

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.5463 of 2014

M.Rajesh Kanna

...Petitioner

-Vs-

Tamil Nadu Uniform Services Recruitment Boards
807, B.it.ly Sengalvarayar Naicker Maligai
Anna Salai, Chennai 600 002.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for direction to issue a Writ of Mandamus to direct the respondent to select and appoint the petitioner (Roll No.2400013) to the post of Special Police based on the selection for Tamil Nadu Special Police Youth Brigade (Male) 2013-2014 on merit without reference to the criminal case in C.C.No.216 of 2011 on the file of Judicial Magistrate No.1 Thanjavur ended in acquittal as per the order dated 24.07.2012, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.R.Vijayakumar
Addl.Govt.Pleader

सत्यमेव जयते

O R D E R

The relief sought for in this writ petition is to direct the respondent to select and appoint the petitioner (Roll No.2400013) to the post of Special Police based on the selection for Tamil Nadu Special Police Youth Brigade (Male) 2013-2014 on merit without reference to the criminal case in C.C.No.216 of 2011 on the file of Judicial Magistrate No.1 Thanjavur ended in acquittal as per the order dated 24.07.2012.

2.The learned counsel for the writ petitioner made a submission that the writ petitioner submitted an application for recruitment to the post of Special Police for the year 2013-14. Pursuant to the call letter, the petitioner appeared in the written examination conducted on 10.11.2013, and successfully passed in the written examination. The name of the petitioner was also provisionally selected for appointment. Subsequently, he was called for to participate in Physical Endurance Test conducted on 30.12.2013 and accordingly, the petitioner participated in the Physical Endurance test also. He has cleared all the tests successfully as well as the final medical check up, the petitioner secured third rank in Thanjavur District as informed orally by the officials concerned. However, he was not considered for appointment on account of the criminal case registered against him.

3.In respect of the criminal case, the Judugment of the Judicial Magistrate-I, Thanjavur, has been enclosed in the typed set of papers. Accordingly, the case was registered against 37 persons for the offence under section 30(2) of Police Standing Orders and under sections 47, 341 and 188 IPC. The allegations against the accused in the criminal case was that they have prevented the public from peacefully utilising the roads and had illegally blocked the traffic in the public road. Further, it is stated the buses and other private vehicles were stopped illegally by these 37 persons, who were arrayed as accuseds in the criminal case. However, the criminal case ended with an order of acquittal, by warning the accused, under section 3 of the Probation of offenders Act.

4.The learned counsel appearing for the petitioner made a submission that the aforesaid criminal case was registered against the writ petitioner, when he was a student and at the time of performing procession in the public road. Thus, the said crime cannot be construed as a serious offence, so as to deprive the candidates from seeking appointment to public employment.

5.This Court also is of the view that such offences or cases registered against the students during the college days, cannot be taken as a bar in a routine manner. In this regard, the three Judges Bench of the Hon'ble Supreme Court in AVTAR SINGH v. UNION OF INDIA [(2016) 8 SCC 471], laid down the principles in paragraph No.38, as under:

"38.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:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after Page 51 51 entering into service must be true and there should be no suppression or false mention of required information.

38.2. 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.

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

38.4. 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 recourse appropriate to the case may be adopted : -

38.4.1. 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.

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

38.4.3. 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.

38.5. 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.

38.6. 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.

38.7. 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.

38.8 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 Page 53 53 authority would take decision after considering the seriousness of the crime.

38.9. 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.

38.10. 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.

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

6. In paragraph No.38.4.3, the Hon'ble Supreme Court has held that 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. Similarly in paragraph No.38.4.1, also, the Hon'ble Supreme Court held that 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. The Hon'ble Supreme Court thus clarified that any such offence which are trivial in nature has

to be considered by referring the antecedents and other record in respect of the candidate.

7.However, in the case on hand, though the case of the writ petitioner was not considered on account of the criminal case registered against him, the criminal case ended with an order of acquittal. Under these circumstances, the respondent is directed to re-consider the case of the writ petitioner in respect of his antecedents and other records. In this view of the matter, this Court is of the view that it is a fit case for reconsideration.

8.Accordingly, the respondent is directed to re-consider the case of the writ petitioner and pass appropriate orders considering all the factors, including the antecedents and other records of the writ petitioner and pass orders after taking a decision in this resgard within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition stands disposed of on the above terms.
No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa
To

Tamil Nadu Uniform Services Recruitment Boards
807, B.it.ly Sengalvarayar Naicker Maligai
Anna Salai, Chennai 600 002.

+1 CC to Mr.G.Sankaran, Advocate Sr.No.72446

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NM(CO)
KP(15.11.2017)