

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.1241, 9338, 9339 of 2015,
4165, 4166, 16651 and 16652 of 2016 and
Connected Miscellaneous Petitions

S.Buveneswaran ...Petitioner W.P.No.1241 of 2015
S.Suresh ...Petitioner W.P.No.9338 of 2015
R.Vinoth kumar ...Petitioner W.P.No.9339 of 2015
S.Maheiswaran ...Petitioner W.P.No.4165 of 2016
N.Manivannan ...Petitioner W.P.No.4166 of 2016
N.Arivazhagan ...Petitioner W.P.No.16651 of 2016
K.Vijaya kumar ...Petitioner W.P.No.16652 of 2016

vs.

- 1.Union Territory of Puducherry
Represented by the Chief Secretary to Government,
Puducherry -1.
 - 2.The Superintendent of Police,
Head Quarters,
Government of Puducherry,
Puducherry -1.
 - 3.Central Administrative Tribunal
By its Registrar, High Court Campus,
Chennai -104.
- ... Respondents in WP.No.1241/15

- 1 Union of India
Rep. by Chief Secretary to Government of
Puducherry Secretariat Government of
Puducherry U.T. of Pondicherry.
- 2 The Additional Secretary
to Government Government of Puducherry
Puducherry.
- 3 The Inspector General
of Police Office of Inspector General of
Police Government of Puducherry Puducherry.

- 4 The Deputy Inspector General
of Police (Admin) Government of Puducherry
Puducherry.
- 5 The Superintendent of Police
(Head Quarters) Government of Puducherry
Puducherry.
- 6 Central Administrative
Tribunal Chennai Board By its Registrar
High Court Campus Chennai-104. ...Respondents in
Wp.No.9338/15
- 1 Union Territory of India
Rep. by Government of Puducherry by its
Chief Secretary to Government No.1 Gobert
Avenue Puducherry-605 001.
- 2 The Inspector General
of Police Police Head Quarters No.4 Dumas
Street Puducherry-605 001.
- 3 The Superintendent of Police
(Head Quarters) Police Head Quarters No.4
Dumas Street Puducherry-605 001.
- 4 Central Administrative
Tribunal By its Registrar High Court
Campus Chennai-104. ...Respondents in WP.No.9339/15,
16651/16,16652/16
- 1 Central Administrative
Tribunal Madras Bench Rep. by its
Registrar City Civil Court Buildings
Chennai-104.
- 2 Union of India
Rep. by Government of Puducherry by its
Chief Secretary to Government No.1 Gobert
Avenue Puducherry-605 001.
- 3 The Inspector General of
Police Police Head Quarters No.4 Dumas
Street Puducherry-605 001.
- 4 The Superintendent of Police
(HQ) Police Head Quarters No.4 Dumas
Street Puducherry-605 001. ...Respondents in WP.No.4165/16,
4166/16

Prayer in WP.No.1241,9338,9339/15

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus, calling for the records in O.A.No.822 of 2013 O.A.No.775/13, O.A.No.917/13 dated 25.09.2014 on the file of the third respondent Sixth Respondent, Fourth Respondent respectively and to quash the same in so far as it refuses to go into merits and refuses to grant relief by relying upon AIR 1980 Karnataka 92 and consequently direct the second respondent to appoint the petitioner to the post of Police Constable.

Prayer in WP.No.4165/16

Petition filed under Article 226 of the Constitution of India parying to issue a Writ of Certiorarified Mandamus after calling for the records from the 1st respondent relating to the Common Judgment dated 25.9.2014 in O.A. No.915 of 2013 and quash the same as illegal arbitrary and consequently direct the respondents 2 to 4 to appoint the petitioner to the Post of Police Constable as per the results published by them on 23.7.2012 w.e.f. the date the other candidates who were selected along with the petitioners were appointed with seniority monetary and other service benefits that would have been paid to the petitioner had the order dated 31.5.2013 was not passed.

Prayer in WP.No.4166/16

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus after Calling for the records from the 1st respondent relating to the Common Judgment dated 25.9.2014 in O.A. No.911 of 2013 and quash the same as illegal arbitrary and consequently direct the respondents 2 to 4 to appoint the petitioner to the Post of Police Constable as per the results published by them on 23.7.2012 w.e.f. the date the other candidates who were selected along with the petitioners were appointed with seniority monetary and other service benefits that would have been paid to the petitioner had the order dated 31.5.2013 was not passed award costs

Prayer in WP.No.16651/16

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating to common order dated 25.09.2014 passed by the 4th respondent tribunal in O.A.No.914 of 2013 and quash the same in so far as the petitioner is concerned and allow the O.A. as prayed for and grant all consequential benefits following therefrom.

Prayer in W.P.No.16652/16

Petition filed under Article 226 of the Constitution of

India praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating to order dated 25.09.2014 passed by the 4th respondent tribunal in O.A.No.910 of 2013 and quash the same and allow O.A. as prayed for and grant all consequential benefits following therefrom.

For Petitioners in

W.P.Nos.1241 and 9338 of 2015: Mr.J.Srinivasa Mohan
W.P.No.9339 of 2015 : Mr.K.Chozhan
W.P.Nos.4165 and 4166/2016 : Mr.K.Srinivasa Murthy
for M/s.Row and Reddy
W.P.No.16651 and 16652/2016 : Ms.Y.Kavitha

For Respondents : Mr.Syed Mustafa
Spl.Govt.Pleader for
R1 and R2 in W.P.No.1241/2015
R1 to R5 in W.P.No.9338/2015
R1 to R3 in W.P.No.9339/2015
R2 to R4 in W.P.Nos.4165 and
4166/2016
R1 to R3 in W.P.Nos.16651 and
16652/2016

C O M M O N O R D E R

K.K.SASIDHARAN, J.

The petitioners failed to disclose their involvement and conviction in criminal cases and the same resulted in cancelling their selection to the post of Police Constable, by the Police Department, Puducherry. The Central Administrative Tribunal dismissed the original applications filed by the petitioners primarily on the ground that the petitioners failed to disclose the conviction in the attestation form and as such, the authorities were right in cancelling the selection.

2. The original applications were dismissed by the Tribunal by order dated 25 September 2014. The Tribunal placed reliance on the authorities, which were governing the field for taking a decision as to whether the Department was correct in cancelling the selection on account of the suppression of material particulars with regard to the conviction in criminal cases.

3. The question regarding verification of character and antecedents and the right of the employer to cancel the appointment or selection on account of suppression or false information regarding involvement in a criminal case came up for consideration before the Hon'ble Supreme Court in Avtar Singh v. Union of India and others [(2016) 8 SCC 471].

4. The Supreme Court scanned the earlier decisions on the point and summarised the legal position in the following words:-

"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 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 recourses 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 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.

39. We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

5. The Supreme Court in Avatar Singh case (cited supra) conferred discretion on the employer to terminate or otherwise to condone the omission or false report.

6. The Central Administrative Tribunal was not having the benefit of the decision in Avatar Singh case and the same resulted in dismissing the original applications.

7. In view of the subsequent events and more particularly, the judgment rendered by the Hon'ble Supreme Court in Avtar Singh case (cited supra), we consider it deem and fit to direct the Government to examine the matter afresh and take a decision one way or the other.

8. In view of our decision to remit the matter to the Government of Puducherry, we consider it not necessary to deal with the facts of the individual cases.

9. The Government of Puducherry vide order in G.O.Ms.No.6 Home Department, dated 4 February 2013 constituted a Screening Committee for examining the cases of candidates selected for the post of Police Constables. We direct the first respondent to place the matter before the very same Committee with appropriate changes, in case of vacancies in the Committee on account of retirement. The Chief Secretary is directed to place the case of the petitioners herein before the said Committee. The Screening Committee shall examine the case of each of the petitioners individually in the light of the law laid down by the Hon'ble Supreme Court in Avtar Singh case (cited supra) and take a decision one way or the other. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

10. The writ petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

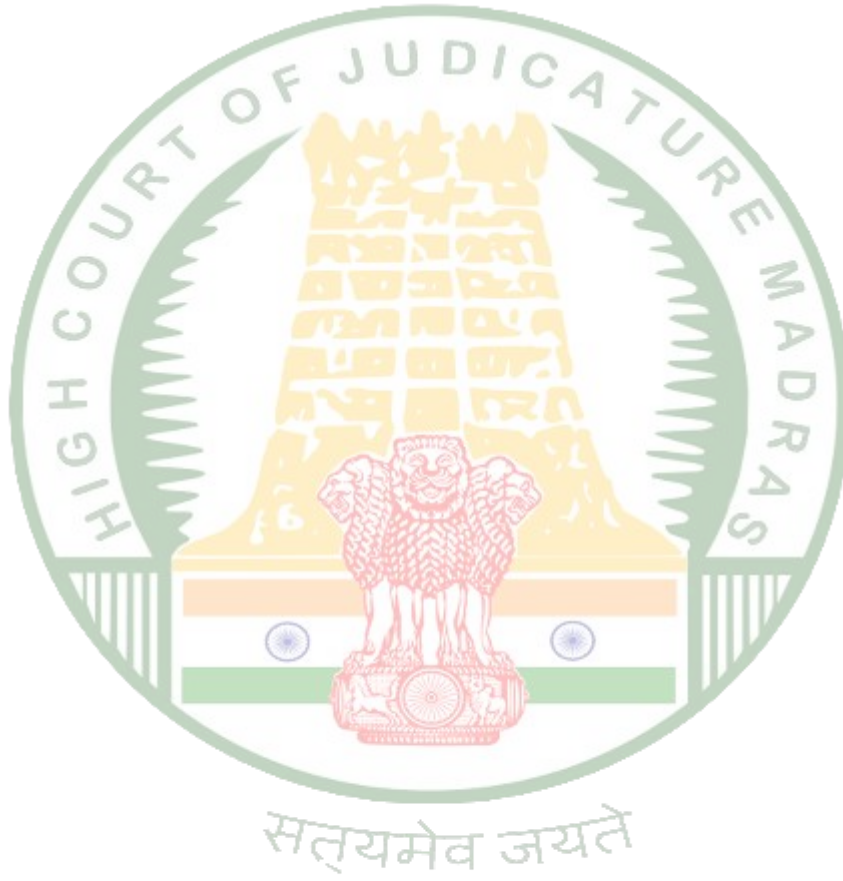
To

- 1.The Chief Secretary to Government,
Union Territory of Puducherry
Puducherry -1.
- 2.The Superintendent of Police,
Head Quarters,
Government of Puducherry,
Puducherry -1.
- 3.Central Administrative Tribunal
The Registrar, High Court Campus,
Chennai -104.
- 4.Additional Secretary Government,
Government of Puducherry, Puducherry.
- 5.The Inspector General of Police,
Office of the Inspector General of Police,
Government of Puducherry, Puducherry.
- 6.The Deputy Inspector General Of Police (Admin)
Government of Puducherry, Puducherry.
- 7.The Chairman,
Screening Committee,
Government of Puducherry.

+2cc to Ms.Kavitha, Advocate, S.R.No.12822,12816
+1cc to M/s.Row & Reddy, Advocate, S.R.No.12072
+1cc to Mr.Srinivasa Murthy, Advocate, S.R.No.12865
+1cc to the Government Pleader, S.R.No.13075

SKV(CO)
RS(06/03/2017)

W.P.Nos.1241, 9338, 9339 of 2015,
4165, 4166, 16651 and
16652 of 2016



WEB COPY