

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.23436 of 2016

M.Subramani

.. Petitioner

versus

1. The Commissioner of Police,
Coimbatore District, Coimbatore.
 2. The Inspector General of Police (West Zone),
Incharge Deputy Superintendent of Police,
Coimbatore Circle, Coimbatore.
 3. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board, Egmore,
Chennai.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the order of the 2nd respondent in Na.Ka.No.1096/A1/2015, dated 11.05.2016, quash the same and consequently, direct the 2nd respondent to appoint the petitioner to the post of Sub-Inspector, with all other concomitant service benefits, eligible to the petitioner.

For Petitioner : Mr.A.Vivin
For Respondents 1 to 3 : Mr.R.Karthikeyan,
Government Advocate

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition, is to an order, made in Na.Ka.No.1096/A1/2015, dated 11.05.2016, passed by the Inspector General of Police (West Zone), by which, the writ petitioner has been informed that he has not satisfied the requirement of Special Rule 14(b) of the Tamil Nadu Police Subordinate Service Rules (In short "TNPSS") and thus, the said authority has disqualified the petitioner for being appointed, to the post of Sub-Inspector of Police.

2. Pursuant to the notification and written examination conducted for the post of Sub-Inspector of Police, for the year 2015, the petitioner has cleared the written, physical and medical tests. He was called upon to submit a questionnaire. Verifying the declaration made by the petitioner in Column No.22 of Tamil Nadu Police Verification Roll, the department has alleged that he has not disclosed about his marriage details and stated that he was not married. According to the petitioner, after verification, the respondents have recorded that he had married one Ambika @ Durga, in the year of 2004 and out of the wedlock, there was a girl child, named Nithiyasri, aged about 11 years and lateron, he had filed a divorce petition in H.M.O.P.No 208 of 2011, which was withdrawn. The respondents have further alleged that there was another marriage, with a lady, named Shabana Ashmi, who was already married to one Alladin, and that she had not obtained any divorce. The respondents have further alleged that during enquiry, it came to be known that the writ petitioner, by changing his name as "Karthick", has been living, as husband and wife, with the said Shabana Ashmi, and therefore, the writ petitioner's conduct and character, are contrary to the rules of Police Department. On the abovesaid conclusion, it is the contention of the petitioner that his right for selection to the post of the Sub-Inspector of Police, for the year 2005, has been denied.

3. Based on the averments made in the supporting affidavit, Mr.A.Vivin, learned counsel for the petitioner submitted that the conclusions arrived at, by the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, the 2nd respondent herein, is without providing an opportunity of hearing, to the writ petitioner and therefore, there is a violation of principles of natural justice.

4. It is also his contention that without any proper evidence and without mentioning the name of the enquiry officer, who conducted the enquiry, and based on the statements of those enquired, the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, the 2nd respondent herein, has recorded an erroneous finding that the writ petitioner is living in illegal relationship with one Shabana Ashmi. According to the learned counsel for the petitioner, the findings of the enquiry officer, who conducted the enquiry, are liable to be set aside, both on the grounds of violation of principles of natural justice and on merits.

5. Learned counsel for the petitioner submitted that when the petitioner filed W.P.No.10546 of 2016, challenging the order, dated 24.12.2015, of the Assistant Commissioner of Police

(West), Coimbatore, 2nd respondent therein, and consequently, prayed for a direction to the 2nd respondent therein, to appoint the petitioner to the post of Sub-Inspector of Police, with all consequential benefits, vide order, dated 28.03.2016, a Hon'ble Division Bench of this Court, accepting the request of the learned Additional Advocate General, Government of Tamil Nadu, permitted the respondents therein, to withdraw the notice, dated 24.12.2015, and directed the respondents therein, to issue a fresh order, after enquiry and giving opportunity to the petitioner to explain his stand. According to the learned counsel for the petitioner that in compliance with the said order, the 2nd respondent has not given the petitioner, an opportunity to explain his stand. Notwithstanding the above, it is also his contention that even the alleged wrong statement on the writ petitioner's marital status, in the application form, cannot be said to be a grave misconduct, to reject the candidature.

6. Learned counsel for the petitioner further submitted that admittedly, when there is an estranged relationship between the petitioner and his wife, Ambika @ Durga, there is every possibility of giving false information by her, against the petitioner, and that the same ought not to have been relied on, by the 2nd respondent, for rejecting the candidature of the writ petitioner. For the abovesaid reasons, he prayed for the reliefs, as stated supra.

7. Per contra, based on the averments made in the counter affidavit filed by the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, the 2nd respondent herein, Mr.R.Karthikeyan, learned Government Advocate submitted that the writ petitioner has suppressed the fact of his marriage with Ambika@ Durga at Vadapalani Murugan Temple, Chennai, on 01.02.2004 and also the birth of a female child, by name, Nithyashree, aged 11 years, born to the spouses on 03.03.2005. He also submitted that due to the estranged relationship between the spouses, the petitioner had applied for divorce, on the file of the Principal Sub-Judge Court, Erode and that the same was transferred to Sub-Court, Poonthamalli. The writ petitioner has withdrawn the divorce petition and the same was dismissed on 11.11.2014. According to the learned Government Counsel, without getting appropriate orders for divorce, from the competent Court, the petitioner is living with another woman, Ms.Shabana Ashmi, who was already married twice.

8. Learned Government Advocate for the respondents refuted the contention that the writ petitioner was not provided with reasonable opportunity. He submitted that during enquiry conducted by the Deputy Superintendent of Police, Erode Town, Erode District, the petitioner appeared and gave a statement,

which was recorded on 19.04.2016 and that the petitioner himself accepted that he had not disclosed the fact of marriage, by mistake.

9. Learned Government Advocate submitted that divorce case filed by the petitioner was dismissed on 11.11.2014 and that the petitioner has furnished the details, in the Police Verification Form, only on 26.11.2015. Though the marriage was very much in subsistence, the petitioner has suppressed the fact of marriage and therefore, vide Memo C.No.A1/1096/2015, dated 26.04.2016, the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, the 2nd respondent herein, has instructed the petitioner to explain his stand. The petitioner has acknowledged the same on 27.04.2016 and submitted his explanation. After due consideration of the same, and the statements of witnesses, the competent authority has found that the character and antecedents of the petitioner are not satisfactory, as per rule 14(b) of TNPSS Rules and therefore, found that he was disqualified, for appointment to the post of Sub-Inspector of Police.

10. Learned Government Advocate further submitted that earlier, police verification was conducted by the Inspector of Police, South PS, Erode district and statements were recorded from petitioner's wife, Ambika, mother in law, M.Varalakshmi and maternal uncle, P.Prithivirajan. Subsequently, as per the directions of this Court in W.P.No.10546 of 2016, dated 28.03.2016, a fresh enquiry was conducted by the Deputy Superintendent of Police, Town Sub Division, Erode District and statements have been recorded from the writ petitioner, and 7 others.

11. Learned Government Advocate further submitted that subsequently, the enquiry clearly revealed that, without getting an order of divorce from the Court of competent jurisdiction, the petitioner has been living with another woman, Ms.Shabana Ashmi. He has also submitted that whenever, a person is appointed to government service, a routine of verification of conduct, character and antecedents, is done and such verification and enquiry, it was found the petitioner, who had not obtained divorce from his legally wedded wife, was found to be living with another woman, and that the subsisting marriage, was suppressed.

12. Mr.R.Karthikeyan, learned Government Advocate further submitted that though the petitioner is not involved in any criminal case, it is for the appointing authority to consider, as to whether, the petitioner is desirable and suitable for appointment, in terms of Rule 14(b) of Special Rules for TNPSS. For the abovesaid reasons, he submitted that there were materials to hold that the writ petitioner does not satisfy the

requirements, in terms of Rule 14(b) of the rules and there are no merits in the writ petition, and prayed for dismissal of the same.

Heard the learned counsel appearing for the parties and perused the materials available on record.

13. Before advertng to the rival contentions, this Court deems it fit to consider Rule 14(b) of the Special Rules for TNPSS, which deals with the qualifications, for appointment to police department, and the said rule is extracted hereunder:

"No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

(a)

(b) that his character and antecedents are such as to qualify him for such service."

14. Material on record discloses that the petitioner has filed H.M.O.P.No.208 of 2011, on the file of the learned Principal Sub Court, Erode, seeking divorce, under Sections 13 (1)(A) and 1(B) of the Hindu Marriage Act, 1955. The marriage between the petitioner and Ambika @ Durga, has been solemnized on 01.02.2004. Vide order of this Court in Tr.C.M.P.No.21 of 2012, dated 13.09.2012, H.M.O.P., on the file of Principal Subordinate Judge, Erode, has been transferred to Subordinate Court, Poonamallee.

15. The writ petitioner has applied for the post of the Sub-Inspector of Police, in the year 2015, and passed the written test. During police verification, the writ petitioner was found to have married one Ambika @ Durga on 01.02.2004 and out of the wedlock, a girl child, named, Nithiyasri, was born and when the petitioner had not disclosed the said fact, in the questionnaire, by observing that the writ petitioner has suppressed the said fact and thus, not satisfied the requirements of Rule 14(b) of the Special Rules for TNPSS, the Inspector General of Police (West Zone), Coimbatore, 2nd respondent herein, has sent a memo, dated 24.12.2015, informing the writ petitioner that he was not selected for the said post. Memo, dated 24.12.2015, is extracted hereunder:

"On enquiry made for knowing about the conduct of M.Subramani (Regn.No.2303264) Son of Muthu sundararajan, after his passing of written test for the post of Sub-Inspector for the year 2015, he has stated in the Enquiry Form-22, that he is not married. But during the enquiry he has submitted that he had already married one Ambika @ Durga on 1.2.2004 as love marriage and has a daughter 11 years called Nithyasri, and further that his conduct is not good.

In the appointment of the post of Sub-Inspector, one should be a person of good conduct as per Tamil Nadu Special Police Subordinate Service Rules, No.13(b).

(3) Due to reason mentioned in para one, it is hereby informed that he has not been selected for the said post."

16. Thereafter, the writ petitioner has filed W.P.No.10546 of 2016, questioning the same. When the writ petition came up for hearing, the learned Additional Advocate General has submitted that it was not only a case of non-disclosure of the existence of marriage, but during enquiry, by the Police Department, it was also found that the petitioner has been living with another woman, already married twice. While submitting the abovesaid fact to this Court, the learned Additional Advocate General has requested this Court to permit, withdrawal of the notice, dated 24.12.2015, with liberty to issue a fresh order, in accordance with law, and accepting the same, the Hon'ble First Bench of this Court, vide order, dated 28.03.2016, has passed the following orders,

"2. We accept the request of the learned Additional Advocate General, to withdraw the notice/order, dated 24.12.2015 and issue a fresh orders, after enquiry and an opportunity to the petitioner to explain his stand, in view of the given facts of the case, not to be treated as a precedent."

17. Thereafter, a fresh enquiry has been conducted by the Deputy Superintendent of Police, Erode Town, Erode District and on the basis of the report, the Inspector General of Police (West Zone), Coimbatore, the 2nd respondent herein, has issued a memo, dated 26.04.2016, to the writ petitioner, calling upon him, to offer his explanation. Translated version of same, as furnished by the petitioner, is extracted hereunder:

ROC.No.1096/A1/2015 Coimbatore Circle Office
Date: 26.04.2016 Coimbatore-18.

MEMORANDUM

Sub: Police-Selection of Sub-Inspector (Male & Female) 2015-Mr.M.Subramani (Registered No. 2303264) Writ Petition No.10546/2016 filed by Subramani is ordered in the High Court - taking up enquiry -Explanation called for.

Ref:-1. This office Endorsement of the same Number date 29.12.2015.

2. Order passed by the Chennai High Court in W.P.No.10546/2016, dated 28.3.2016.

3. Memorandum No. 48207/Recruitment II(1)/
2016,
dated 7.4.2016, Office of Head Office.

4. Letter No.A1/3112/2016, dated 26.4.2016 of
the Superintendent of Police/ Erode District.

It is informed by the endorsement of this Office as cited in Ref.1 that you Mr.M.subramani (Regd.No.2303264) S/o.Mr.Muthu Sundararaj an after getting selected upto the written examination stage for the selection for the post of Sub-Inspector for the year 2015, when an enquiry was conducted from the details of the Enquiry Form submitted by you for the purpose of understanding about your character, since it is found that you have by suppressing the fact that you had loved and married one Ambiga @ Durga on last 1.2.2004 and you are having a daughter named Nithiyasree, aged 11 and informed in column 22 of the Enquiry Form that you are not married and further because your conduct is improper, you are not appointed in the post of Sub-Inspector as per Rule No.13(b) of the Tamil Nadu Special Police Subordinate Services Rules.

2. After receiving the above said endorsement on 26.12.2015 you have filed the writ Petition in W.P.No.10516 of 2016 on 8.3.2016 as against that before the Chennai High Court. The Chennai High Court had passed an order in that Writ Petition for adopting an enquiry by granting one more opportunity.

3. When the enquiry was re-conducted as directed in the order of the above said Chennai High Court it is seen that you have mentioned the false detail and contrary to truth that you are not married with reference (2) the question in column 22 of the Police Department, the enquiry Form. It is further learnt that you had firstly married the girl called Ambiga and that you have got a girl child named Nithiya Sree, aged 11, and after you had separated from Ambiga, you had filed a Divorce case before the Court and later you, yourself had withdrawn the case. (emphasis supplied) It is also gleaned from the enquiry that thereafter you had without obtaining the divorce properly had secretly married for a second time the girl called as Sabna Asmin at Erode Sastri Nagar, who was already married to one Allaudeen and Raja and who had not obtained Divorce properly and running the family. It is also further learnt from the enquiry that you had stated your name as Karthick by changing it to the people with the neighbour hood and cheating

and running the family with the said Sabna Asnin, your character and conduct are contrary to the rules of the Police Department. Further in the enquiry in the neighbourhood it is clearly understood that you are not a man of good character.

4. As per Rule No.14(b) of the Tamil Nadu Special Police Subordinate Services for being appointed to the Post of an Sub-Inspector one has to be possessing a good character and further according to Rule 13(c) for the appointment to the Post of an Sub-Inspector one ought not to run the life with more than one wife it is stipulated like that. But since you had not fulfilled the qualifications mentioned in these Rules, you had become unfit for the appointment to the post of an Sub-Inspector. So you are directed to give your explanation in these regard within 7 days. In default it will be considered with, you are not desiring to give any explanation at all and you are informed that order will be passed unilaterally.

Sd/-
Head of the Police Department West Zone,
Coimbatore (Incharge),
Deputy Police Officer, Coimbatore."

18. Responding to the memo, dated 24.06.2016, the writ petitioner has submitted his explanation, dated 02.05.2016, stating that, as against Column No.22, by mistake, he has stated that he was not married. He has denied the alleged relationship with Ms.Shabana Ashmi. On the allegations that the writ petitioner had changed his name, as "Karthick", he has contended that he was usually called only as "Karthick" and therefore, there was no intention to change of name, to avoid identity. After considering the report of the enquiry officer and explanation of the petitioner, dated 02.05.2016, the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, 2nd respondent herein, has issued impugned memo, dated 11.05.2016, holding that the petitioner is not qualified under Section 14(b) of the Special Rules for TNPSS, and that he is disqualified for the post of Sub-Inspector of Police. The translated version of the impugned memorandum, dated 11.05.2016, as furnished by the petitioner, is extracted hereunder:

Na.Ka.No.1096/A1/2015

Date: 11.05.2016

Coimbatore Circle
Office
Coimbatore-18.

ENDORSEMENT

Sub: Police - Selection of Sub-Inspector
(Male & Female)
2015 - Mr.M.Subramani (Registered No.669500)
Writ
Petition No.10546/2016 filed by him before
the
Chennai High Court passed - regarding
disqualification
for appointment as SI - Informed.

Ref:-1. This office's Endorsement of the same date
as 24.12.2015

2.Order, dated 28.03.2016 passed by the
Chennai High Court in W.P.No.10546/2016.

3.Memo of head Office No.48207/Rect.II(1)/
2016, dated 7.4.2016.

4. Letter No.A1/9815/2016, dated 26.4.2016 of
the S.P. Erode District.

5.This office's Memo same Number dated
26.04.2016.

6.Explanation, dated 02.05.2016 of
Mr.M.Subramani, Son of Mr.Muthu Sundararajan
received through letter of Erode District
Superintendent No.A19815/2050, dated
03.05.2016.

When enquiry was conducted regarding your
conduct after you got selected up to direct written
exam stage for the purpose of Selection as Sub
Inspector for 2015, ie., about you Mr.M.Subramani
(Registered No.669500) Son of Mr.Muthu Sundararajan,
based on your submission in the enquiry form, since it
is found that your information that on 01.02.2014 you
had married one Tmt.Anbika @ Durga by loving and you
have got one girl child / aged 11 named Nithiyasree
and you have by screening the above details stated in
Column 22 of the Enquiry Form that you have not it
been married and further by commit to know during the
further enquiries that your conduct is not proper, you
were informed through this officer's endorsement
mentioned in Reference 1 above that you have not been
appointed as S.I., as per Tamil Nadu Sub-Inspectors
Services Special Rule No.13(b).

2. After receiving the abovesaid endorsement on 26.12.2015 you have filed a W.P.No.10546 of 2016 on 8.3.2016 before the Madras High Court as against that Chennai High court had passed an order on that writ petition towards to give one chance to you again and proceed with the enquiry. On further continuing is that enquiry as per Tamil Nadu Police Subordinate services Special Rule No.13(b) since you have not fulfilled the qualification that one should be a man of good conduct for appointment as Sub-Inspector and as per Rule 13(c) for the appointment of Sub-Inspector, one must not run life with more than one wife and since you become disqualified for the appointment the post of Sab-Inspector, you were informed to this Officers memo mentioned in Ref.5 to submit your explanation regarding the above within 7 days.

3. You have given your explanation in the report mentioned in Ref.No.6 on his scrutiny of the explanation submitted by you and the report of the Police superintendent, Erode Town sub-Division it comes to knowledge during the enquiry that you have got married to one Tmt.Ambiga @ Durga and you have a girl child named Nithiyasree aged 11 years. You had yourself accepted this as true in your explanation. But you have wrongly filled the column 22 of the Enquiry Form that you are not married is not acceptable.

4. Further you have stated in your explanation that you are a family friend of Tmt.Sabana Azmin who is already married. But it is seen that as a matter of fact from the report of the Enquiry Officer and the statements of the other witnesses that you have without obtaining divorce properly from your wife Tmt.Ambiga and contrary to law you are keeping illicit intimacy with Tmt.Sabana Azmin and has been running the family secretly. It is not possible for appointing such a person of bad character in the police department. Hence your are informed through this that because you have not fulfilled the qualification mentioned in the Special Rule No.13(b) of Tamil Nadu Police Subordinate Services Rules, you are disqualified for being appointed as Sub Inspector.

Sd/-

Head of the Police Department,
West Zone, Coimbatore,
(Incharge) Police Deputy Superintendent,
Coimbatore Circle.
Dated 11.05.2016.

To

Mr.M.Subramani,
(Registered No.669500),
S/o. Mr.Muthu Sundararajan
49/71, Bagavanthi Amman Koil St.,
Sasthiri Nagar, Erode - 638 002.

Through the Superintendent of Police, Erode District (2 copies)

It is requested that is Memo shall be served on the said M.Subramani, Son of Muthusundararajan to-day itself and send the copy of the Memo served to this office at once.

Copy to:

Director of Police Department, Tamil Nadu, Chennai - 4.
(R.l. Memo No.18207/Rect.11(1) 2016 dated 07.04.2016 regarding)
Police Chief, West Zone, Coimbatore-18.

19. At the outset, this Court deems it fit to state that Police Verification done by the government or any other employer, as the case may be, to find out the conduct and character, and antecedents of a person, to be appointed in service, is not quasi-judicial in nature. However, there is already a direction of this Court in W.P.No.10546 of 2016, dated 28.03.2016, to provide the petitioner, an opportunity. Now, let us consider few cases, as to why, police verification, before appointment, is required.

20. In Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar reported in (1996) 11 SCC 605, the Hon'ble Apex Court held that,

"verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offence, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate

to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequence."

(emphasis supplied)

21. In *Kendriya Vidya Sangathan vs. Ram Ratan Yadav* reported in (2003) 3 SCC 437, the Hon'ble Supreme Court, considered a case, as to whether the information furnished by the respondent therein, a person selected, who had answered in the negative, to certain questions, "as to whether he was prosecuted or convicted by any court of offence" and "if any case was pending against him in any court", at the time of filling up of the attestation form, would amount to suppression of material fact and has a bearing on the character and antecedent. While advertng to the above, the Hon'ble Supreme Court, at paragraph No.12, explained the object of requiring such information.

"12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court

was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

(emphasis supplied)

22. In *R.Radhakrishnan vs. Director General of Police and others* reported in (2007) 12 Scale 539, the Hon'ble Apex Court considered the case of a person, who claimed a right to be inducted in disciplined force. The Hon'ble Apex Court held as follows:

"10. Indisputably, Appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed. "

(emphasis supplied)

23. While considering the validity of Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, dealing with the eligibility of a person for appointment in Police Department, by direct recruitment, on the aspect of character and antecedents of a person to qualify for appointment

to the service; morefully the condition that the person should not have more than one wife living, and a person should not have involved in any criminal case, before police verification and other factors to be taken note of, by the department, a Hon'ble Full Bench of this court in Manikandan v. Tamil Nadu Uniformed Services Recruitment Board reported in 2008 (2) CTC 97, at paragraph No.12 of the judgment has observed as hereunder:

" 12.The rule is only a reflection of the intention of the Government to maintain purity of administration. The Rule merely provides a check post or a filter point, to ensure that only those, who had a clean record of personal life, are admitted into the system. That the existing system, has already come under heavy dose of criticism, cannot be swept under the carpet. Therefore, as an employer, the Government is entitled to prescribe, especially in a disciplined force like the police force, such a restriction at the entry level. There cannot be a dispute about the proposition that an employer has the right to prescribe any qualifications for appointment to a post. If that be so, an employer has a concomitant right even to prescribe disqualifications when it comes to appointment to a post. The prescription that Caesar's wife should be above suspicion, cannot be said to be faulty at least in this regard."

(emphasis supplied)

Though the above said observations have been made by this Court, while testing the validity of Rule 14(b), in the context of making classification of persons, involved in criminal cases and not involved, we are of the view that the said observation of the Hon'ble Full Bench of this Court, is relevant for the purpose of verification of the character and antecedents of a person, to qualify himself, for appointment to police department.

24. In Jainendra Singh vs. State of U.P. through Principal Secretary, Home & Ors. reported in (2012) 8 SCC 748, the Hon'ble Supreme Court, at paragraph No.31, summed up, as follows:

"31. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two-Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of

years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

(ii) Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

(iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

(iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

(viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

(ix) An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such

a service born in deceit and subterfuge cannot be tolerated.

(x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

(emphasis supplied)

25. In Commissioner of Police, New Delhi and another vs. Mehar Singh reported in 2013 (7) SCC 685, there was a criminal case against the appellant. The Screening Committee did not recognise his case for appointment. He filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi. A direction was issued in his favour. The Commissioner of Police, New Delhi, filed a writ petition before the Delhi High Court, which confirmed the order of the Tribunal. While testing the correctness of the same, at paragraph No.28, the Hon'ble Supreme Court observed as hereunder:

"28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to

the importance of trust reposed in it and must treat all candidates with even hand."

(Emphasis supplied)

26. In Avatar Singh vs Union of India & Ors reported in 2016 SCC Online SC 726, after considering a catena of decisions, the Hon'ble Apex Court, at paragraph Nos.21 to 29, held as follows:

"21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an

incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

23. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of

suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to

act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The 'McCarthyism' is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

(emphasis supplied)

27. Reverting to the case on hand, as against Column No.22 of the Tamil Nadu Police Verification Roll, viz., Are you married? If so, furnish name and age of your spouse, date of place of marriage and details of children, if any, with age?, the writ petitioner has given the answer, "No".

28. During police verification and enquiry, it is found that the petitioner's marriage with Ambiga @ Durga, on 01.02.2004, was subsisting and that he has a daughter, by name, Nithiyasri, aged about 11 years. Thus, there is a clear suppression of fact. However, when the notice, dated 24.12.2015, issued by the Assistant Commissioner of Police (West), Coimbatore, was withdrawn and pursuant to the order made in W.P.No.10546 of 2016, dated 28.03.2016, a fresh notice has been issued by the Deputy Superintendent of Police, Erode Town, Erode District, the new enquiry officer and that the petitioner himself has given a statement, dated 19.04.2016, accepting non-disclosure of the fact of his marriage, but contended it was a mistake. On the facts, we are not inclined to accept the contention of the petitioner, that non-disclosure of marriage, was a mistake.

29. Besides examining the petitioner, perusal of the files discloses that an enquiry has been conducted, near the place, where the petitioner is now stated to be residing. Statements have been obtained, indicating that the conclusion arrived at by the Inspector General of Police (West Zone), Incharge of Deputy Superintendent of Police, Coimbatore Circle, Coimbatore, the 2nd respondent herein, to non-suit the petitioner to the post of Sub-Inspector of Police, has not been arrived at, in arbitrary manner.

30. In an enquiry of this particular nature, the employer/government is not required to divulge all the details, such as, the source of information, names of the persons enquired, in the order, non-suiting a candidate, for appointment. On the basis of the enquiry officer's report, a memo, dated 26.04.2016, has also been issued by the Inspector General of Police, West Zone, Coimbatore, 2nd respondent, to the petitioner, calling upon him, to offer his explanation and that the same has also been considered, in the light of the materials gathered, during enquiry, conducted by the Deputy Superintendent of Police, Erode. On the facts and circumstances of the case, we are of the view that, it is suffice to give the reasons for arriving at the conclusion, which has been done in this case.

31. Judicial pronouncements make it clear that desirability and suitability of a person to be appointed to service, on the basis of verification of character and antecedents, is the subjective satisfaction of the government, moreso, in a disciplined force, Police Department. Desirability and suitability of a candidate in public employment, depends upon the nature of the post, duties and responsibilities, secret or sensitive matters, which he may have to deal with, if appointed to service and in the context of the above, the Government or the employer requires verification of character and antecedents and to take a decision, as to whether, a candidate can be appointed to service or not. Police verification only facilitates the Government or the employer, to arrive at a decision.

32. Verification of character and antecedents, is one of the important criteria, to test, as to whether a selected candidate is suitable to a post and more so, in the case on hand, to the post of Sub-Inspector of Police, in a disciplined force. As observed by the Hon'ble Supreme Court in Mehar Singh's case, a candidate, who desires to join police force must be a person of utmost rectitude. He must have impeccable character and integrity. In Kendriya Vidya Sangathan's case, the Hon'ble Apex Court held that the object of requiring information is to ascertain and to verify the character and antecedents to judge the suitability of a candidate, to the post.

33. Verification of character and antecedents is an important criteria, to test, as to whether a selected candidate is suitable to the post under the State, and on account of his antecedents, if the appointing authority finds that it is not desirable to appoint a person to a disciplined force, it cannot be said that the decision arrived at, is arbitrary. A person, who has suppressed the material information or given false information, cannot claim any right for appointment, or continuity in service.

34. The standard expected of a person intended to serve in a Uniformed Service, is quite different from the one of a person who intended to serve in other services and therefore, any deliberate statement or omission regarding a vital information, can be seriously viewed and the ultimate decision of the appointing authority, cannot be faulted. The authorities, entrusted with a responsibility of appointing a person, to a disciplined force, are certainly under duty to verify the antecedents of a candidate, to find out whether he is suitable for the post.

35. While arriving at the conclusion of desirability and suitability, we are of the view that the employer should act prudently, with due consideration to the nature of post. Once the verification form requires certain information to be furnished, the declarant is duty bound to furnish it correctly and any suppression of material facts or false information, the same, by itself, would lead to termination of his services or cancellation of candidature, in an appropriate case. But the decision to be taken, should be based on objective criteria, on due consideration of all relevant aspects.

36. A person, who has suppressed a material information, cannot claim that he has a unfettered right for appointment. We are of the view that as to whether, a person is fit to be appointed or not, to a post, moreso, in a disciplined force, should be left to the exclusive domain of the government/employer. Decision taken by the Government or the employer, as the case may be, on desirability and suitability of a person to be appointed to a post, in relationship to character and antecedents, should be based on materials, on the touchstone of preponderance of probability. Conclusion arrived at, should not be perverse.

37. During police verification, a candidate cannot expect a detailed enquiry, by giving him, a show cause notice, on every material gathered, during verification. There is no right to appointment. Verification of character and antecedent, to assess the desirability or suitability, should be left to the exclusive domain of the employer, but the decision taken by the competent

authority, should not be, an arbitrary exercise of powers and such exercise of power, has to be done, in a reasonable manner, with an objectivity, having due regard to the materials gathered during enquiry.

38. At this juncture, it is also to be noted that while submitting the Tamil Nadu Verification Roll, petitioner himself has given a declaration that,

"I am applicant for appointment to the Tamil Nadu Police Force, do solemnly and sincerely declare that answer furnished by him to the following questions are entirely true and accurate.

I realize that if I am enlisted and my statement, which has been made by me is found to be false, I wish render myself liable to be dismissed by obtaining service under false pretences."

39. While testing the correctness of the order impugned in this petition, we also deem it fit to consider few decisions, on judicial review. Judicial review of administrative action, under Article 226 of the Constitution of India, can be exercised only on the grounds of perversity, extraneous and irrelevant considerations, mala fides and other infirmities. [Organo Chemical Industries v. Union of India [1979 (4) SCC 573], Babubhai & Co., v. State of Gujarat [1985 (2) SCC 732] and Workmen v. Meenakshi Mills Ltd., [1992 (3) SCC 336]].

40. In Government of A.P., v. Mohd. Narsullah Khan reported in 2006 (2) SCC 373, at Paragraph 11, the Hon'ble Supreme Court, held that it is a well-established principle of law that, the High Court, while exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit, by re-appreciating the evidence, as an appellate Authority.

41. In Bachan Singh v. Union of India reported in 2008 (9) SCC 161, the Hon'ble Supreme Court reiterated that judicial review under Article 226 of the Constitution of India is not directed against the decision, but it is confined to the decision-making process. Judicial review is not an appeal, but a review of the manner, in which, the decision is made. The Hon'ble Apex Court held that the High Court sits in judgment only on the correctness of the decision-making process, and not on the correctness of the decision itself.

42. Contention of the petitioner that he was not given a reasonable opportunity, is not accepted. We have given our due consideration to the principles of law, required to be applied to the facts of the case. On that aspect, we have directed the department to produce the files. We have perused the same. Files disclose that there are materials to arrive at a conclusion, on the touchstone of preponderance of probability. When the Department has conducted a police verification, to find out the character and antecedent of the candidate's suitability and desirability for appointment, unless and until, the petitioner had substantiated that the decision taken to non-suit him, is on account of malice, perversity, extraneous and irrelevant materials or other infirmities, the decision arrived at by the competent authority, cannot be interfered with, by exercising judicial review. On facts and circumstances of the case, there are no averments on malice, raised and substantiated.

43. In the light of the discussion and decisions, the contentions of the petitioner that there was no willful suppression; there was no proper enquiry; and that there was an erroneous conclusion on the basis of statements obtained during verification, regarding marital status and that the same ought not to have been construed as a misconduct, are not accepted. "Suppressio veri : Suggestio falsi", means, "suppressing the truth; suggesting the false". "Suppressio veri" implies knowledge of a fact, suppressed. In Ramanatha Iyer Law Lexicon, "suppression" is defined as, "when there is an obligation to speak a failure to speak will constitute the suppression of a fact, but when there is no obligation to speak, silence cannot be termed as suppression. On the aspect of police verification, relating to character and antecedent, we are of the considered view that the decision arrived at, is not quasi-judicial. There are no merits in this writ petition.

44. In the result, the Writ Petition is dismissed. No costs.

सत्यमेव जयते

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Police,
Coimbatore District, Coimbatore.

2. The Inspector General of Police (West Zone),
Incharge Deputy Superintendent of Police,
Coimbatore Circle, Coimbatore.

3. The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board, Egmore,
Chennai.

+1 cc to Mr.A.Vivin, advocate,sr.60952.

pk(co)
krd 24/11

W.P.No.23436 of 2016



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