

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.5718 of 2013

and

M.P.No.1 of 2013

S.Govindaraj

... Petitioner

Versus

1.The State of Tamil Nadu
Rep. by the Secretary,
Home (Police) Department,
Fort St. George Fort,
Chennai.

2.The Director General of Police,
The DGP's Office,
Mylapore,
Chennai-600 004.

3.The Superintendent of Police,
O/o.The Superintendent of Police,
Vellore District,
Vellore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in Na.Ka.NO A2(3)/49777/2012 dated 03.01.2013 and quash the same and consequently to direct the respondents to call for the petitioner for selection.

For Petitioner : Mr.MKS.Sundar
for YES WE Associates

For Respondents:Mrs.M.E.Rani Selvam
Additional Government Pleader

O R D E R

Heard Mr. MKS.Sundar representing for M/s.YES WE Associates, learned counsel on behalf of the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader on behalf of the respondents.

2.The Challenge in this Writ Petition is a letter dated 03.01.2013 denying the opportunity to the petitioner to attend training and refusing his selection to the post of Second Grade Constable in view of his involvement in a criminal case.

3.The learned counsel for the petitioner would submit that the criminal case initiated against him ended in acquittal by judgment dated 04.12.2012 in Special Sessions Case No.36 of 2011 on the file of the Principal and Sessions Judge, Vellore. In view of the acquittal, the petitioner submits that the impugned order is liable to be quashed and consequently, he is entitled for the selection to the post of Second Grade Constable.

4.The learned Additional Government Pleader would submit that the petitioner had passed the written test, physical endurance test, physical efficiency test and medical test and he was disqualified since he was acquitted in a criminal case viz.Crime No.46 of 2011. Though the learned Government Advocate admits that the criminal case ended in acquittal, by relying upon the Full Bench Order of this Court in Manikandan and ors. V The Chairman, Tamil Nadu Uniformed Services and others reported in 2008(2)CTC 97 would submit that the petitioner's candidature was rightly rejected.

5.The only reason the petitioner was disqualified is for his involvement in the criminal case, which had ended in acquittal. There is no dispute that the petitioner was acquitted from the criminal case. The Full Bench judgment that was relied upon by the learned Government Advocate may not be applicable to the respondents to sustain the impugned order, since the Full Bench Order in Manikandan's case emphasizes acquittal of a person on the "benefit of doubt" and it does not apply to "Honorary Acquittal".

6.From a reading of the judgment of the Sessions Court, it is seen that the acquittal of the petitioner was after due consideration of the prosecution evidence and after it was found the prosecution had failed to prove the charges against the petitioner. The Hon'ble Supreme Court in Inspector General of Police Vs. S.Samuthiram (2013) 1 SCC 598 has held that when the accused is acquitted after full consideration of the prosecution evidence and that the prosecution had miserably failed to prove

the charges leveled against the accused, it can possibly be said that the accused was honorably acquitted. In this case also the petitioner was honorably acquitted from the Criminal Case.

6. The consequent issue to be addressed in this case, as to whether the honorable acquittal could disqualify the petitioner from the appointment has been answered by the Honorable Supreme Court in Joginder Singh Vs. Union Territtory of Chandigarh and Others 2015 2 SCC 377. The relevant observation is extracted below:

"19.Further, an acquittal of the appellant is an "honourable" acquittal in every sense and purpose. Therefore, the appellant should not be deprived from being appointed to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him."

"25.Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the appellant was not up to the mark to appoint him to the post. The appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in Jagtar Singh V.CBI which states as under:(SCC pp.50-51,para 4)

"4.....It is not necessary for us to go into the question as to whether the claim of privilege by the respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the appellant. We have carefully examined the material on the basis of which the respondents have come to the conclusion that the appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the respondents are not justified in reaching a conclusion adverse to the appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the

respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the appellant is not a desirable person to be appointed to government service. We are of the view that the appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission."

"26. Thus, we are of the opinion that the alleged past conduct of the appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the respondents by the appellant. The respondents were thus not justified in denying the said post to the appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind."

7. In view of the above findings and the law laid down by the Honorable Supreme Court, the impugned order passed by the third respondent is quashed. Consequently, the respondents are directed to complete the selection process and issue suitable appointment order to the petitioner in the post of Second Grade Constable, subject to any other qualification/tests that may have to be satisfied within a period of eight weeks from the date of receipt of copy of this order.

8. With the above observation, the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is also closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rm

To

- 1.The State of Tamil Nadu
Rep. by the Secretary,
Home (Police) Department,
Fort St. George Fort, Chennai.

M.S.RAMESH.J.,
rm

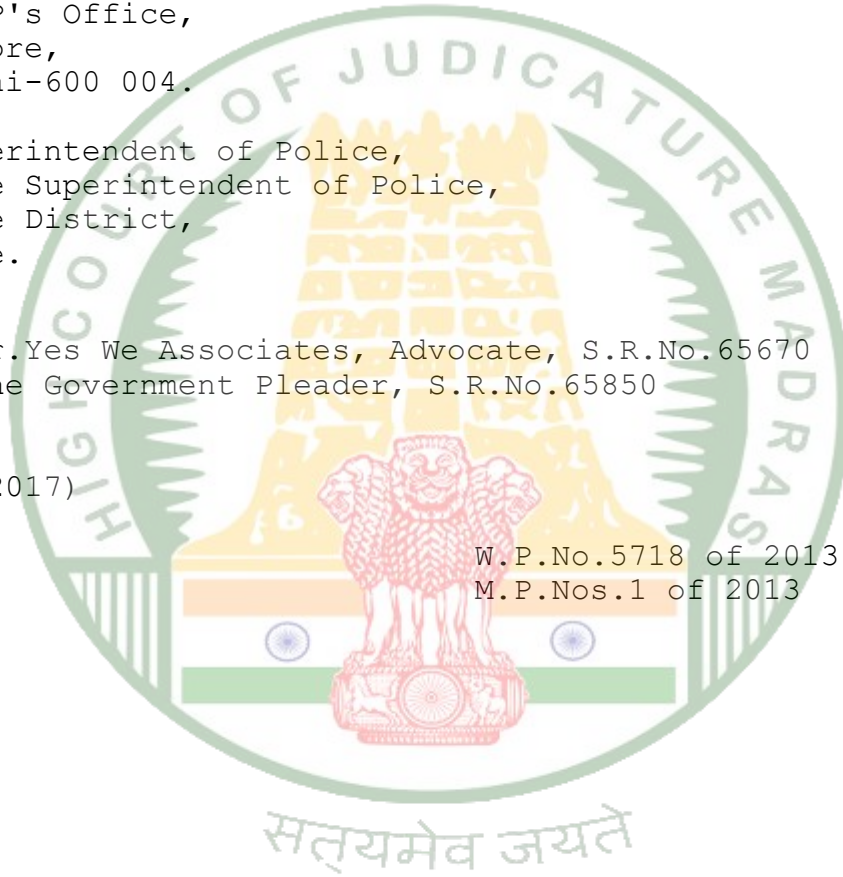
- 2.The Director General of Police,
The DGP's Office,
Mylapore,
Chennai-600 004.

- 3.The Superintendent of Police,
O/o.The Superintendent of Police,
Vellore District,
Vellore.

+1cc to Mr.Yes We Associates, Advocate, S.R.No.65670
+1cc to the Government Pleader, S.R.No.65850

ad(CO)
md(31/01/2017)

W.P.No.5718 of 2013 and
M.P.Nos.1 of 2013



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