

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.Nos.741, 663, 631, 632, 633, 634 and 635 of 2017
and
CMP.Nos.10183, 10184, 9359, 9360, 8799, 8800 and
8801 to 8812 of 2017

W.A.No.741 of 2017:

- 1.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, 2nd Floor,
Anna Salai, Chennai - 2.
 - 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai -4.
 - 3.The Superintendent of Police,
Dharmapuri.
 - 4.The Inspector of Police,
Morappur Police Station,
Dharmapuri.
- ... Appellants/Respondent

vs.

V.Bharathan

... Respondent/Petitioner

W.A.No.663 of 2017:

The Superintendent of Police,
District Police Office,
Dharmapuri District,
Dharmapuri - 636 701.

... Appellant/Respondent

vs.

S.Dhanakoteeswaran

... Respondent/Petitioner

W.A.No.631 of 2017:

- 1.The Superintendent of Police,
Dharmapuri.
- 2.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Madras.

... Appellants/Respondents

vs.

M.Vijaya Baskar

... Respondent/Petitioner

W.A.No.632 of 2017:

- 1.Tamil Nadu Uniformed Services
Recruitment Board rep. By its Chairman,
No.807, P.T.Lee. Chengalvarayan Naicker,
Maaligai, Anna Salai,
Chennai -2.
- 2.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

... Appellants/Respondents

vs.

J.Senthil

... Respondent/Petitioner

W.A.No.633 of 2017:

- 1.The Superintendent of Police,
Dharmapuri.
- 2.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
Madras.

... Appellants/Respondents

vs.

L.K.Starnesh

... Respondent/Petitioner

W.A.No.634 of 2017:

- 1.The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, 2nd Floor,
Anna Salai, Chennai - 2.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai -4.

3.The Superintendent of Police,
Dharmapuri.

4.The Inspector of Police,
Morappur Police Station,
Dharmapuri.

... Appellants/Respondents

vs.

M.Velu

... Respondent/Petitioner

W.A.No.635 of 2017:

1.The Director General of Police,
Tamil Nadu, Mylapore,
Chennai -4.

2.The Chairman,
Uniform Service Recruitment Board,
Chennai.

3.The Superintendent of Police,
Dharmapuri District,
Dharmapuri.

... Appellants/Respondents

vs.

S.Sasikumar

... Respondent/Petitioner

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 22.03.2013 passed by a learned Single Judge of this Court in W.P.Nos.3688, 3691, 2795, 3467, 3616 and 4278 of 2013 and 24279 of 2012 respectively.

W.P.No.3688 of 2013: Writ petition filed under Article 226 of the constitution of India praying that Court to call for the entire records of the 3rd respondent in his impugned proceedings in Na.Ka.No.13100/2012/A3 dated Nil.1.2013 signed on 7.1.2013 quash the same and direct the respondent to appoint the petitioner Grade II Constable.

W.P.No.3691 of 2013: Writ petition filed under Article 226 of the constitution of India praying this Court to calling for the records pertaining to the impugned order Na.Ka.No.13100/2012/A-3 dated 8.1.2013 quash the same and consequently direct the respondent to reconsider and issue the appointment order

W.P.No.2795 of 2013: Writ petition filed under Article 226 of the constitution of India praying this Court to call for the records on the file of the 1st respondent in Na. Ka. En.13100/2012/A3 dt 8.1.2013 and to quash the same as illegal invalid and without jurisdiction and to direct the 2nd respondent herein to appoint the petitioner to the post of Police Constable Grade II.

W.P.No.3467 of 2013: Writ petition filed under Article 226 of the constitution of India praying this Court to calling for the records relating to the order made in Na.Ka.No. 13100/2012/A3 dated 07.01.2013 passed by the 2nd respondent and quash the same and consequently direct the respondents to appoint the petitioner to the post of Grade II Police Constable;

W.P.No.3616 of 2013: Writ petition filed under Article 226 of the constitution of India praying this Court to call for the records on the file of the 1st respondent in Na.Ka. En.13100/2012/A3 dt 7.1.2013 and to quash the same as illegal invalid and without jurisdiction and to direct the 2nd respondent herein to appoint the petitioner to the post of Police Constable Grade II

W.P.No.4278 of 2013: Writ petition filed under Article 226 of the constitution of India praying this Court to call for the entire records of the 3rd respondent impugned proceedings in Na. Ka. No. 13100/2012/A3 dt .1.2013 signed on 7.1.13 quash the same and direct the 1st respondent to appoint the petitioner as Grade II Constable;

W.P.No.24279 of 2012: Writ petition filed under Article 226 of the constitution of India praying this Court to directing the Respondents to appoint the petitioner as Grade-II AR Constable in the Police Department on the basis of the representation submitted by the petitioner dated 28.8.2012 to the Respondents

For Appellants : Mr.K.Venkataramani, AAG assisted by
in all WAs Mr.P.S.Sivashanmuga Sundaram, SGP

For Respondent : Mr.R.Sankara Subbu
in W.A.Nos.631 & 632 of 2017

For Respondent : Mr.N.Vijaya Basker, for M/s. Law Vision
in W.A.No.633 of 2017

For Respondent : Mr.G.Prabhakar
in W.A.Nos.741, 663 & 634 of 2017

COMMON JUDGMENT

(Common Judgment of the Court was made by
HULUVADI G. RAMESH, J.)

These appeals are filed by the State as against a common order dated 22.03.2013 passed by a learned Single Judge in a batch of writ petitions numbering 15. The State has challenged the said order only in respect of seven writ petitions. Since the issue involved in all these writ appeals is one and the same, they are considered and decided by this common judgment.

2.The necessary facts leading to the filing of these writ appeals are that in the year 2012, the Tamil Nadu Uniformed Services Recruitment Board called for applications from the eligible candidates for the posts of Police Constable Grade-II, Jail Warden and Fireman and conducted written examination. The respondents participated in the said examination and secured more than the required cut off marks and therefore, they were called for physical measurement and physical endurance test. The respondents participated in the same and were qualified for appointment to the post of Police Constable Grade-II. Subsequently, after subjecting the respondents to medical examination, the local police were called upon by the department concerned to verify the antecedents of the respondents and report about their character. Accordingly, the local Inspector of Police certified that there were no adverse remarks against the character of the respondents, however, the respondents were found to be involved in the criminal cases, the details of which run thus:

S.No.	Case No.	Name of the respondent	Involvement of the criminal case	Remarks
1	WA.No.631 of 2017 against WP.No.2795 of 2013	M.Vijaya Baskar	Crime No.429 of 2011 for the offences under Sections 147, 294 (b), 323, 324 and 506 (ii) IPC	Closed as Mistake of Fact on 12.12.2012 by the learned Judicial Magistrate, Pappireddipatti, Harur District

S.No.	Case No.	Name of the respondent	Involvement of the criminal case	Remarks
2	WA.No.632 of 2017 against WP.No.3467 of 2013	J.Senthil	Crime No.245 of 2004 culminated as CC No.119 of 2005 for the offences under Sections 147, 148, 323, 325, 326 and 294-A IPC	Acquitted on benefit of doubt by order dated 20.10.2010 passed by the learned Judicial Magistrate No.II, Dharmapuri
3	WA.No.633 of 2017 against WP.No.3616 of 2013	L.K.Starnesh	Crime No.141 of 2009 culminated as CC No.170 of 2009 for the offences under Sections 324 and 506 (ii) IPC	Acquitted on benefit of doubt by order dated 23.08.2010 passed by the learned District Munsif-cum -Judicial Magistrate, Pappireddipatti.
4	WA.No.634 of 2017 against WP.No.4278 of 2013	Velu	Crime No.145 of 2010 for the offences under Sections 147, 148, 323, 324 and 506(ii) IPC r/w Section 3 of PPD Act	Closed as Mistake of Fact on 02.03.2011 by the learned Judicial Magistrate No.I, Harur.

S.No.	Case No.	Name of the respondent	Involvement of the criminal case	Remarks
5	WA.No.635 of 2017 against WP.No.24279 of 2012	S.Sasikumar	Crime No.95 of 2010 for the offences under Sections 147, 148, 294(b), 324 and 427 IPC	FIR was quashed by this Court vide order dated 02.03.2011 in Crl.OP.No.330 6 of 2011
6	WA.No.663 of 2017 against WP.No.3691 of 2013	S.Dhana-koteeswaran	Crime No.145 of 2010 for the offences under Sections 147, 148, 323, 324 and 506(ii) IPC r/w Section 3 of PPD Act	Closed as Mistake of Fact on 28.02.2011 by filing Referred Charge Sheet.
7	WA.No.741 of 2017 against WP.No.3688 of 2013	V.Bharathan	Crime No.145 of 2010 for the offences under Sections 147, 148, 323, 324 and 506(ii) IPC r/w Section 3 of PPD Act	Closed as Mistake of Fact on 02.03.2011 by the learned Judicial Magistrate No.I, Harur.

Due to the said report, the appellant concerned passed the orders, withholding the selection of the respondents to the post of Police Constable Grade-II on the ground that they were involved in the criminal cases and they were not eligible for getting appointment for the post in question. Challenging the said orders, the respondents filed the respective writ petitions, which were allowed by the learned Single Judge. Hence, these writ appeals by the State.

3. By the common order dated 22.03.2013, the learned Single Judge allowed the writ petitions and quashed the orders passed by the appellant concerned. Further, a direction was issued to the appellants to consider the respondents for appointment by ignoring their alleged involvement in the criminal cases and appoint them in case they fall in the merit for selection. While coming to such conclusion, the learned Single Judge referred to various decisions of this Court as well as the Supreme Court and observed that the respondents in all these cases, were acquitted in criminal cases much before commencement of process of selection; the persons, in whose cases, the criminal case was closed as Mistake of Fact, by no stretch of imagination, can be said to be involved in criminal case, to deny them public appointment; and Rule 14(b) can only be interpreted to mean, that in cases, which are pending at the time of selection and ended in acquittal by giving benefit of doubt, then a person can be denied the right of appointment by considering him to be involved in criminal cases, but not in a case, where much before the start of selection process, the person is acquitted, even by giving benefit of doubt.

4. Placing reliance on a number of judgments, more particularly, the judgment of a Full Bench of this Court in *Manikandan v. Chairman T.N. Uniformed Services Recruitment Board* [2008 (2) CTC 97], the learned Additional Advocate General would contend that the respondents are not entitled to be appointed, as Rule 14(b) of the Tamil Nadu Police Subordinate Service Rules stipulate that the character and antecedents of the candidates are required to be such, which qualify him for service. The Rule further provides that a person acquitted or discharged by giving benefit of doubt or due to the fact that the complainant had turned hostile, are to be treated as person involved in a criminal case. Secondly, he would contend that suppression of involvement in a criminal case, in the application form, will also amount to suppression of a material fact and that by itself shall be a ground to reject the candidature. Therefore, the rejection of the respondents for appointment to the post in question, in view of their involvement in criminal cases and for suppression of information of their involvement in criminal cases, is justified, whereas, the learned Single Judge, without considering the same, passed the impugned order, directing the State to consider the respondents by ignoring their alleged involvement in the criminal cases and appoint them in case, they fall in the merit for selection.

5. Refuting the contentions so raised on the side of the appellants, learned counsel for the respondents would contend that as on the date when the respondents submitted their applications for the post in question, there had been no criminal case pending against them and there was no suppression

of any fact on the part of the respondents and that, they do not suffer from any disqualification. As such, the order passed by the learned Single Judge is perfectly correct and valid, which does not call for any interference.

6. We have given our anxious considerations to the rival submissions and also perused the records.

7. The issues that arise for consideration herein, are as follows:

(i) whether the acquittal or discharge of a person in a criminal case on benefit of doubt would amount to a stigma on the life of the respondents so as to make them ineligible as per Rule 14(b), Explanation-I of the Tamil Nadu Special Police Subordinate Rules?

(ii) Whether the non-disclosure of involvement in a criminal case, which has ultimately ended in acquittal, but in some cases disclosed after acquittal, can be a ground for disqualifying the respondents from entering into the Government service?

8. It is well settled law that the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria, which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature, which may adjudge him unsuitable for the post. The verification of antecedents is necessary to find out fitness of incumbent. 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.

9. The Division Bench of the Supreme Court in Jainendra Singh v. State of U.P. [(2012) 8 SCC 748], having considered the cleavage of opinion in various decisions of the Court in cases of suppression of requisite information or submission of false information by the employees in regard to criminal prosecution, arrest or pendency of any criminal cases against them, referred to the cases to the Larger Bench, for resolving the same.

10. The Larger Bench of the Supreme Court in Avtar Singh v. Union of India and others [(2016) 8 SCC 471], on a reference made by the Division Bench in Jainendra Singh (supra), having noticed various decisions, summarised its conclusion at para 38, which runs 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 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 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."

11. In the light of the above settled legal principles, the issues involved herein have to be looked into by this Court. The whole gamut of the argument of the learned Additional Advocate General is that the respondents have suppressed the material facts about their involvement in the criminal cases in the application form. To substantiate his argument, he produced the original files relating to the respondents for perusal of this Court.

12. On a cursory glance at the files produced on the side of the appellants, particularly, the OMR Application Form for Grade II PC, JW and Fireman-2012, it would reveal that it was drafted in the form of objective and the questions were asked both in Tamil and English languages. Sl.Nos.29 and 29(a) pertain to the

information about the involvement of the criminal cases by the candidates, which reads as follows:

"29.உம் மீது குற்றவழக்கு நிலுவையில் இருக்கிறதா? Whether any criminal case is pending against you? ஆம்.Yes இல்லை.No

29(a)ஆம் எனில், வழக்கு எண், நாள், காவல் நிலையத்தின் பெயர், வழக்கின் தற்போதைய நிலையைக் குறிப்பிடவும்."

The perusal of the files would further reveal that there was a declaration form relating to Tamil Nadu Police, Annexure-III, Verification Roll, in which, Serial Nos.15 and 16 sought the information about the involvement of the criminal cases by the candidates, which read as under:

"15.Have you ever been concerned in any criminal case as defendant? -

நீர் கிரிமினல் வழக்கில் எப்போதாவது சம்பந்தப்பட்டது உண்டா?

16.Have you ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with CC No. and Court.

நீர் எப்போதாவது கிரிமினல் அல்லது பிற சுற்றங்களில் ஈடுபட்டு தண்டிக்கப்பட்டதுண்டா? ஆம், எனில், தண்டனை, சிசி எண். மற்றும் நீதிமன்றம் விவரம்."

When the application form was drafted in such a fashion i.e., answering the questions in 'yes' or 'no' type, how is it expected from the respondents to mention about all the material facts about their involvement in the criminal cases. Obviously, the respondents have to answer the same either 'yes', if any criminal case is pending at the time of filling up the application form or 'no', if there is no criminal case is pending. Further, there was no serial number, about the past or previous involvement of the criminal cases by the candidates in the said application form. When such being the case, this Court is of the view that the argument of the learned Additional Advocate General that the respondents did not disclose their past or previous antecedents about their involvement in the criminal cases at the time of filling up the application form, does not have legs to stand.

13. Admittedly, all the respondents have furnished about their past antecedents relating to their involvement in the criminal cases in the declaration form. As such, there is no suppression of material facts on the part of the respondents, as alleged by the learned Additional Advocate General. Even there is no disclosure or suppression about the past antecedents of the involvement of the respondents in the criminal cases, the perusal of the records would reveal that there is no criminal case pending against the respondents at the time of applying the post in question. In that event, the question of suppression of material facts or non-disclosure about the past antecedents of the involvement of the respondents in the criminal cases, does not arise.

14. We are of the opinion that verification of character and antecedents is one of the important criteria to assess suitability, at the same time, the minor indiscretions made by young people required to be condoned rather than to brand them as criminals for the rest of their lives and it is open to the employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects, whereas, in the present case, the appellants, without looking into the materials in a proper perspective, have mechanically acted upon. The learned Single Judge after noticing all the facts and on analysing the factual and legal position, has rightly passed the order, which is impugned in these writ appeals. We find no error or irregularity in the order so passed by the learned Single Judge.

15. However, the issues involved herein have already been elaborately dealt with by the Larger Bench of the Supreme Court in Avtar Singh (supra), wherein, before coming to the conclusion as noted above, it has been observed as follows:

"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..."

16. In the light of the decision of the Larger Bench, we hereby modify the order passed by the learned Single Judge, directing the appellants to reconsider the case of the respondents, after affording an opportunity of personal hearing to them and strictly in terms of the guidelines laid down by the Larger Bench of the Supreme Court in Avtar Singh (supra) and take a decision in accordance with law, with regard to the appointment of the respondents for the post in question. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

17. All the writ appeals are disposed in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rk

TO

1. The Chairman,
Tamil Nadu Uniformed Services
Recruitment Board,
No.807, 2nd Floor,
Anna Salai, Chennai -2.

2. The Director General of Police,
Dr. Radhakrishnan Salai,
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3. The Superintendent of Police,
Dharmapuri.

4. The Inspector of Police,
Morappur Police Station,
Dharmapuri.

+ 3 ccs to Mr. G. Prabhakar, Advocate Sr.83358, & 83359
+ 1 cc to M/s. Law Vision Advocate Sr.83412
+ 3 ccs to MR. R. Sankarasubbu, Advocate Sr.84037 to 84039
+ 1 cc to Government Pleader SR.84222

W.A.Nos.741, 663, 631, 632, 633, 634 and 635 of 2017

RV(CO)

EU(12/02/2018)