

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10053 of 2010

A.Bharathithasan

... Petitioner

-vs-

1.Director General of Police,  
Chennai - 600 004.

2.The Chairman cum-Director General of Police,  
Tamil Nadu Uniformed Services Recruitment Board,  
Anna Salai, Chennai - 600 002.

3.The Superintendent of Police,  
District Police Office,  
Villupuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents herein to appoint the petitioner (Regn. No.0505259) as Grade II Police Constable for the year 2009 in terms of Explanation - 2 of Rule 14 (b) of Special Rules for Tamil Nadu Special Police Subordinate Service Rules, without reference to the criminal case culminated with the Judgment in C.C.No.168/2006 dated 30.01.2009 on par with his batch mates with all consequential service benefits within a time frame.

For Petitioner :: Mr.P.Velmurugan for  
M/s. G.Bala and Daisy

For Respondents :: Mr.A.Raja Perumal  
Additional Government Pleader

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O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to appoint the petitioner as Grade II Police Constable for the year 2009 in terms of Explanation - 2 of Rule 14 (b) of Special Rules for Tamil Nadu Special Police Subordinate Service Rules, without reference to

the criminal case culminated with the Judgment in C.C.No.168/2006 dated 30.01.2009 on par with his batch mates with all consequential service benefits within a time frame.

2.The learned counsel appearing on behalf of the writ petitioner states that in pursuant to the notification issued by the respondents, the writ petitioner has participated in the process of selection for appointment to the post of Grade II Police Constable for the year 2009. The writ petitioner had appeared in the written examination and passed in the said examination. Thereafter, he was called for interview and the writ petitioner participated in the physical verification test, eligibility test and physical endurance test. On verification, the petitioner came to understand that he was not selected for appointment to the post of Grade II Police Constable, on account of a criminal case registered against him in C.C.No.168 of 2006.

3.The learned counsel appearing on behalf of the writ petitioner further states that the criminal case was registered against the writ petitioner under Section 147, 148, 324, 323, 427, 109 and 506 (ii) of the Indian Penal Code and after trial the petitioner was acquitted from the criminal case. The order of acquittal was passed by the Judicial Magistrate-II, Villupuram in C.C.No.168 of 2006 on 30.01.2009. It is contended that since the writ petitioner was acquitted from the criminal case, his candidature should have been considered by the respondents for appointment to the post of Grade II Police Constable.

4.The learned Additional Government Pleader appearing on behalf of the respondents state that the writ petitioner has suppressed the fact in respect of the registration of the criminal case against him in the application submitted by him at the first instance. Therefore, the writ petitioner is not entitled to be selected even on the ground that he has suppressed the fact in relation to the registration of a criminal case against him. The learned Additional Government Pleader is of the opinion that the candidates who are having criminal case history is not entitled to be appointed as Grade II Police Constable, which is an uniformed Police service.

5.On a perusal of the Judgment passed in the criminal case, this Court is able to find that the order of acquittal was granted by extending the benefit of doubt. Therefore, this Court has to consider whether a candidate having a criminal case history can be selected for appointment to the post of Grade II Police Constable in the Tamil Nadu Police service or not?

6.In respect of the very same issue, it is necessary to consider the Judgments of the Hon'ble Supreme Court of India and

in this regard, this Court also passed an order on 21.04.2017 in W.P.7606 of 2017 and the relevant paragraphs are extracted here under:

"23.The submission of Mr. Lakshmi Narayanan, the learned counsel for the petitioner, that this Bench has earlier considered the case of similar facts on 08th March, 2017, we are of the opinion that all the aspects in this regard were meticulously considered with reference to the principles laid down by the Honourable Apex Court of India. We would like to quote certain paragraphs of the said Judgment to re-emphasize the views expressed by us in earlier Judgment.

"9.Thus, the matter came to be considered by a Bench of Three Judges in Avatar 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 Avatar 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."

24.We have considered the legal aspects dealt with by the Hon'ble Apex Court, in the case of Daya Shankar Yadav in Paragraph Nos. 15 & 21 are extracted below:

"15.When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having

regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

"21.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 straight forward. Be that as it may."

25. In paragraph 26 of the Judgment, we have unambiguously and in clear terms expressed our firm opinion as under:

"26. ....we are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely dis entitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service."

7. This Court is of an undoubted opinion that the candidate who has a criminal case back ground cannot be considered, more specifically for appointment to the post of Grade II Police Constable, which is an uniformed police service. In certain cases, Court can direct the authorities to reconsider the matter in the light of the Judgment of the criminal case, but in respect of the Police service and Judiical service, it is not desirable to issue any such direction.

8. Integrity and honesty is of utmost importance in the Police service, since it is an uniformed service so also in Judicial service. The Hon'ble Supreme Court of India also emphasized that the antecedent character, criminal case history and other particulars ought to be carefully verified before appointing any persons in the Uniformed service or in the Judicial service.

9. In view of the respective pronouncement spelled out by the Hon'ble Apex Court of India, this Court again reiterated that the candidate having a criminal case history, though acquitted has to be screened in respect of the nature of involvement and related facts. Further, the mind set and intention of a person is also to be looked into through the manner in which he has stated the facts in various formats. Thus, the arguments advanced by the learned counsel appearing for the writ petitioner deserves no consideration in spite of the order of acquittal. The selection authority has got every right to reject the candidature on ascertaining the over all facts and circumstances in each case.

10. Thus, this Court is not inclined to reconsider the case of the writ petitioner, in view of the fact that it is a case of suppression of the material facts by the writ petitioner, even at the time of the submission of the application and participated in the selection process. Thus, the writ petition deserves no further consideration.

11. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Director General of Police,  
Chennai - 600 004.

2. The Chairman cum-Director General of Police,  
Tamil Nadu Uniformed Services Recruitment Board,  
Anna Salai, Chennai - 600 002.

3. The Superintendent of Police,  
District Police Office,  
Villupuram District.

+1cc to Mr.G.BALA & DAISY Advocate, S.R.No.86992  
+1cc to the Government Pleader, S.R.No. 86859

W.P.No.10053 of 2010

TR(18/01/2018)