

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
And
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.739 of 2014
and

M.P.No.1 of 2014 and C.M.P.No.11316 of 2017

1. The Director General of Police and Chairman,
Special Band Selection Committee,
Chennai - 600 004.
2. The Superintendent of Police,
Cuddalore District,
Cuddalore.
3. The Inspector of Police,
Sethiyathope Police Station, Chidambaram,
Cuddalore District - 608 001.
4. The Sub - Inspector of Police,
Orathur Police Station,
Cuddalore District. ... Appellants/Respondents

Vs.

J.Vetriselvan ... Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent seeking to set aside the order dated 20.12.2013 passed in W.P.No.11442 of 2013. सत्यमेव जयते

W.P.No.11442 of 2013 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the order Na.Ka.No.A4/55415/2013 dated 08.03.2013, passed by the 2nd Respondent herein and to quash the same and consequently direct the 2nd Respondent to appoint the petitioner in the post of Grade II Bank Police Constable Bugler.

For Appellants : Mr.P.Sivashanmugasundaram
Special Government Pleader

For Respondent : Mr.R.Sampath Kumar

J U D G M E N T

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

Though this matter has been listed before us, at the interlocutory stage when C.M.P.No.11316 of 2017 which is moved seeking vacation of the interim order, with the consent of the learned counsel appearing on either side, we heard the matter finally.

2.The case of the respondent/ writ petitioner was that his family comes from a socially disadvantaged segment. The family was also not educationally developed either. The writ petitioner studied upto IX Standard, but harnessed his skills for playing musical instruments. The second respondent/ Superintendent of Police, Cuddalore District has proposed recruitment to the posts of Grade II Band Police Constable Bugler. The educational qualification required for recruitment to be possessed by the candidate is upto IX Standard. Hence, the writ petitioner responded.

3.However, the selected candidates had faced a problem with regard to their age. Therefore, certain steps were taken for relaxing the upper age limit and he appeared for the said qualifying examination conducted on 30.06.2010. He was also subjected to medical test. Thereafter on 27.12.2012, the writ petitioner was asked to fill up the police verification form and submit the same. With the assistance of some one, the writ petitioner filled up the verification form and submitted the same in the office of the second respondent. While doing so, against the relevant column, as to whether any criminal case is pending against him, he inadvertantly furnished his answer as "no". However, the police have verified and found that in respect of a motor accident that was caused on 27.06.2012, the writ petitioner was arrested and granted station bail. Since the writ petitioner has suppressed his involvement in the criminal case, his case is not taken up for consideration for appointment as Grade II Band Police Constable Bugler.

4.The learned Special Government Pleader Shri.Sivashanmugasundaram would contend that at the time when the writ petitioner has responded to the notification, he may not have been involved in any criminal case, but, however, on 27.12.2012, when he has filled up the verification form, the writ petitioner is certainly aware of his involvement in a criminal case and his arrest on 27.06.2012 and his release on station bail in connection with the said crime on the same day. Therefore, the writ petitioner ought to have disclosed truthfully and faithfully, the information with regard to his involvement in the criminal case and instead, he suppressed the

information by furnishing the answer as "no" against the relevant column in the verification form.

5. At the stage of recruitment to a Government service, if a candidate were to indulge in mis-representations, suppressions or making false representations, such personnel did not deserve any consideration or compassion in the matter of public employment and he has pressed into service, the judgment rendered by a Full Bench of this Court, which has reviewed the entire legal regime and pointed out that suppression of information relating to involvement in criminal cases is certainly a factor which, in appropriate cases can dis-qualify such candidates from securing employment.

6. Per contra, the learned counsel appearing for the writ petitioner, who moved the vacate application would submit that there are cases and cases and therefore facts and circumstances of each case have got to be noticed and taken note of. Without any regard for the facts and circumstances, as a rule of thumb, the candidate should not be dis-qualified merely because of his involvement in a criminal case.

7. We have examined the record carefully. It is true that the writ petitioner is involved in Cr.No.142 of 2012 on the file of Orathur Police Station for the offences said to have been committed by him on 27.06.2012 at about 11.00 p.m. He was involved in crime registered as Cr.No.142 of 2012 on 15.02.2013 for the alleged offences committed under Sections 279 and 337 of I.P.C. He was also arrested and granted station bail by the police. Therefore, the writ petitioner is certainly aware of his involvement in Cr.No.142 of 2012.

8. However, when we examine Section 279 of I.P.C., it becomes very clear that whoever drives any vehicle or rides on any public way, in a manner so rash and negligent as to endanger human life or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Thus, the offence under Section 279 of I.P.C., is for rash driving or riding on a public way.

9. Similarly, if we examine Section 337 of I.P.C., it becomes very clear that whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. Thus under Section 337 of I.P.C., a person is liable to be punished for causing hurt by an act endangering life or personal safety of others.

10. In our opinion, both the offences are of a minor scale. This can be clear from the term of punishment provided for them. When a similar issue has engaged the attention of the Supreme Court in Pawan Kumar Vs. State of Haryana and another (1996 SCC (4) 17), the Supreme Court has dealt with and elucidated the concept of 'moral turpitude' and required the Parliament to step in and directions are issued as under:

"Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs.2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

Going by this principle, an offence for which the maximum punishment provided for is only six months or imposition of fine of Rs.1,000/-, the element of 'moral turpitude' perhaps, will not get attracted.

11. More than anything else, the post which the writ petitioner sought for recruitment is not as a Police Constable for performing either law and order duties or for performing duties as an armed trained guard. He sought for recruitment as a Grade II Band Police Constable Bugler to play the musical instrument Bugler.

12. The musical instrument is played, more, with a view to call the attention of the other Constables because the

instructions passed on orally may not reach till the very end of the column of Constables, whereas, if a Bugler is blown, the sound emanating therefrom can reach and travel for a long distance and can be heard by the concerned even at the end. At all other times, Police Band services will be utilized during ceremonial occasions or while conducting inspection of armed guards to offer such services on important occasions or during the visits of V.I.Ps. At all other times if an official dinner is hosted by high ranking officials in the police department, perhaps the services of the musical band attached to the police department will be pressed into service.

13. Therefore, keeping these factors in mind and also keeping in mind the factor that the people from the lowly placed social sector take to playing such musical instruments as they do not have the benefits of educational and social advancement, we consider that ends of justice would be better served by directing the second respondent Superintendent of Police, Cuddalore District, not to view the conduct of the writ petitioner in furnishing his answer against the relevant column as 'no' and treat it as amounting to willful suppression of his involvement in a criminal case. In the peculiar facts and circumstances of the case, we think that the cause of justice would be enhanced by ignoring such answers, whereas, a similar view is not liable to be taken, if the recruitment is for the post of a Grade II Police Constable or Armed Force Constable.

14. Accordingly, the writ appeal stands disposed of. The necessary follow up action shall be initiated by the Superintendent of Police, Cuddalore District, within a period of thirty days from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Director General of Police and Chairman,
Special Band Selection Committee,
Chennai - 600 004.
2. The Superintendent of Police,
Cuddalore District,
Cuddalore.

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3. The Inspector of Police,
Sethiyathope Police Station, Chidambaram,
Cuddalore District - 608 001.

4. The Sub - Inspector of Police,
Orathur Police Station,
Cuddalore District.

+lcc to Dr.R.Sampath Kumar, Advocate, S.R.No.58461

+lcc to the Government Pleader, S.R.No.58169

W.A.No.739 of 2014

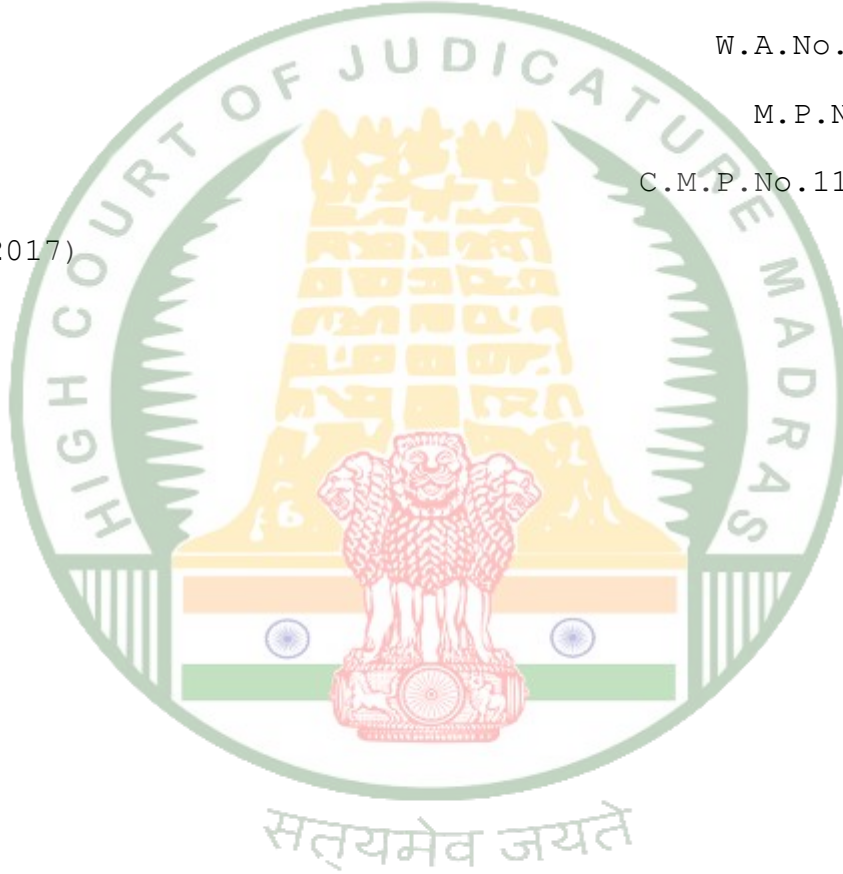
and

M.P.No.1 of 2014

and

C.M.P.No.11316 of 2017

EV(CO)
CA(31/08/2017)



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