

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.525 of 2017 &
WMP Nos.550 & 551 of 2017

S.Vallal

[PETITIONER]

Vs

- 1 The Government of Tamil Nadu
Rep. by its Secretary
Home Prohibition and Excise Department
Secretariat, Fort St. George, Chennai.
- 2 The Director General of Police
O/o Director General of Police
Dr.Radhakrishnan Salai
Mylapore, Chennai 600 049.
- 3 The Director General of Police/
Inspector General of Prisons
Egmore, Chennai 8.
- 4 The Tamilnadu Uniform Services
Recruitment Board
Rep. by its Chairman
2nd Floor, P.T.Lee Chengelvarayar Nayakkar Maligai
807 Annasalai, Chennai 2.
- 5 The Director
Fire and Rescue Services
No. 12 Lakshmipathi Road,
Egmore, Chennai 2.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 27.02.2016 passed by the 3rd Respondent in Ref.No. 37131/W1 / 2012 dated 27.02.2016 and quash the same and consequently direct the Respondents to select the petitioner for the post of Constable Grade II (Prisons) with effective from the date of original selection with all other attendant status of seniority and

benefits within a time frame limit.

For Petitioner : Mr.P.G.Thiyagu

For Respondents: Mr.K.Dhananjayan
Sp.Govt.Pleader

O R D E R

The relief sought for in this Writ Petition is challenging the order dated 27th February, 2016, rejecting the claim of the writ petitioner for recruitment to the post of Constable, Grade II.

2.The writ petitioner submitted that he has completed B.B.A., Degree and applied for recruitment to the post of Police Constable Grade-II (Prisons) in March, 2012. The grievance of the petitioner is that though he was provisionally selected in January, 2013, at the time of considering his name for appointment, the same was rejected by the authorities concerned.

3.The learned counsel appearing for the writ petitioner strenuously contended that the writ petitioner has not suppressed the fact regarding the pendency of the criminal case registered against him in C.C.No.73 of 2012, for the offences under section 147, 18, 341, 294(b), 323 r/w 149 IPC and even while submitting his Application through 'Online', he has mentioned that a criminal case was pending against him, in the column prescribed for that purpose and therefore, the case of the writ petitioner to be treated distinctly. The learned counsel further proceeded by stating that the criminal case ended in acquittal.

4.On a perusal of the Judgment rendered by the Court below, this Court is able to find that the order of acquittal was delivered by extending the 'benefit of doubt' in favour of the writ petitioner. Under such circumstances, the third respondent issued the order impugned in this writ petition in proceedings dated 27th February, 2016, by stating that though at the time of final selection, the criminal trial was concluded and an order of acquittal was passed, since at the time of submission of the Application for recruitment, the criminal trial was pending against the writ petitioner, the case of the writ petitioner could not be considered, pursuant to the Notification issued in 2012 and liberty was granted to the petitioner to appear before the next recruitment process, if undertaken by the Department.

5. Now the question to be decided is that when the criminal case is pending against the writ petitioner at the time of submission of his Application for recruitment to the post of Police Constable Grade-II (Prisons), will be a bar for further consideration to appoint him.

7. The issue in this aspect was elaborately considered by the Division Bench of this Court in D. RAMGANESH & ORS v. TAMIL NADU PUBLIC SERVICE COMMISSION & ORS [W.P.Nos.37769 of 2016 etc. batch dated 08.03.2017 (in which myself is also a party)]. While delivering the Judgment, the Division Bench considered various aspects with regard to the appointment of a person against whom the criminal case was pending and the nature of the post involved. No doubt, a mere pendency of a criminal case will not be a bar or an order of acquittal in a criminal case also is not a bar for certain posts in other Departments, but, certainly in respect of Judicial Service and Police Service, the Hon'ble Supreme Court has categorically rendered a finding that an integrity and the antecedents to be verified in all respects and a slightest black mark in that respect should be held against the candidate, in view of the nature of the post for which a person is to be appointed. In this regard, the observations made in the Judgement cited supra, are extracted herein below:

7. The question that is raised before us is the same, which has fallen for consideration time and time again in one form or the other namely whether involvement in a criminal case is an automatic fact or for disqualification of the candidature itself. This very question has fallen for consideration on several occasions before this Court as well as before various other Courts as well as before the Supreme Court. Various views have been expressed by various Courts for a long period of time and the spectrum ranges from

- (i) involvement in a criminal case is itself a disqualification;
- (ii) it all depends upon the nature of selection;
- (iii) it all depends upon the nature of exoneration secured in the criminal case; and
- (iv) it depends upon the status of employment.

8. In fact, the Supreme Court had also occasion to deal with various related questions for over a long period of time. As a result, when Civil Appeal No. 5671 of 2012 between Jainendra Singh and State of U.P. [reported in 2012 (8) SCC 748] has come up for consideration, the Supreme Court, after noticing the range of views expressed by various Benches of the Supreme Court till then, had noticed the divergence of opinion to a certain extent. Hence, the Supreme Court

felt it appropriate to refer the said civil appeal to be considered by a Larger Bench so as to express one uniform opinion on the subject.

9. Thus, the matter came to be considered by a Bench of Three Judges in Avtar Singh Vs. Union of India [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in Daya Shankar Yadav Vs. Union of India [reported in 2010 (14) SCC 103] and State of West Bengal Vs. S.K. Nazrul Islam [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in paragraph 34 of the judgment in Avtar Singh :

"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."

10. The Supreme Court has pointed out that verification of character and antecedents is one of the important criteria to assess the very suitability of the candidate for employment and hence, it is open to the employer to adjudge the antecedents of the incumbent based upon objective criteria. It is also held that though a person is guilty of suppression of material information and consequently has no claim of unfettered right of appointment or continuity in service, however, he has a right not be dealt with arbitrarily. It is further held that the ultimate decision, which is the result of exercise of necessary power by the employer, shall be carried out in a reasonable manner with objectivity having due regard to the facts of the case.

11. In paragraph 38 of the said judgment, the following principles have been settled :

"We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:-

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/ removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

15. It is, therefore, urged before us that when the writ petitioner does not possess any character, which is blameworthy at all, it is not appropriate that his candidature should be rejected for appointment as a Civil Judge (Junior Division) outright. The learned counsel would specifically invite our attention to paragraph 21 of the judgment in Daya Shankar Yadav, which is as follows :

"If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot

dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may."

33. In this context, we will be extremely profited to subscribe to the view rendered by the Supreme Court in the case of Commissioner of Police Vs. Mehar Singh [reported in 2013 (7) SCC 685] wherein in paragraph 35, it has been held thus :

"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."

8. In the case on hand, the respondents themselves have considered the fact that at the time of pendency of the selection process, the criminal case initiated against the petitioner was pending and further they have given an opportunity to the writ petitioner to participate in the next recruitment process. Such being the leniency extended to the writ petitioner, this Court is not inclined to further extend the scope in this regard, since the post for the recruitment process is undertaken is of 'Uniformed Services'.

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9. Accordingly, no further consideration on the arguments advanced by the learned counsel for the petitioner is required to be considered and the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

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807 Annasalai, Chennai 2.
- 5 The Director
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No. 12 Lakshmipathi Road,
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+1 cc to the Government pleader sr 50108
+1 cc to M/s.P.G.Thiyagu Advocate sr 50199

W.P. No. 525 of 2017

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