, if they disclosed the correct information, they are entitled for appointment if he is eligible in all other aspects. Similarly in the case on hand, the petitioner was selected, however, due to a mere involvement in a criminal case, although he was acquitted, he was not considered fit, therefore, a lenient view may be taken, he pleaded. But the case in hand is completely different from the one decided by the learned Central Administrative Tribunal. As I mentioned earlier that the learned trial Court in SC.42 of 2009 by order dated 13.07.2009, no doubt has given the benefit of doubt to the petitioner/A3 for the simple reason that the M.O.1 series recovered from the place of occurrence had created a doubt whether the same was used for committing the offence. Since the petitioner was acquitted on the ground of benefit of doubt but not got the hon'ble acquittal on merits, his case cannot be mixed up with that of the other case as cited by the learned counsel for the petitioner.

9. In view of the well settled law laid down by the Hon'ble Apex Court as well as by this Court holding that any incumbent to the police service before selection involving in any criminal case and getting order of acquittal on the benefit of doubt, still remains disqualified, this Court does not find any merits in the contention of the learned counsel for the petitioner, hence, the writ petition fails and is accordingly dismissed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

DP

To

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1 cc to Mr.M. Ravi, Advocate, Sr. 22496

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