

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :22.08.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
WRIT PETITION No.21989 of 2017

Kaviyarasu

... Petitioner
Vs.

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

2. The Member Secretary,
Tamil Nadu Uniform Service Recruitment Board,
No.807, P.T.Lee, Chengalvarya Naicker Maaligai,
Anna Salai, Chennai - 2. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 22.07.2017 in accordance with law by appointing the petitioner as Grade-II Constable in Reg.No.0804772 Dharmapuri to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to consider the petitioner's representation dated 22.07.2017 in accordance with law by appointing the petitioner as Grade-II Constable in Tamil Nadu Police Circle.

2. The writ petitioner, pursuant to the notification appeared for recruitment to the Post of Grade-II Constable, participated in the written examination, in Register No.0804772, held on 22nd August, 2012 and he passed in the said examination. The writ petitioner, being a successful candidate in the written examination got selected for appointment to the Post of Grade-II Constable and was waiting for his order. At that point of time, during the Police verification, it was found that the writ petitioner was implicated in criminal case in Crime No.16 of 2011 on the file of the Inspector of Police, Morappur Police Station, Morappur under Sections 147,427 and 323 of I.P.C

3. The learned counsel for the writ petitioner states that the petitioner moved this Court by filing CrI.O.P.No.20191 of 2013 to quash the said F.I.R and the same was allowed on 15.02.2017. Thus, as of today, there is no F.I.R pending against the writ petitioner and therefore, the writ petitioner has to be considered for recruitment to the Post of Grade-II Constable.

4. First of all, the writ petitioner has participated in the recruitment process of the year 2012 and the selection was conducted in the year 2012 itself. At time of the process of recruitment, a criminal case was pending against the writ petitioner and it was quashed by this Court on 15.02.2017 as stated above. Thus, question of considering the merits regarding the criminal case now after a lapse of five years, does not arise at all. Further, as on the date of selection, the criminal case was pending against the writ petitioner.

5. That apart, the post of Grade-II Constable is a uniformed service which requires consideration in respect of the candidates against whom criminal cases are registered. A mere acquittal or exoneration alone is not a point and the very nature and involvement of the candidates have also to be considered.

6. The question that has raised before this Court is the same which has fallen for consideration and time and again in one form or the other. Involvement in a criminal case is an autocratic fact or for disqualification of the candidates itself. The very question has been raised on several occasions before this Hon'ble Court as well as before various other Courts as well as before the Hon'ble Supreme Court. The decision has been settled by various Courts for a long period of time and the substratum of recommendations from (I) involvement in a criminal case is itself a disqualification, (II) It all depends upon the nature of selection, (III) It all depends upon the nature of involvement in a criminal case, (IV) It depends upon the status of employment.

7. The Hon'ble Supreme Court had also an occasion to deal with various relief and questions for over a long period of time. As a result, Civil Appeal No.5671 of 2012 between Jainendra Singh Vs. State of U.P., 2012 (8) SCC 748, has come up for consideration, in which the Hon'ble Supreme Court of India, after noticing the range of views caused by various Benches of the Court till then, had noticed the divulgence of opinion to certain extent. Thus, the Hon'ble Supreme Court felt it appropriate to be considered by Larger Bench so as to cause one uniform opinion on the subject.

8. Thus, the matter came to be considered by a Bench of Three Judges in the case of Avtar Singh Vs. Union of India, reported in 2016 (8) SCC 471. After reviewing all the earlier cases including the one, in the case of Daya Shankar Yadav Vs. Union of India, reported in 2010 (14) SCC 103 and in the case of State of West Bengal Vs. S.K.Nazrul Islam, reported in 2011 (10) SCC 184, the following principles were settled by the Larger Bench in Paragraph 34 of the Judgment in the case of Avtar Singh Vs. Union of India, which are as follows:

"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 all relevant aspects."

9. The Hon'ble Supreme Court has pointed out that verification of character and antecedents is one of the important criteria to assess the very suitability of the incumbent for the employment and hence, it is open to the employer to adjudge the facts and circumstances of the case based upon objective criteria. It is also held that though for a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service, but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity.

10. In paragraph 38 of the said judgment, the following principle have been settled:-

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 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."

11. In view of the legal principles discussed above, it is not enough that the criminal case against the writ petitioner was quashed, but verification of antecedent is also an important criteria for selection, more specifically for recruitment in the uniformed service. Further, the writ petitioner appeared in the selection conducted in the year 2012 and F.I.R was quashed only on 15.02.2017, after a lapse of about 5 years. Thus, now question of considering his candidature for the selection conducted in the year, 2012, does not arise at all and the other grounds raised in this writ petition deserve no further consideration at all.

12. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Member Secretary,
Tamil Nadu Uniform Service Recruitment Board,
No.807, P.T.Lee, Chengalvarya Naicker Maaligal,
Anna Salai, Chennai - 2.

+1 cc to M/s.S.Rajanikanth Advocate sr 60160
+1 cc to the Government Pleader sr60560

W.P.No.21989 of 2017

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